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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 748, 750, 756, 758, 762, 764, 770, 772, and 774

[Docket No. 120403246-2657-01]

RIN 0694-AF65

Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Export Control Reform (ECR) Initiative, the Bureau of Industry and Security (BIS), and the Directorate of Defense Trade Controls (DDTC), Department of State, have published multiple proposed amendments to the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), respectively, to strengthen national security by fundamentally reforming the export control system. This final rule implements the initial ECR changes by adding a structure and related provisions to control munitions items that the President has determined no longer warrant export control on the U.S. Munitions List (USML) on the Commerce Control List (CCL), specifically aircraft, gas turbine engines, and related items. This rule is being published in conjunction with a Department of State rule that revises the USML so that upon the effective date of both rules, the USML and CCL and corresponding regulatory structures will be complementary. The revisions in this final rule are also part of

Commerce's retrospective regulatory review plan under EO 13563, which Commerce completed in August 2011.

DATES: *Effective Date:* This rule is effective [INSERT DATE 180 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Commerce's full plan can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules*.

FOR FURTHER INFORMATION CONTACT: For general questions about the "600 series" control structure or transition related questions, contact Hillary Hess, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202-482-2440 or rpd2@bis.doc.gov. For technical questions about the ECCNs included in this rule contact Gene Christiansen, Office of National Security and Technology Transfer Controls, at 202-482-2984 or gene.christiansen@bis.doc.gov. For questions about the definition of "specially designed," contact Timothy Mooney, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202-482-2440 or timothy.mooney@bis.doc.gov.

SUPPLEMENTARY INFORMATION: This final rule implements the initial ECR changes by adding a structure and related provisions to control munitions items that the President has determined no longer warrant export control on the U.S. Munitions List (USML) on the Commerce Control List (CCL). In addition to adding this control structure, this rule creates ten new "600 series" Export Control Classification Numbers (ECCNs) to control an initial tranche of items moving from the USML to the CCL: aircraft and gas turbine engines, related parts, components, accessories, attachments, software, and technology.

This rule also adopts as much as possible a common definition of "specially designed" for use under the EAR and the ITAR, along with other key terms used on the two control lists. In addition, this rule addresses implementation issues related to the transition of items from the USML to the CCL, including the continued use of DDTC-issued licenses that include items transferred to the CCL.

This rule implements changes that were proposed in five rules published between July 15, 2011 and June 21, 2012 under ECR. This rule is being published in conjunction with a Department of State rule that revises the USML so that upon the effective date of both rules, the USML and CCL and corresponding regulatory structures will be complementary.

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I. The Export Control Reform Initiative

A. Background

The objective of the Export Control Reform (ECR) Initiative is to protect and enhance U.S. national security interests. President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system to identify additional ways to enhance national security. In April 2010, then-Secretary of Defense Robert M. Gates, describing the initial results of that effort, explained that fundamental reform of the U.S. export control system is necessary to enhance national security. Once the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML) are amended so that they control only

the items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and the Export Administration Regulations (EAR) are amended to control military items that do not warrant USML controls, the U.S. export control system will enhance national security by (i) improving interoperability of U.S. military forces with allied countries, (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, and (iii) allowing export control officials to focus government resources on transactions that pose greater concern.

On July 15, 2011, BIS published *Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)* (76 FR 41958) (hereinafter "July 15 (framework) rule"). That rule proposed a regulatory framework to control items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)(1)), the President determines no longer warrant export control under the AECA. These items would be controlled under the EAR once the congressional notification requirements of section 38(f) and corresponding amendments to the ITAR (22 CFR parts 120-130) and its USML and the EAR (15 CFR parts 730-774) and its Commerce Control List (CCL) are completed.

After the July 15 (framework) rule proposed this regulatory framework, BIS published subsequent rules proposing specific changes to the CCL, and to other parts of the EAR. Among other rules, on June 21, 2012, BIS published *Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review* (77 FR 37524) (hereinafter "June 21 (transition) rule"). That rule proposed, *inter alia*, establishing a general order to facilitate the transition from ITAR to

EAR licensing jurisdiction and broadening certain EAR license exceptions and licensing procedures to ensure they are not more restrictive than comparable ITAR exemptions and approvals.

This final rule implements ECR by finalizing the provisions contained in five proposed rules published between July 15, 2011 and June 21, 2012, which adds to the CCL military aircraft, military gas turbine engines, and related items that the President has determined no longer warrant export control on the USML. The Department of State made the congressional notification required by Section 38(f) of the AECA for removal of these items from the USML. The majority of the revisions in this rule are specific to the munitions items that are transferred from the USML to the CCL; however, many revisions also affect items or transactions that were already subject to the EAR prior to the effective date of this rule.

Rather than adding a new paragraph to § 734.3 for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), as proposed, BIS is adding a note to section 734.3(b)(1)(i) to clarify the delegations of authority between the Departments of State and Justice with respect to defense articles identified on the USML in the ITAR and the United States Munitions Import List (USMIL). BIS received no comments from the public on this issue. BIS does not believe that this change is substantive; rather it more accurately reflects the relationship between the USML in the ITAR and the United States Munitions Import List.

B. List of Proposed Rules

This rule implements amendments to the EAR proposed in the following five rules published between July 15, 2011 and June 21, 2012 under ECR:

- *Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, (, 76 FR 41958, July 15, 2011) (RIN 0694-AF17) ("July 15 (framework) rule");
- *Revisions to the Export Administration Regulations (EAR): Control of Aircraft and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, (76 FR 68675, November 7, 2011) (RIN 0694-AF36) ("November 7 (aircraft) rule");
- *Revisions to the Export Administration Regulations (EAR): Control of Gas Turbine Engines and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, (76 FR 76072, December 6, 2011) (RIN 0694-AF41) ("December 6 (gas turbine engines) rule");
- *"Specially Designed" Definition*, (77 FR 36409, June 19, 2012) (RIN 0694-AF66) ("June 19 (specially designed) rule"); and
- *Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review*, (77 FR 37524, June 21, 2012) (RIN 0694-AF65) ("June 21 (transition) rule").

C. Relationship to Other Rules Implementing ECR

This final rule is published concurrently with the Department of State final rule, *Revisions to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform.* BIS anticipates additional final rules will be published concurrently by both agencies moving additional munitions items from the USML to the CCL, once the notification

process is completed in accordance with section 38(f) of the AECA and subsequent USML categories and the corresponding Export Control Classification Numbers (ECCNs) are published in final form.

II. Addition of the "600 Series" to the CCL

In the July 15 (framework) rule, BIS proposed to add a new "xY6zz" control series to the CCL. This series, known as the "600 series," would control most items formerly on the USML that move to the CCL and would consolidate the thirteen existing Wassenaar Arrangement Munitions List (WAML) entries (i.e., those entries currently under "xY018"). In implementing the "600 series" in this rule, as discussed below, BIS took into account comments related to the function and structure of the "600 series" submitted under all prior proposed rules issued as part of ECR that would move items from the USML to the CCL. These rules are:

- *Revisions to the Export Administration Regulations (EAR): Control of Military Vehicles and Related Items That the President Determines No Longer Warrant Control on the United States Munitions List*, (76 FR 76085, December 6, 2011);
- *Revisions to the Export Administration Regulations (EAR): Control of Vessels of War and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, (76 FR 80282, December 23, 2011);
- *Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles That the President Determines No longer Warrant Control Under the United States Munitions List (USML)* (76 FR 80291, December 23, 2011);

- *Revisions to the Export Administration Regulations (EAR): Control of Energetic Materials and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (77 FR 25932, May 2, 2012);
- *Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items That No Longer Warrant Control Under the United States Munitions List and Items on the Wassenaar Arrangement Munitions List* (77 FR 29564, May 18, 2012);
- *Revisions to the Export Administration Regulations (EAR): Control of Personal Protective Equipment, Shelters, and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (77 FR 33688, June 7, 2012); and
- *Revisions to the Export Administration Regulations (EAR): Control of Military Training Equipment and Related Items the President Determines No Longer Warrants Control Under the United States Munitions List (USML)* (77 FR 35310, June 13, 2012).

These rules, as well as the rules referenced in Section I.B., above, published in 2011 and 2012, provided the public with extensive notice regarding the proposed control structure and transition-related provisions and offered a wide array of examples of proposed "600 series" items. The public comments BIS received in response to these proposed rules have played an important role in helping the Administration refine the provisions that are included in this final rule and the corresponding Department of State final rule to achieve initial implementation of ECR. A summary of the comments and BIS' responses are provided below.

A. General Structure

Under the July 15 (framework) rule, BIS proposed to add the new "600 series" to each applicable CCL category so that it would fall after the 300 series (ECCNs that control items primarily for chemical and biological weapon proliferation reasons) and before the 900 series (ECCNs that control items for various U.S. foreign policy reasons). The "600 series" framework would allow for identification, classification, and control of items transferred from the USML that, based on their technical or other characteristics, are not classified under an existing ECCN that is subject to controls for any reason other than Anti-Terrorism (AT) reasons. This structure would allow for a straightforward application of a licensing policy for items that move to the CCL from the USML. The fourth and fifth characters of each new "600 series" ECCN would generally track the WAML categories for the types of items at issue.

BIS is adopting the general structure of the "600 series" proposed under the July 15 (framework) rule. Most commenters were supportive of this structure, but some commenters were concerned that it did not make the CCL more "positive" and that dual-use items may be controlled under a "600 series" ECCN. BIS shares the goal of creating a more positive control list, but maintained a goal that no items be unintentionally decontrolled during the process of moving items from the USML to the CCL. Since the USML contains, *inter alia*, catch-all controls on parts, components, accessories, and attachments specifically designed or modified for defense articles, most of these catch-all controls are being moved to the CCL. BIS will continue to work to make the CCL more positive through the multilateral regimes and through considering public comments responding to the advance notice of proposed rulemaking, *Feasibility of Enumerating "Specially Designed" Components*, (77 FR 36419, June 19, 2012). Also, BIS does not believe that dual-use items or purely civil items – i.e., items that are now subject to the EAR

and not subject to the jurisdiction of the ITAR – would be moved to a "600 series" entry because items in a -018 ECCN are on the WAML and thus, even prior to this rule, are more properly described as munitions items than dual-use or purely civil items.

B. Reasons for Control

In proposing the "600 series," the July 15 (framework) rule also proposed the reasons for control for "600 series" ECCNs. Generally, such ECCNs would be subject to National Security Column 1 ("NS1"), Regional Stability Column 1 ("RS1"), Anti-Terrorism Column 1 ("AT1"), and United Nations Embargo ("UN") reasons for control. In addition, end items moving from the USML that are controlled by the Missile Technology Control Regime, Australia Group, and Firearms Convention would be controlled for Missile Technology Column 1 ("MT1"), Chemical and Biological Weapons Proliferation Column 1 ("CB1"), and Firearms Convention ("FC") reasons, respectively, under the EAR. Items that were on the CCL prior to the creation of the "600 series" and that move into the "600 series" would retain the reasons for control to which those items were subject prior to the creation of the "600 series."

BIS is adopting the reasons for control described above in this final rule. Some commenters were concerned that the "600 series" ECCNs contained too many varying controls, unilateral NS controls, overly sensitive NS1 and RS1 controls, or could inaccurately contain MT controls. BIS does not agree with these comments. Almost all items moving from the USML to the "600 series" are also on the WAML, particularly considering the catch-all controls in the WAML. Thus, there is already multilateral agreement on such items and NS controls are warranted. To the extent an item in the "600 series" is not on the WAML, BIS has concluded that its inherent or unique military or intelligence applicability warrants RS1 controls, unless the item is specifically listed in a .y paragraph within the ECCN (see discussion below in Section

II.C for an explanation of .y paragraphs). BIS has also determined that certain license exceptions should be available under certain circumstances and under specific conditions in order to better harmonize the EAR's exceptions with the exemptions in the ITAR or to otherwise implement the national security objectives of the reform effort as set forth above. With respect to MT controls, the Departments of Defense, State, and Commerce have reviewed the USML to determine which items are currently subject to MT controls. As mentioned, BIS will continue to review the CCL to make the entries more clear and positive, including reviewing the scope of controls on items subject to the EAR.

The United Nations (UN) reason for control was added to the "600 series" ECCNs after publication of the rule *Export and Reexport Controls to Rwanda and United Nations Sanctions Under the Export Administration Regulations* (77 FR 42973, July 23, 2012) established this convention for identifying items controlled to UN arms-embargoed destinations.

C. Items Paragraph

Within each "600 series" ECCN, the July 15 (framework) rule proposed that specific "end items," "parts," "components," "accessories," and "attachments" moving from the USML would, unless otherwise noted, be positively enumerated in paragraphs .a through .w. Former USML "parts," "components," "accessories," and "attachments" that are not (i) enumerated in the revised, positive USML or (ii) enumerated in a new "600 series" entry in paragraphs .a through .w would be controlled in the .x paragraph of each new corresponding "600 series" ECCN as "parts," "components," "accessories," and "attachments" "specially designed" for items controlled elsewhere in that ECCN or for defense articles controlled in the corresponding USML category.

The .y paragraph of each "600 series" would control specific types of "parts," "components," "accessories," and "attachments" that, even if "specially designed" for a defense article or "600 series" end item, warrant no more than AT-only controls. Thus, one would not need to review the .x paragraph if a "part," "component," "accessory," or "attachment" is described in the .y paragraph. The .y paragraphs thus do not control the enumerated items if they were not "specially designed" for a "600 series" item or a defense article subject to the ITAR.

BIS received multiple comments regarding the structure of the .x and .y paragraphs. With respect to the .x paragraph, some commenters recommended that the descriptions of items should be more positive and avoid the use of "specially designed," while other commenters believed that items in .x should only be subject to embargoes, end-use controls, and end-user controls. Again, BIS shares the goal of ultimately having a more positive list of items controlled in the "600 series" and the CCL generally. However, the proposed revisions must comply with multilateral regime obligations and must not inadvertently decontrol items that are being moved from the USML. Moreover, it would be physically impossible and impractical to enumerate every U.S. and foreign-origin "part," "component," "accessory," and "attachment" that is or ever was "specially designed" for every U.S. and foreign-origin military item. Therefore, BIS is maintaining the use of "specially designed" when describing items in the .x paragraph. Further, while items in the .x paragraph are of less significance than the controls of the ITAR warrant, they nevertheless warrant control beyond the requirements of parts 744 and 746 due to their inherent military or intelligence characteristics.

With respect to the .y paragraph, commenters expressed support for positively enumerating items in the .y paragraph and applying an AT control only. However, some commenters believed that .y items should be designated EAR99, that BIS should develop a list of

items that would be controlled for AT reasons only across all "600 series" ECCNs, or that .y items should be controlled under an existing ECCN subject to AT control rather than a "600 series" ECCN.

BIS does not accept these recommendations. All items described in the .y series have been subject to the ITAR in that they, by definition, were "parts," "components," "accessories," or "attachments" specifically designed or modified for a defense article. If such items were identified as not being ITAR controlled in a commodity jurisdiction (CJ) determination or were not otherwise specifically designed or modified for a defense article, then they were not ITAR-controlled and are not now becoming subject to a .y control. To avoid designating such items as EAR99, BIS developed the .y list structure and is implementing the .y list structure in this final rule to reflect the lesser military significance of such items. Also, as one commenter alluded to, the definition of "specially designed" already provides a list of "parts" in paragraph (b)(2) of the definition that are militarily less significant across all categories. The .y list is necessary for individual "600 series" entries because a "part" "specially designed" for one end item or end use may not be considered critical, but similar "parts" may be critical for a different end item or end use. For example, "hoses" for military vehicles may warrant a .y listing in the "600 series" controls for military vehicles but not all "hoses" specially designed for military aircraft are *per se* insignificant. Moreover, BIS believes that the inherent military nature of .y items necessitates inclusion in a "600 series" ECCN rather than an existing ECCN with an AT reason for control. Because different classification and marking schemes will already be necessary for such items since they are currently subject to the ITAR, there would be little benefit to exporters of using an existing ECCN vis-à-vis a .y entry in a "600 series" ECCN because both are subject to the same reason for control and the same reporting requirements in the Automated Export System (AES).

As described below, part 758 is being amended to address issues pertaining to the reporting of "600 series" items in AES.

This rule does not adopt the proposal to create .y.99 paragraphs that was first proposed in the November 7 (aircraft) rule. One commenter raised concerns about moving items to the .y.99 paragraph if the items were determined to be subject to the EAR under a prior CJ determination and are not on the CCL. BIS agrees that the burden of tracking down and analyzing whether items formally determined not to be subject to the ITAR were also EAR99 items because they were not identified on the CCL outweighs the once-contemplated organizational benefits of creating the .y.99 control. Such items have already gone through an interagency review process that concluded whether the items were subject to the ITAR. Thus, BIS has determined that any such items should retain EAR99 status if not otherwise identified on the CCL. Paragraph (b)(1) of the new definition of "specially designed" also reflects this understanding. An amendment to General Order No. 5 from what was proposed in the June 21 (transition) rule, as discussed further below in Section III.C, also addresses this issue.

III. Transition

A. Delayed Effective Date

This rule adopts a delayed effective date of 180 days after publication in the Federal Register. The public comments addressing the effective date for this final rule varied. Some commenters requested a 120-day delay before the effective date while other commenters requested a longer delay, ranging from 180 days to four years. They cited many tasks to be performed as a result of this transition, including classifying and marking items transferred to the CCL, obtaining new licenses, changing internal databases, modifying compliance practices, and

training personnel. BIS and the Directorate of Defense Trade Controls (DDTC), Department of State have taken various steps to ease the transition from the USML to the CCL. This final rule includes specific provisions to ease the transition process, such as the new General Order No. 5 in Supplement No. 1 to part 736 being added to the EAR in this final rule and the provisions to address the dual-licensing issue, that are discussed below in Sections III.B and III.C.

These provisions, along with the other changes included in this final rule, are intended to ease the transition for exporters, reexporters and transferors from the USML to the CCL and alleviate some of the public concerns regarding the effective date of the rule. BIS agrees that a reasonable period of transition, including a delayed effective date for this final rule, should be provided. Therefore, this final rule has a delayed effective date of 180 days. This approximately six-month period will provide the regulated community a reasonable amount of time to implement changes to conform their export control compliance systems to the new "600 series" and the first ten ECCNs that are being added to the EAR in this final rule. A longer delay, such as four years, as recommended by one commenter, would not have been reasonable given the national security objectives of the reform effort set out above. A 180-day delayed effective date represents BIS's best effort to provide sufficient time for exporters, reexporters and transferors to update their internal systems and for BIS to provide education and outreach services to those affected who may not have been following closely the changes BIS has proposed over the course of the last two years.

B. Amendment to the EAR to Address Dual Licensing

In response to the June 21 (transition) rule, many commenters expressed concerns that the movement of items from the USML to the CCL would result in the need to obtain a license from DDTC and a license from BIS for many transactions that currently only require one license from

one agency. For example, exports of end items on the USML often contain related USML parts and components in the shipment, so such items are typically authorized under a single DDTC license, such as a DSP-5. Since many parts and components are moving from the USML to the CCL, this typical export scenario could require two separate authorizations from two agencies. Further, one commenter to the June 21 (transition) rule stated that it is industry practice to include items currently subject to the EAR in a single license application to DDTC or under the Foreign Military Sales (FMS) program because such items will accompany USML items in a shipment authorized under a license or because such EAR items are included in an executed Letter of Offer and Acceptance (LOA) under the FMS program.

To address these issues, BIS is amending part 734 to reflect the fact that the President has delegated to the Secretary of State the authority to license or otherwise authorize the export, reexport or in-country transfer of items otherwise subject to the EAR, as agreed upon by the Secretaries of State and Commerce. (Executive Order 13637 of March 8, 2013, Administration of Reformed Export Controls, 78 FR 16129, March 13, 2013). The items will remain subject to the EAR, and BIS will continue to maintain jurisdiction for licensing and enforcement. However, applicants will be able to choose whether to use a DDTC or BIS authorization so long as the export, reexport, or in-country transfer meets the applicable requirements described herein.

In accordance with new § 120.5(b) of the ITAR, § 734.3(e) authorizes the export, reexport or in-country transfer of items subject to the EAR when the items subject to the EAR will be used in or with items subject to the ITAR and are included on the same DDTC license, agreement, or other approval. Thus, a DDTC license, agreement, or other approval made in accordance with § 120.5(b) of the ITAR will preclude the need for a separate license from BIS, and a BIS license will only be required when an export, reexport, or in-country transfer exceeds

the scope of the DDTC license, agreement, or other approval or exceeds the scope of § 120.5(b) of the ITAR. DDTC added § 120.5(b) to the ITAR on [INSERT DATE OF PUBLICATION].)

Under this provision, DDTC has discretion in determining whether the requirements of § 120.5 have been met and whether items subject to the EAR should be authorized under a license, agreement, or other approval by DDTC. To provide guidance on the use of § 120.5(b) of the ITAR, items subject to the EAR may be exported, reexported, or transferred (in-country) using a valid DDTC license, agreement, or other approval. The following are illustrative scenarios for when such approvals may be used:

- Parts and components subject to the EAR that will be used in or with end items subject to the ITAR and that would otherwise require a license from BIS may all be exported under a DDTC license, such as a DSP-5, or reexported under a DDTC General Correspondence (GC) approval.
- Software subject to the EAR that will be used in or with software or an end item subject to the ITAR and that would otherwise require a license from BIS may all be exported under a DDTC license, such as a DSP-5, or reexported under a GC.
- Technology subject to the EAR that is used with technical data subject to the ITAR that will be used under the terms of a Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA) and that would otherwise require a license from BIS may all be exported under the TAA or MLA.
- If a program authorized by a TAA or MLA requires that parts and components subject to the EAR *and* parts and components subject to the ITAR be shipped in furtherance of the TAA or MLA, then DSP-5 licenses may be used. However, if the program only requires that parts and components subject to the EAR be

shipped in furtherance of the TAA or MLA, then authorization must be obtained from BIS and DSP-5 licenses may not be used.

One commenter also believed that another scenario would require additional licensing – the export and subsequent installation of a "600 series" part or component into a foreign defense article. Under this situation, a license may be required from BIS to export the "600 series" parts or components and then a TAA may be required from DDTC to perform the defense service in order to provide the installation and integration services with respect to a defense article. However, this scenario differs from those above because two authorizations would already be required under the ITAR. For instance, if the part or component to be exported is currently on the USML, then the applicant would need to apply for a TAA for the exchange of technical data pursuant to providing the installation and integration service regarding a defense article, while also applying for a separate DSP-5 license for the export of the part or component. If the part or component is currently subject to the EAR or would become subject to the EAR as a "600 series" item, then a TAA would still be required from DDTC and a license or other authorization would be required from BIS for the export of the part or component. Since the number of authorizations would remain the same, this scenario would not be eligible for the provision described above.

Section 734.3(e) authorizes the export, reexport or in-country transfer of items subject to the EAR when those items are subject to licenses, agreements, or other approvals issued by DDTC to authorize items subject to the EAR that will be exported, reexported, or transferred (in-country) under the FMS program. Items subject to the EAR that are included in an executed Letter of Offer and Acceptance under the FMS program may be identified in a DSP-94 submitted in accordance with § 126.6(c) of the ITAR. The DSP-94 and use of § 126.6(c) will serve as

authorization for items subject to the EAR, and no separate authorization from BIS will be required. However, any export, reexport, or in-country transfer of an item subject to the EAR that is outside the scope of the LOA or DSP-94 must adhere to the requirements of the FMS case. In addition, no separate authorization from BIS is required to supplement actions taken on FMS cases by the Department of State's Office of Regional Security and Arms Transfers (RSAT). Questions regarding §§ 120.5(b) or 126.6(c) of the ITAR; the use of any DDTC license, agreement, or other approval; or FMS cases should be directed to DDTC or RSAT, as appropriate.

C. Transition Period and General Order No. 5

In the June 21 (transition) rule, BIS proposed creating General Order No. 5 in Supplement No. 1 to part 736 to describe the transition process for items moving from the USML to the CCL upon the publication of the pertinent final rules. The proposed general order described the grandfathering of DDTC licenses and agreements, the use of BIS authorizations, and the submission of disclosures to BIS and DDTC related to the transition of items from the USML to the CCL. In response to the proposed general order, BIS received public comments regarding: the timing for submitting a license application to BIS, clarification of when to submit a disclosure to BIS and when to submit a disclosure to DDTC, a recommendation to include some form of a "safe harbor" for violations when a DDTC approval is used for items subject to the EAR, and guidance on shipping documentation.

1. Timeline for Applications, Amendments, and Grandfathering

Because BIS and DDTC are adopting a six-month delay in the implementation of this final rule, BIS has made corresponding amendments to General Order No. 5 regarding the earliest date that BIS will accept license applications for items moving from the USML to the

CCL under this final rule and under future final rules. For those wishing to export under the authority of the EAR as soon as possible for items moving from the USML to the CCL, applicants may submit license applications immediately after the publication of the final rule adding such items to the CCL. Thus, applicants may, in effect, pre-position license applications early to facilitate processing of the license application. Such a pre-positioned license application will be processed in accordance with § 750.4 of the EAR, but if BIS completes processing the application prior to the effective date of the applicable final rule, BIS will hold the application without action (HWA), until the effective date of that final rule. Applications for transitioned items received after the effective date of the applicable final rule will be processed as described in § 750.4 of the EAR.

Existing holders of DDTC licenses, agreements, or other approvals, may maintain existing authorizations or obtain new authorizations for items moving from the USML to the CCL in accordance with DDTC's transition plan. Proposed General Order No. 5 has been amended to more closely correspond to DDTC's finalized transition plan. Questions regarding the continued use of DDTC licenses, agreements, or other approvals should be directed to DDTC.

2. Submission of Voluntary Self-Disclosures

BIS is amending the prior guidance in proposed General Order No. 5 with respect to submitting disclosures to BIS or DDTC. The amendment makes clear the existing recommended practice will continue to apply. For potential violations of the EAR, persons are recommended to submit a voluntary self-disclosure to BIS; for potential violations of the ITAR, persons are recommended to submit a voluntary disclosure to DDTC; and for potential violations of both the EAR and ITAR, persons are recommended to submit disclosures to both agencies. One

commenter suggested inserting a "safe harbor" provision for those who use a DDTC authorization for items subject to the EAR. BIS believes that the addition of § 734.3(e) addresses that commenter's concerns, because it removes the dual licensing requirement that gave rise to those concerns (see Section III.B., above). Also, if a person uses a DDTC authorization for an item subject to the EAR that does not fall within the circumstances described in § 734.3(e), BIS will exercise discretion in reviewing and responding to those who filed disclosures involving such scenarios.

3. Miscellaneous Issues

Because of the six-month implementation period for this final rule, BIS believes that the public will have adequate time to adjust USML and CCL notations for shipping documents. BIS, therefore, is not adding provisions related to export clearance in General Order No. 5. BIS is, however, amending the proposed General Order No. 5 to add a paragraph (c) to address the removal of the proposed .y.99 paragraph for "600 series" ECCNs by clarifying that if the U.S. Department of State has previously determined that an item is not subject to the ITAR and the item is not listed on the CCL, then the item will remain designated as EAR99.

IV. Retrospective Regulatory Review

On January 18, 2011, President Barack Obama issued Executive Order 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. Although ECR did not originate with Executive Order 13563, it is consistent in spirit and substance. On August 5, 2011, BIS issued a notice soliciting public comment on streamlining its regulations pursuant to that executive order (76 FR 47527). In response to public comments received on the August 5, 2011 notice, and consistent with BIS's

internal analysis, the June 21 (transition) rule proposed revisions to license exceptions for government uses (GOV, § 740.11) and temporary exports (TMP, § 740.9) that streamlined and updated unduly complex or outmoded provisions. At the same time, BIS broadened certain provisions within these license exceptions to implement ECR. One commenter to the June 21 (transition) rule stated that it appreciated BIS's efforts to streamline this regulatory text.

BIS intends to address other proposed changes to the EAR in accordance with the executive order in separate *Federal Register* notices. BIS received a number of comments, particularly on license exceptions in response to the June 21 (transition) rule, that require extensive consideration, possibly including additional proposals seeking public comment. BIS intends to address these comments in future rules as part of BIS's continuing retrospective review of the EAR.

Commerce's full retrospective regulatory review plan under Executive Order 13563 can be accessed at: http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.

V. Part 730 – General Information

This rule revises the heading of § 730.3 from "Dual use exports" to ""Dual use" and other types of items subject to the EAR" to reflect the scope of items subject to export controls under the EAR. Similarly, the revised text notes that while the term "dual use" is often used to describe the types of items subject to the EAR, more precisely, any item that is not exclusively controlled for export or reexport by another agency of the U.S. Government or excluded from the EAR pursuant to § 734.3(b), is subject to the EAR.

One commenter recommended deletion of part 730, because it is not regulatory, but guidance. BIS has not adopted this recommendation, because it was outside the scope of this rule. The part exists for the benefit of those new to exporting.

VI. Part 732 – Steps for Using the EAR

BIS is amending §§ 732.2 (Steps regarding scope of the EAR) and 732.3 (Steps regarding the ten general prohibitions) to remove text that is redundant to that found in § 736.2(b)(3) – General Prohibition Three. BIS received one comment in response to the July 15 (framework) rule's part 732 proposal. The commenter recommended deletion of parts 730 and 732, because the commenter believes those provisions are guidance and not regulatory in nature. For reasons described in discussion to part 730 above, BIS has decided to keep parts 730 and 732 for the benefit of those new to exporting. However, BIS agreed with the recommendation to add a disclaimer to part 732 stating that part 732 should only be used as a general overview of the EAR. This disclaimer is in new § 732.1(a)(3). BIS also agreed that repeating regulatory text concerning General Prohibition Three in §§ 732.2 and 732.3 is not useful; therefore, the repeated text is deleted and replaced by a brief explanation of the direct product rule (General Prohibition Three) and a reference to § 736.2(b)(3) is added to § 732.2(f). Although the June 21 (transition) rule proposed revisions to the direct product rule, it did not propose corresponding revisions to the steps. This final rule makes that conforming change.

The order of review in § 732.3(b) (Step 7: Classification) is revised to add a reference to Supplement No. 4 to part 774 – Commerce Control List Order of Review. The July 15 (framework) rule proposed to add a cross reference in Step 22 (Terms and Conditions of the License Exceptions), § 732.4(b)(3)(iv). The reference alerts exporters that, if they are exporting

under License Exceptions LVS, TMP, RPL, STA, or GOV and their item is classified in the "600 series," they should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports. This rule implements that proposal.

The July 15 (framework) rule also proposed to revise Step 26 (license applications) to add a paragraph describing the process of requesting License Exception STA eligibility for export, reexport or in-country transfer of an aircraft controlled under ECCN 9A610.a. While the July 15 (framework) rule proposed eligibility requests for "end items" generally, ships, vehicles, and aircraft were the "end items" items identified in subsequent technical reviews as requiring a determination of eligibility for License Exception STA, and of those, only aircraft are included in this final rule. A reference is also added to Step 26 to Supplement No. 2 to part 748, paragraph (w) (License Exception STA eligibility requests), which contains instructions for how to request in an application that subsequent exports of such end items be eligible for License Exception STA. The revisions to Step 26 also indicate that exporters, reexporters and transferors may review the list of such end items that have already been approved for License Exception STA pursuant to § 740.20(g) in the License Exceptions paragraph of ECCN 9A610. Lastly, to alert exporters, reexporters, and transferors who wish to use License Exception STA in such cases in which License Exception STA has been approved, a new Note was proposed to § 734.4(b)(7)(ii) to remind them to review paragraphs (a) and (b) to determine the steps needed in using license exceptions. BIS did not receive any comments regarding these specific proposals.

VII. Supplement No. 3 to part 732 – Red Flags

This rule expands the EAR's "Know Your Customer" Guidance and Red Flags to provide compliance guidance for License Exception STA and the "600 series."

The July 15 (framework) rule proposed creating two new red flags, designated as numbers 13 and 14 in Supplement No. 3 to part 732, that would be specific to "600 series" items in addition to the existing 12 red flags in that supplement that apply to EAR transactions generally.

One such proposed red flag (number 13) would address a proposed transaction involving "parts" of "600 series" items where the country of destination has no apparent need for the "parts" or for the quantity ordered. One commenter stated this proposed red flag overlaps with two existing red flags that address item suitability and quantity for transactions subject to the EAR. This commenter proposed generalizing the proposed new red flag to make it applicable to all transactions subject to the EAR, not just "600 series" items. Another commenter recommended that the phrase "You receive an order" in this red flag be changed to read "An order received" and that the term "components" be added to the red flag to make the red flag consistent with other red flags. Finally, one commenter recommended that this red flag not apply to .y items because such application would place an unreasonable requirement on the exporter.

The second proposed red flag would address a proposed transaction in which the customer indicates that the "600 series" items are destined for an arms embargoed country. One commenter suggested that this red flag be expanded to include customer indications of shipment to destinations or end users that would be prohibited or restricted for transactions involving all items subject to the EAR with a specific reference to "600 series" items and arms embargoed destinations.

One commenter recommended that both proposed red flags not be adopted because they would not be applicable to any of the items proposed for the "600 series" in the July 15 (framework) rule.

This final rule makes one change to the new proposed red flags in response to these comments. It adds the term "components" to red flag number 13 because BIS believes the additional term more completely describes the transactions that this red flag is intended to address, although the listing of "parts" and "components" is not intended to be an exhaustive listing of items that may fall within the scope of this red flag because other "600 series" items, such as "accessories" and "attachments" could also be used in this scenario. This final rule also makes a non-substantive clarification, by changing references from "item" to "end item" to create greater consistency with how the term "end item" is being used in the context of this new red flag 13. Lastly, to conform to the changes being made in this final rule, BIS is replacing the reference to arms embargoed countries in new red flag 14, with a reference to destinations listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR), which as described below, is a new country group being added to the EAR in this final rule.

BIS did not adopt any of the other recommendations concerning the red flags for the following reasons. Generalizing red flags 13 and 14 to apply to the entire EAR would dilute their effect in highlighting the military nature of the "600 series" items and the precautions appropriate for such items, including the various provisions being added to the EAR in this final rule to implement an appropriate control structure under the EAR for these munitions items. Adopting the phrase "An order received," would be only a minor stylistic change from the proposed text that does not provide additional clarity. Excluding .y items from red flag 13 would be inappropriate because, even though the .y items require a license to fewer destinations than

"600 series" items generally, they are "specially designed" "parts" and "components" for military items and, as such, deserve inclusion.

Several commenters in response to the July 15 (framework) rule also noted that exporters who will be new to the EAR because their items were previously only subject to the ITAR would benefit by having outreach materials developed specifically for them to assist them in understanding the EAR and the new "600 series." Red flags in this supplement, including the new red flags 13 and 14 being added in this final rule, are and will be an important part of BIS's outreach program. The BIS outreach program focuses on assisting persons involved in transactions that are subject to the EAR in understanding their responsibilities and what steps they can take to avoid being involved in transactions that may violate the EAR. BIS believes the two new red flags described above will assist those persons involved in transactions that are subject to the EAR involving "600 series" items, in particular those exporters, reexporters and transferors who will be new to the EAR.

VIII. Part 734 – Scope of the EAR

A. Dual Licensing

As described above under section III.B., BIS is amending part 734 to note the authority of DDTC to authorize certain exports of items subject to the EAR to address public comments regarding dual licensing concerns.

B. *De minimis*

Section 734.4 of the EAR sets forth the *de minimis* provisions, which provide that foreign-made items incorporating less than *de minimis* levels of U.S. content are not subject to the EAR. The July 15 (framework) rule proposed to add special restrictions for *de minimis*

applicability for "600 series" items. That rule proposed amending § 734.4 (*De minimis* U.S. content) by adding paragraph (b)(3) and making a conforming change to paragraph (c). The rule proposed restricting the scope of *de minimis* for "600 series" "parts," "components," and other items subject to the EAR (i.e., those classified under xB6zz, xC6zz, xD6zz and xE6zz entries). The rule also proposed that when foreign-made items that incorporate such controlled U.S.-origin "600 series" items are to be exported from abroad or reexported to any country they are subject to the 10% *de minimis* rule for U.S.-origin content rather than the 25% *de minimis* rule.

Fourteen commenters found the July 15 (framework) rule proposal regarding a revised *de minimis* rule for "600 series" items too complex and unworkable. Commenters stated that having a 10% *de minimis* rule for "600 series" items and a 25% *de minimis* rule for all other items subject to the EAR would be extremely burdensome, if not impossible, for the commenters to calculate.

The June 21 (transition) rule proposal addressed the calculation concerns of the commenters to the July 15 (framework) rule by proposing to maintain the EAR's 25 percent *de minimis* rule for reexports to most countries; and would carry forward the ITAR's zero percent *de minimis* rule with respect to reexports of foreign-made items containing "600 series" content to countries subject to U.S. arms embargoes (Country Group D:5 of Supplement No. 1 to part 740 of the EAR).

BIS received eight comments to the June 21 (transition) rule. Four commenters agreed with this approach. Four commenters disagreed with this approach, generally suggesting that the arms embargoed countries be subject to the same 10% *de minimis* threshold that applies to countries in Country Group E:1. These commenters provided two reasons. First, they stated that foreign manufacturers determine *de minimis* at development stage and use the lowest possible

threshold. The possibility of a 0% threshold may lead to designing out EAR content. Second, these commenters stated that three *de minimis* thresholds would make determining whether an item produced outside the United States is subject to the EAR unduly complex. BIS does not accept the recommendations to replace the 0% with a 10% U.S. content for foreign-made items containing "600 series" items destined to U.S. arms embargoed destinations (Country Group D:5 of Supplement No. 1 to part 740). BIS also does not agree with the comments that the approach would be unduly complex. All legal trade in defense articles is now with countries that are not subject to U.S. arms or other embargoes, and all such defense articles are subject to a 0% *de minimis* rule for all such destinations. Thus, for example, a foreign party's transfer of a foreign-made end item containing even one U.S.-origin ITAR-controlled component of any value from one NATO member to another NATO member requires State Department authorization. This naturally creates dis-incentives to purchase U.S.-origin content even for end items to be sold to allies of the United States. This rule changes this current 0% *de minimis* rule of the ITAR for all such items to the standard 25% *de minimis* rule of the EAR for all such items. Contrary to the comments, this change is a dramatic reduction in complexity and will significantly reduce the current incentives for buyers in such countries to avoid purchasing what were ITAR-controlled parts and components and what will, with this rule and successive implementations of additional categories, become "600 series" items subject to the EAR. It will at the same time maintain the status quo with respect to the 0% *de minimis* rule for trade in items with countries subject to U.S. arms embargoes. This is a simple rule -- trade in foreign-made items with non-arms embargoed countries containing U.S.-origin military items is subject to the same rule as all other items subject to the EAR and trade in such items with countries subject to arms embargoes is prohibited, as is the case today. This furthers the twin U.S. policy objectives of removing

unnecessary barriers in trade with most of the world and discouraging or indeed prohibiting trade in military items containing controlled U.S.-origin content with arms embargoed destinations.

One commenter asked that BIS clarify the *de minimis* provisions of the EAR by rewriting Supplement No. 2 to part 734 and by eliminating the one-time reporting requirement that applies to technology. BIS is not addressing this comment because it is outside the scope of any of the proposed rules being addressed by this final rule. Two commenters pointed out that § 123.9 of the ITAR contains an exemption for U.S.-origin components incorporated into a foreign defense article to a government of a NATO country, or the governments of Australia, Japan, New Zealand, South Korea and Israel without prior written approval from DDTC. License Exception GOV is equivalent to this ITAR exemption, and other license exceptions in part 740 may also be available, *e.g.*, License Exception STA, for such transactions. One comment suggested BIS clarify the method of calculating the *de minimis* value by rewriting Supplement No. 2 to part 734 of the EAR; this recommendation falls outside the scope of this final rule.

In sum, this rule furthers U.S. national security and foreign policy interests by prohibiting the reexport of foreign-made items containing "600 series" content to countries subject to U.S. arms embargoes (Country Group D:5 in Supplement No. 1 to part 740), while removing the incentive the ITAR creates for foreign buyers to avoid such U.S.-origin content with respect to trade by and between other countries.

IX. Part 736 – General Prohibitions

A. Foreign-Produced Direct Product

Prior to the effective date of this rule, certain foreign-produced direct products of U.S. technology were subject to the EAR: national security controlled items that were direct products of U.S. national security-controlled technology, or of a plant that is the direct product of national

security-controlled technology, when those products were destined to countries of concern for national security reasons (Country Group D:1) or terrorist-supporting countries (Country Group E:1). The June 21 (transition) rule proposed to expand these provisions by adding an additional country and product scope. Foreign-produced direct products of U.S.-origin "600 series" technology, or of a plant or major component of a plant that is a direct product of U.S.-origin "600 series" technology, that are "600 series" items are now subject to the EAR when reexported or exported from abroad to countries listed in Country Groups D:1 (national security countries of concern), D:3 (chemical and biological countries of concern), D:4 (missile technology countries of concern), D:5 (U.S. arms embargo countries) or E:1 (countries that support terrorism) in Supplement No. 1 to part 740. Foreign-made items subject to the EAR because of this rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin.

BIS received three comments opposing the expanded country scope "to include countries of concern due to nuclear proliferation or missile technology reasons" for "600 series" items on the grounds that "600 series" items are controlled for national security and regional stability reasons. BIS is not making the suggested changes and is adopting the expansion of the country scope to countries of concern for missile or chemical and biological weapon proliferation reasons, because some "600 series" items are or likely will be only controlled for missile technology or chemical and biological reasons. BIS does not anticipate that any "600 series" items will be controlled for nuclear nonproliferation reasons, so BIS did not propose expansion of the foreign-produced direct product rule for "600 series" items to countries of concern for nuclear proliferation and does not adopt such an approach in this final rule.

B. General Order 5

As described above in section III.C., BIS is amending part 736 to add General Order No. 5 to Supplement No. 1.

X. Part 738 – CCL Overview and the Country Chart

This rule implements changes proposed in the July 15 (framework) rule to paragraph (b) of § 738.2 (Commerce Control List (CCL) structure) by adding the new terms "end items," "attachments," "parts" and "systems" to the description for Product Group A in order to describe the scope of items within CCL Product Group A with the more precise terms that are added to part 772 by this rule.

BIS also adopts revisions to paragraph (c) of § 738.2 (Order of review) to provide a cross reference to the new Supplement No. 4 to part 774 – Commerce Control List Order of Review that is also being added in this final rule. This new Supplement No. 4 sets forth the steps that should be followed in classifying items that are "subject to the EAR" and provides new guidance for how to classify items in light of the addition of the "600 series" of ECCNs to the CCL and the new definition of "specially designed" also being added with this final rule.

BIS had proposed in the July 15 (framework) rule to add to paragraph (d)(1) of § 738.2 (Commerce Control List (CCL) structure) a reference to items warranting national security or foreign policy controls at the determination of the Department of Commerce under ECCN 0Y521. BIS received one comment suggesting that the descriptor for ECCNs that have "5" as their third digit should be, "Items subject to license requirements described in § 742.6(a)(7)." BIS does not accept this suggestion to allow broader applicability than the items described in § 742.6(a)(7). Another commenter recommended adding "Unilateral National Security or Foreign

Policy Reasons" as a revised reason for control for ECCNs that have "5" as their third digit. This recommendation is also not accepted. BIS notes that in the final rule implementing the 0Y521 series, (4/13/12, 77 FR 22191) the EAR indicates that the determination to control ECCNs that have "5" as their third digit was made by the Department of Commerce, and the term "Items warranting national security or foreign policy controls at the determination of the Department of Commerce" provides a more precise descriptor for these ECCNs.

In § 738.2(d)(1), the July 15 (framework) rule proposed to add a reference to the "600 series" to indicate that items in which the third character is a "6" are "600 series" items and controlled because they are Wassenaar Arrangement Munitions List (WAML) and formerly USML items subject to the jurisdiction of the EAR. As described in Section XXIII (part 772 – Definitions (including Specially Designed)) in this rule, this rule also adds a definition of "600 series" to provide additional information to the public regarding this control series. To explain the meaning of the last two numbers in "600 series" ECCNs, this rule adds a new paragraph (d)(1)(iv) that indicates that the last two characters of each "600 series" ECCN, with few exceptions, track the WAML categories for the types of items at issue. In order to stay consistent with the general structure of the groups within the CCL Categories, the Wassenaar Arrangement ML21 ("software") and ML22 ("technology"), however, are rolled into the existing D ("software") and E ("technology") CCL product groups. The WAML numbering structure for the last two characters is generally used rather than the USML numbering structure because the majority of items to be transferred are subject to the WAML, although the "600 series" is not limited to items on the WAML. Thus, the numbering scheme is generally consistent with such controls. BIS, however, deviated from this scheme with respect to the new controls on military aircraft engines and related items that fall under new ECCNs 9A619, 9B619, 9C619, 9D619, and

9E619. WAML Category 19 controls directed energy weapons, but BIS has used the "19" ECCN suffix in order to track the new USML category XIX that identifies the military aircraft engines and related items that were formerly controlled under USML Category VIII(b).

This structure makes it easier to see that the United States continues to control all WAML items. In addition, multinational companies that must deal with both the USML system and the numbering system of most other allied countries (which generally track the WAML) should find compliance and tracking of controlled items somewhat easier.

BIS received one comment suggesting that the "600 series" descriptor should be "Commerce Munitions List." BIS did not accept the suggestion because it is not creating a new list of controlled items but rather incorporating items formerly subject to the ITAR into the existing Commerce Control List.

This rule revises § 738.2(d)(2)(ii) to state that in some "600 series" ECCNs, the STA license exception paragraph or a note to the License Exceptions section contains additional information about License Exception STA applicability to that ECCN. This sentence is needed to distinguish the role of STA paragraphs in the License Exception sections of "600 series" ECCNs from the role of those paragraphs in other ECCNs where the STA paragraph only denotes ineligibility of STA for destinations listed in § 740.20(c)(2). Upon the effective date of this final rule, those destinations will be listed in Supplement No. 1 to part 740, Country Group A:6. As described below in more detail and briefly mentioned above, Country Group A:6 is one of the new country groups added to the EAR in this final rule. BIS proposed this revision to the text of § 738.2(d)(2)(ii) in the November 7 (aircraft) rule and received no comments. This final rule adopts the proposed text without change. As a conforming change, BIS is also replacing the phrase "eight destinations listed in § 740.20(c)(2) of the EAR" where it appears in ECCN entries

in part 774 with the phrase "destinations listed in Country Group A:6 (see Supplement No. 1 to part 740 of the EAR)."

XI. Part 740 – License Exceptions

License Exceptions are published authorizations set forth in part 740 of the EAR that allow exports, reexports, and in-country transfers that would otherwise require a license to proceed without one if certain conditions are met. License Exceptions operate under the EAR the same way exemptions operate under the ITAR.

A general principle underlying the incorporation of the "600 series" into the EAR is that, because items subject to the EAR are less militarily significant than those subject to the ITAR, EAR exceptions should not be more restrictive than comparable ITAR exemptions. BIS recognizes that several commenters to the June 21 (transition) rule agreed with this principle. The June 21 (transition) rule proposed to harmonize the provisions of several EAR license exceptions with several ITAR exemptions, as set out in detail below, but only insofar as they are permitted by law and otherwise relevant to "600 series" items and other items subject to the EAR. In particular, BIS has no authority to change the scope of license exceptions available for items controlled for MT reasons because of statutory restrictions. See section (6)(*l*) of the Export Administration Act of 1979, as amended, 50 U.S.C. app. § 2405(*l*).

When a license exception authorizes reexports under certain terms and conditions, there is no national security or foreign policy objective met by restricting in-country transfers that also meet those terms and conditions. In the June 21 (transition) rule, BIS proposed revising License Exceptions TMP and GOV (§§ 740.9 and 740.11, respectively) to explicitly provide authorization for in-country transfers.

One commenter responding to the July 15 (framework) rule stated that "no limitation should be placed on in-country transfers of licensable items." The commenter continued, "[t]he prospect that an item exported to an entity in a foreign country may be transferred to another entity in the same licensed country is inherent in the assessment of an export transaction. Accordingly, part 740 of the EAR should be revised to exclude all mentions of "transfers (in-country)." BIS does not agree with this comment. The EAR's end-use and end-user controls evidence a longstanding policy that an assessment of an export transaction involves more than the country of destination. Further, conditions on most licenses restrict subsequent transfer of the licensed items. Rather than include in-country transfers in some license exceptions and not in others when the policy rationale is the same, this rule revises § 740.1 to state that, when a license exception authorizes reexports, in-country transfers meeting the terms and conditions of the reexport are also authorized. While this specific revision was not proposed in the June 21 (transition) rule, it is a logical outgrowth of BIS's original proposal that stems from reviewing the related public comment and further thinking about how in-country transfers are addressed in part 740.

A. Restrictions

Section 740.2 describes restrictions on all license exceptions, and this rule adds certain restrictions specific to "600 series" items in new paragraphs (a)(12) through (a)(16).

In the July 15 (framework) rule, BIS proposed adding to § 740.2 new paragraphs (a)(12) (restricting the use of license exceptions to countries subject to a United States arms embargo) and (a)(13) (restricting the use of license exceptions for "600 series" items destined to countries other than those listed in proposed (a)(12)). In the June 21 (transition) rule, BIS proposed that in addition to items destined to arms-embargoed countries, items shipped from or manufactured in

those destinations also be restricted from license exceptions. With this final rule, BIS adopts the (a)(12) proposal with an additional change. Rather than list the countries in (a)(12), they are being identified in a new Country Group D:5 (Supplement No. 1 to part 740 of the EAR), as explained below in the Country Groups discussion (Section XI.H). The restriction on using license exceptions for "600 series" items destined to, shipped from, or manufactured in a destination subject to a United States arms embargo as described in § 126.1 of the ITAR remains set forth in paragraph (a)(12). One commenter recommended deleting Yemen from the (a)(12) list of countries to reflect an amendment to the ITAR; BIS agrees with this comment, and this rule does so in Country Group D:5. Further comments received on paragraph (a)(12) are described below, as part of the discussion of Country Groups in Section XI.H.

Paragraph (a)(13) is adopted as set forth in the July 15 (framework) rule. The license exceptions available for "600 series" items are listed in paragraph (a)(13). Each exception is available according to the terms and conditions set forth in its section and subject to the restrictions in § 740.2.

Finally, in the June 21 (transition) rule, BIS proposed adding to § 740.2 two new paragraphs (a)(15) and (a)(16) restricting the availability of license exceptions for certain "600 series" exports for which prior notification to Congress will be made. This rule changes BIS's original proposal, as explained below in the discussion of "600 Series Major Defense Equipment" in Section XIII.B.

B. License Exception TMP

This rule revises § 740.9, License Exception Temporary imports, exports and reexports (TMP) paragraphs (a) (Temporary exports and reexports) and (b) (Exports of items temporarily in the United States) to streamline the existing exception consistent with the retrospective review

and regulatory improvement directed in E.O. 13563, and to broaden the exception to correspond to certain ITAR exemptions. BIS proposed these revisions in the transition rule.

BIS received three comments stating that, to correspond to the ITAR, TMP should provide for the return or disposal of items within four years rather than the current one year, and a further five comments stating that when authorization to retain the item abroad beyond one year is requested, that authorization be valid for four years rather than a one-time extension of six months.

BIS does not agree that the term of TMP should be four years in order to correspond to the ITAR. Under the ITAR, most exemptions for temporary export require some other form of authorization to be in place for the exemption to be available. These requirements mean that simply extending TMP to a four-year term generally would be significantly more expansive than the ITAR exemptions. However, to better approximate ITAR controls, this rule revises TMP to provide that, when authorization to retain the item abroad beyond one year is requested, the term of the authorization may be for a total of four years rather than just an additional six months.

Four commenters questioned the term "order to acquire," seeking clarification on whether a purchase order would be considered an example of an order to acquire an item. BIS confirms that a purchase order would be one such example, and adds that example in this final rule. Four commenters asked for clarification that the term "U.S. persons and their employees" referred to employees of foreign branches. BIS is maintaining the existing definition in License Exception TMP of "U.S. persons," which does not include foreign branches. Thus, no regulatory change is required.

Seven commenters stated that § 740.9(a)(3)(i)(B), as proposed in the June 21 (transition) rule, introduces "additional recordkeeping requirements" for a temporary export of technology as

a tool of trade by a non-U.S. person. In fact, prior to publication of that proposed rule, that requirement existed in the EAR in § 740.9(a)(3)(iv)(A)(2). It was originally published on December 12, 2007 (72 FR 70509) in a rule that established the ability to temporarily export technology as a tool of trade under License Exception TMP, which had previously been limited to commodities and software. This 2007 expansion of TMP was based in part on § 125.4(b)(9) of the ITAR, which allows certain exports of technical data by U.S. persons. The 2007 rule also required that the employers of non-U.S. persons document the need to travel, as a safeguard to the expansion of the tools of trade provision of TMP beyond U.S. persons. This restriction does not impose additional requirements on any permanent release of technology, because License Exception TMP does not authorize any new (i.e., previously unauthorized) release of technology. It authorizes temporary exports of that technology as a tool of trade. BIS believes the commenters misconstrued this provision, and this final rule adopts it as proposed in the June 21 (transition) rule.

In the June 21 (transition) rule, BIS proposed that temporary exports under License Exception TMP to a U.S. person's foreign subsidiary, affiliate, or facility abroad would no longer be limited to exports to Country Group B countries in order to make TMP consistent with § 123.16(b)(9) of the ITAR. Three commenters recommended adding "materials" to the types of items eligible for this provision. BIS did not make this change. Materials are unlikely to be returned in the form received and are inappropriate for this provision.

Four commenters recommended replacing the country scope "E:2, Sudan and Syria" with "E:1" throughout TMP. BIS agrees that this expression is clearer and has made this change.

One commenter requested that the requirement for personal inspection of body armor be dropped. In this final rule, BIS has dropped the entire paragraph relating to body armor. The

issue will be addressed in a future final rule that will address controls on personal protective equipment.

This rule updates the provision authorizing certain tools of the trade for Sudan by removing outdated technical parameters and ECCN paragraph references that no longer exist.

Consistent with § 123.19 of the ITAR, this rule adds a note to the temporary imports paragraph of License Exception TMP stating that a shipment originating in Canada or Mexico that incidentally transits the United States en route to a delivery point in the same country does not require a license. BIS did not receive public comments on this note and adopts it as proposed in the June 21 (transition) rule. A note regarding shipments from one location in the United States to another location in the United States via a foreign country, also proposed in the June 21 (transition) rule, was not adopted in this final rule. BIS received no comments on this note, but, upon further review and interagency consultation, BIS determined that the concept is already implicit in § 734.2(b)(8). Therefore, BIS deleted the proposed note.

An additional note explaining that defense articles on the USMIL are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447, proposed in the June 21 (transition) rule, was not adopted because it duplicates the USMIL description added to part 734 (described above).

Three commenters requested confirmation that § 740.9 (b)(3) applies to technology. BIS confirms that it does; technology is a component of the definition of "items," as defined in § 772.1.

C. License Exception RPL

In the July 15 (framework) rule and the June 21 (transition) rule, BIS proposed changes to § 740.10 (Servicing and replacement of parts and equipment (RPL)). The July 15

(framework) rule proposals all related directly to servicing and replacement of "600 series" items. The June 21 (transition) rule proposals were related to a similar ITAR exemption.

In the July 15 (framework) rule, BIS proposed revising RPL to: (1) add "600 series" "parts," "components," "accessories," and "attachments" to the scope of this authorization; (2) impose restrictions on the use of License Exception RPL for the export or reexport of "parts," "components," "accessories," and "attachments" classified in "600 series" ECCNs; (3) authorize exports and reexports of certain items "subject to the EAR" to or for a defense article described in an export or reexport authorization issued under the authority of the AECA; and (4) exclude from authorization the export or reexport of "parts," "components," accessories," or "attachments" that are defense articles identified on the USML (22 C.F.R. §§ 120.6 and 121.1). In this final rule, BIS adopts all of these proposals.

One commenter to the July 15 (framework) rule suggested that "accessories" and "attachments" be removed from License Exception RPL, as they are by definition not necessary for items' operation. BIS does not agree with this suggestion, as servicing and replacement of "accessories" and "attachments" may be within the scope of transactions conducted under this license exception and thus should be authorized.

The June 21 (transition) rule proposed to revise RPL to allow export or reexport of spares up to $500 in total value, and to remove the requirement that the ability to return serviced commodities and software or replace defective or unacceptable U.S.-origin equipment be limited to the original exporters. BIS is not adopting these proposals at this time, for the reasons explained below.

Six commenters addressed this proposal, most requesting clarification of the relationship between the shipment of spares under proposed revised RPL and low-value shipments under

existing License Exception LVS. Two commenters proposed different ways of valuing the spares or suggested placing a value limit on the item shipped or the transaction rather than the shipment. One comment recommended restructuring the exception into separate paragraphs for spares as distinguished from one-for-one replacement parts, and another comment recommended numerous changes, amounting to a thorough revision of the license exception. Additionally, in response to the July 15 (framework) rule, BIS received a comment recommending that RPL define enhancement resulting from servicing or replacement of parts or components as "affecting a controlled characteristic of an end item."

Unlike License Exceptions TMP and GOV, BIS did not propose a wholesale clarification and streamlining of RPL in the June 21 (transition) rule. Based on public comments and internal analysis, however, BIS has concluded that a completely revised RPL should be proposed separately as part of a retrospective regulatory review, using public comments already received as part of the basis for the new proposal. While the June 21 (transition) rule proposal to amend RPL was related to a similar ITAR exemption, it was not specific to the "600 series." As such, and because BIS plans to propose comprehensive revisions to RPL, this final rule adopts only the changes to RPL proposed in the July 15 (framework) rule. It does not adopt changes proposed in the June 21 (transition) rule or address comments received in response to those proposed changes in this final rule.

D. License Exception GOV

Consistent with the retrospective review and regulatory improvement directed in Executive Order 13563, the June 21 (transition) rule proposed to completely revise § 740.11, License Exception GOV (Governments; International Organizations; International Inspections under the Chemical Weapons Convention; and the International Space Station). Prior to the

effective date of this rule, License Exception GOV contained references to items on the Wassenaar Arrangement's Sensitive and Very Sensitive Lists, which necessitated annual regulatory revisions and was so lengthy that it required a supplement to the section. The June 21 (transition) rule proposed shortening and simplifying License Exception GOV by including the Sensitive and Very Sensitive Lists as supplements to part 774, described below in Section XXIV.F. BIS received no public comments on this simplification, and this final rule adopts it without change.

The July 15 (framework) rule proposed restricting certain "600 series" items' eligibility for License Exception GOV, and the November 7 (aircraft) rule proposed changes with respect to restricting certain aircraft-related software and technology as listed in a proposed Supplement No. 4 to part 740. The December 6 (gas turbine engines) rule added restrictions on certain engine-related software and technology to Supplement No. 4 to part 740. This final rule, however, does not adopt the proposal to include Supplement No. 4 to part 740, and instead incorporates these restrictions into the relevant ECCNs for ease of use, as described below in Sections XXIV.C and .D.

As proposed in the June 21 (transition) rule, this rule expands GOV to authorize items consigned to non-governmental end users, such as U.S. Government contractors, acting on behalf of the U.S. Government in certain situations, subject to written authorization from the appropriate agency and additional export clearance requirements. One commenter on the June 21 (transition) rule noted its agreement with BIS's proposal to extend GOV to U.S. Government contractors. Two commenters on the June 21 (transition) rule suggested that the requirement for written authorization be deleted in favor of relying on the actual contract, noting that certification is a burden on both the exporter and on the Department of Defense, and that OFAC's Sudanese

Sanctions Regulations (31 CFR part 538) are less restrictive with a similar purpose. Another commenter requested confirmation that the exception includes subcontractors under certain contract clauses, and asked that the final rule include examples and scenarios. This final rule adopts as proposed the requirement for written authorization and does not allow use of the license exception by subcontractors. Given the broad scope of items authorized under the GOV license exception, written authorization and a direct relationship between the exporter and the U.S. Government is necessary to ensure proper use of the exception. BIS does not include examples in this final rule, but will attempt to generate such scenarios to include in outreach efforts. Four commenters recommended that references to A:1 countries, a narrow group of close allies, be replaced with "Wassenaar member countries," a broader group. Another commenter recommended expanding the provisions available for cooperating governments to include all of Country Group B. Given the broad scope of items authorized under the GOV license exception, BIS considers the suggested changes to the country scopes too broad, and therefore does not accept them.

One commenter recommended deletion of the requirement for a statement that the U.S. Government owned the property being exported because it was too broad. BIS agrees and has limited the requirement to Government Furnished Equipment. In response to a request for clarification of the scope of a provision describing programs related to capacity-building and counterterrorist operations, BIS determined that the provision was subsumed by a less specific provision describing cooperative efforts with foreign governments or international organizations, and deleted the unclear provision.

This rule also adopts provisions for exports made under the direction of the U.S. Department of Defense consistent with §§ 125.4(b)(1), 125.4(b)(3) and 126.6(a) of the ITAR. This provision was proposed in the June 21 (transition) rule and received no comments.

The June 21 (transition) rule proposal to add a note regarding authorization of Foreign Military Sales is not adopted in this final rule. Authorization of Foreign Military Sales is addressed above in section III.B.

This rule adopts provisions in the June 21 (transition) rule that expands the scope of countries eligible to receive items on the Sensitive List under § 740.11(a) (International Safeguards) and (c) (Cooperating Governments) to include the governments of those 36 countries listed in new Country Group A:5, discussed below in Section XI.H. BIS received no comments on this proposal.

This rule makes one correction to GOV as proposed in the June 21 (transition) rule. Section 740.11(b)(2)(iii)(G) has been amended to remove "defense articles" from the parenthetical in that paragraph since BIS does not have jurisdiction over items subject to the ITAR.

E. License Exception TSU

This rule implements revisions proposed in the June 21 (transition) rule to § 740.13 License Exception Technology and Software – Unrestricted (TSU) that would include training information in the operation technology authorized, as it is in § 125.4(b)(5) of the ITAR. This rule also adds TSU authorization for the release of software source code and technology in the United States by U.S. universities to their bona fide and full-time regular foreign national employees to correspond with a similar authorization in § 125.4(b)(10) of the ITAR. Further,

this rule amends TSU to add an authorization corresponding to § 125.4(b)(4) of the ITAR for copies of technology previously authorized for export to the same recipient.

Two commenters stated that the revised TSU for university employees should not be subject to the end-use and end-user restrictions in part 744 of the EAR because such restrictions do not now exist in the comparable ITAR exemption at § 125.4(b)(10). In addition, the commenters said that TSU should not preclude the unlicensed release of encryption-related software controlled for "EI" and other software and technology controlled for "MT" (Missile Technology) reasons because ITAR § 125.4(b)(10) does not now preclude the release of such software and technology to bona fide university employees under the exemption. This rule does not make the suggested revisions. While license exceptions under the EAR should not be more restrictive than corresponding exemptions under the ITAR, license exceptions must be implemented within the framework of the EAR. The restrictions proposed in the transition rule are consistent with those imposed on other license exceptions for national security and foreign policy reasons, and restrictions on MT items are statutory. Another commenter recommended that the provision be extended to entities other than universities. BIS does not accept this recommendation. This provision broadened TSU to correspond with an ITAR exemption for university employees; its expansion to other entities would exceed that rationale.

One commenter suggested that the university employee's requirement not to transfer technology survive his employment at the university; BIS agrees, because export controls on technology exist independently of nondisclosure or other agreements. Another commenter suggested striking the prohibition on "establishing or producing items," because the phrase is not uniquely defined in the EAR and does not provide clarity about what it excludes. BIS agrees with this analysis and has made this revision.

With respect to paragraph (g), one commenter suggested deleting "copies" from the heading and revising the text accordingly. BIS does not accept this recommendation. "Copies" is an accurate description of the intended scope of the provision.

F. License Exception STA

This final rule describes how and under what circumstances License Exception STA may be used for "600 series" items. This rule implements the proposals regarding License Exception STA that appeared in the July 15 (framework) rule, the November 7 (aircraft) rule and the June 21 (transition) rule. Generally, License Exception STA will be available for exports, reexports and transfers (in-country) of "600 series" items to any of the 36 destinations currently listed in § 740.20(c)(1) (which this rule will move to a new Country Group A:5 in Supplement No. 1 to part 740), but not to the destinations currently in § 740.20(c)(2) of the EAR (which this rule will move to a new Country Group A:6 in that supplement). As with all license exceptions in the EAR, its use is optional. If an exporter, for example, prefers to export an item otherwise eligible to be exported under License Exception STA under the authority of a license, then the exporter may apply for such a license.

License Exception STA may not be used for any "600 series" items identified in the relevant ECCN as not being eligible for export under STA. It may not be used to export, reexport, or transfer (in-country) "600 series" items to persons, whether non-governmental or governmental, unless those persons are in and, if natural persons, nationals of a country listed in Country Group A:5 or the United States *and either* (a) the *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government, *or* (b) are for the "development" or "production" of an item in one of the

countries listed in Country Group A:5 or the United States that will *ultimately* be used by any such government agencies, the United States Government, or a person in the United States. It may not be used to export, reexport, or transfer (in-country) end item aircraft described in ECCN 9A610.a until after BIS has approved their export under STA under the procedures set out in § 740.20(g) of the EAR. It may not be used to export, reexport, or transfer (in-country) "600 series" items "subject to the EAR" if they are "600 Series Major Defense Equipment" and the value of such items in the contract requiring their export exceeds $25,000,000. This rule also will add provisions to the License Exception STA consignee statement that will apply only to shipments containing "600 series" items. The consignee will have to acknowledge the end-use and consignee restrictions that apply to "600 series" shipments under License Exception STA and consent to U.S. Government post-shipment verifications.

BIS is implementing these changes to License Exception STA with respect to "600 series" items because such items are, by definition, military items or specially designed for military applications and thus warrant controls beyond those dual-use and civil items eligible for export under STA. This revised License Exception STA will enhance national security because it will, with respect to such items, (a) allow for greater interoperability between the United States and its NATO and other multi-regime allies because it will permit more efficient and quick trade in such items than is now possible under the ITAR, (b) enhance the United States industrial base by reducing the incentive for buyers in such countries to avoid or design out such U.S.-origin content and, thus, create more opportunities to be regular, predictable suppliers to buyers in such countries, (c) allow the government to focus its limited licensing resources on transactions of concern rather than those that are routinely approved, and (d) allow for greater enforcement- and compliance-related visibility into such transactions.

BIS received several comments concerning License Exception STA as it applies to "600 series" items. The comments and BIS's responses are summarized below.

One commenter noted that, in some instances, "600 series" "components" could be sent to an STA eligible destination for incorporation into an end item that would be exported to a non-STA eligible destination. One commenter requested that BIS "pre-approve" such end items for *de minimis* treatment. Another commenter stated its belief that License Exception STA may not be used to export a part that will be incorporated into an end item that will be shipped to a non STA eligible destination. This commenter asked that BIS clarify that the exporter of the "600 series" part could list the manufacturer of the end item as the end user on a license application because the end item would not be subject to the EAR.

License Exception STA states that "600 series" items must be for ultimate government end-use to be eligible. If a "600 series" part or component to be exported is destined for ultimate end use by a government that is not among the STA-36 or the United States, then a license is required to export the part or component. However, there may be a third scenario in which items are not destined for end use in an STA-36 country but are destined for an end use that has been explicitly authorized by the U.S. Government. To address this scenario, BIS has made a change to STA as discussed below in Section XI.G.

One commenter stated that paragraph (c)(1) in License Exception STA appears to exclude from STA all ECCNs that have antiterrorism as a reason for control. This same commenter expressed a belief that only governments would be eligible recipients of "600 series" items under License Exception STA. The commenter noted that the latter limit could seriously disrupt supply chain activity because licenses would be needed to supply vendors who supply STA eligible governments.

BIS believes that this commenter misconstrues the terms of License Exception STA as proposed in the July 15 (framework) rule, the November 7 (aircraft) rule and the June 21 (transition) rule. Paragraph (c)(1) of § 740.20 refers to "Exports, reexports and in country transfers in which the only applicable reason for control is . . . ." This text in the June 21 (transition) rule is unchanged from the current text of paragraph (c)(1), except in that it identifies the authorized destinations and nationals by Country Group A:5. BIS has consistently construed the phrase "applicable reason for control" to mean the reasons for control that would impose a license requirement on the export, reexport or in country transfer at issue, not every reason for control that appears in the ECCN that covers the item being shipped. In accordance with part 742, AT controls do not apply to any destination for which License Exception STA is available. As proposed in the July 15 (framework) rule and the November 7 (aircraft) rule, this rule makes private sector parties eligible recipients of "600 series" items exported under License Exception STA if the "600 series" item is for *ultimate* end use by a designated agency of an eligible government or for development, production, operation, installation, maintenance, repair, overhaul, or refurbishing in an eligible country or the United States for use by such a government agency or by the United States Government. Because "600 series" ECCNs do not specify controls on "use" software or technology, the term "use" does not appear for those items in this license exception.

The June 21 (transition) rule contained a note 2 to paragraph (c) providing that License Exception STA may authorize export, reexport or in country transfer of "600 series" items only if the purchaser, intermediate consignee, ultimate consignee and end user have previously been approved on a license issued by BIS or the Directorate of Defense Trade Controls. This proposal elicited a number of questions and comments.

Commenters wanted to know whether the previous license had to be for the same commodity as will be shipped under License Exception STA, whether the validity of the prior license for purposes of STA eligibility continues after the name of the party changes and whether the prior license for a party authorized use of License Exception STA for all locations of that party within one country.

The purpose of this requirement is to provide some assurance that the foreign parties in transactions involving "600 series" items under License Exception STA are reliable as evidenced by the fact that either BIS or DDTC have approved licenses for transactions in which that party was involved. Plans to export under License Exception STA a different item than that under previous licenses do not alter the fact that the U.S. Government had vetted through the licensing process the foreign parties at issue in the transaction. Also not affecting the conclusion that the U.S. Government has vetted a foreign party through the licensing process is if the company changes its name or has offices at various addresses. Because the approval must have been for the party that will receive items under STA, an approval for a different entity, even if it is related to or affiliated with that party, would not meet the requirements for note 2 to paragraph (c)(1). BIS believes that no changes are needed to the text proposed in the June 21 (transition) rule to implement these points.

One commenter asked whether exporters would be required to provide the information about approved parties and, if so, specifically what information would have to be provided and how often would it have to be provided. The commenter suggested that the exporter should be required to provide the information only for the initial export under License Exception STA to the party.

The June 21 (transition) rule did not propose any requirement that the exporter report to BIS information about the prior licenses. As with other license exceptions, by entering STA (or the corresponding AES license code) into AES, the exporter represents to the United States Government, subject to penalties for false statements, that all of the requirements of License Exception STA have been met. In addition, parties to transactions that are subject to the EAR must provide BIS or other authorized U.S. Government agency with documents relating to the transaction upon request. BIS believes that no change to the text as proposed in the June 21 (transition) rule is needed on this point.

Some commenters noted that parties wishing to use STA would not have access to licensing records from which they could determine whether the party to which they wish to ship under License Exception STA had previously been on an approved license. These commenters recommended several changes to address this issue. One recommendation was to remove the requirement because ordinary screening of customers as part of company compliance programs should be adequate and, especially with exports to close allies, additional measures should not be needed. Another recommendation was that the government, which has all the licensing records needed to determine whether a party was on a previously approved license, could provide the information (including known name changes) on a website. Additionally, the government could implement a procedure whereby AES could notify an exporter who wishes to use License Exception STA for a "600 series" item that the consignee is not an eligible recipient. Such a notice could be based on the fact the consignee has not previously appeared on an approved license or on other non-public information that the government possesses.

Items in the "600 series" are military items or items that are designed for military application. Although they are less significant military items that the President has determined

do not warrant control on the USML, they nonetheless, as military items, warrant export under more extensive safeguards against diversion than are applied to some of the other items that are subject to the EAR. The presence of a party on a previous license provides such a safeguard for such items because it indicates that the United States Government has reviewed that party and approved a transaction in which that party participated. Although providing access to the information obtained in connection with a license application about the identity of parties on approved licenses to the public via a website would likely make use of License Exception STA for "600 series" items easier, Section 12(c) of the Export Administration Act precludes such disclosure absent a finding that doing so is in the national interest. Given the widespread access to items posted on public websites, including access by persons not intending to use License Exception STA, such a finding would be unlikely. Attempting to modify AES in the way suggested is not yet feasible. Moreover, AES filings for "600 series" items will take place shortly before the time of export. An exporter relying on AES to screen out ineligible consignees would have done all of the work necessary for an STA shipment including furnishing the ECCN(s) to and obtaining the required statement from the consignee only to find out almost at the moment of shipment that the consignee is not eligible. BIS expects that, in most instances, a consignee that is willing to make the commitments and certifications required under License Exception STA will also be willing to confirm to the potential exporter, reexporter or transferor whether it has been a party on any approved licenses. Accordingly, BIS is making no substantive changes to the note to paragraph (c)(1) in response to these comments. (See Section XX below for recordkeeping requirements.)

The June 21 (transition) rule would require consignees of "600 series" items to state that the items are for ultimate end use (or will be used in development, production, use, operation,

installation, maintenance, repair, overhaul, or refurbishing of an item for ultimate end use) by an authorized government agency or a person in the United States; and to consent to an end-use check. One commenter questioned whether a private consignee would be able to consent to an end-use check on a government end user.

BIS agrees that a private party should not be expected to make a commitment on behalf of a government. In addition, the governments eligible to ultimately receive "600 series" items under License Exception STA were selected because of their status as NATO allies of the United States or multi-regime members. Therefore, this final rule revises the requirement to make clear that only a non-government consignee is required to consent to an end-use check. In such an instance, BIS recognizes that because a condition of STA is that "600 series" items must ultimately go to an authorized government end user or a user in the United States, the items may no longer be on the consignee's premises. Nevertheless, an end use check at the consignee's premises may provide information that would help confirm the ultimate disposition of the items.

G. Other License Exception STA Changes

The November 7 (aircraft) rule proposed creating a new Supplement No. 4 to part 740 that would list certain "600 series" items that are not eligible for License Exception STA. Both the November 7 (aircraft) rule and the December 6 (gas turbine engines) rule proposed items for inclusion in this new supplement. Upon reflection, BIS has concluded that listing these ineligible items in the ECCNs to which they apply will make the ineligible items more readily apparent to readers than will listing them in a separate supplement. Accordingly, this rule does not list these items in a supplement as proposed, but in ECCNs 9D610, 9E610, 9D619 and 9E619. This change is purely one of format. The ineligible items listed in those four ECCNs are

the same as those proposed in the November 7 (aircraft) rule and the December 6 (gas turbine engines) rule.

The conditions under which License Exception STA may be used have been revised to allow for situations where the United States would, for national security, foreign policy, or other reasons, explicitly authorize its use in circumstances not yet contemplated. In response to the June 21 (transition) rule, commenters requested that BIS allow for the use of STA to authorize certain exports in situations in which the exporter knows that the items may be reexported to both STA-36 and non-STA-36 destinations. This new provision is designed to give the U.S. Government, through the normal interagency license review process, flexibility to craft license authorizations and conditions to address atypical fact patterns and allow for the use of STA in situations that would not otherwise be authorized. For example, a foreign consignee may receive a U.S. Government authorization to reexport from an STA-36 country a foreign-made item containing controlled U.S.-origin content. The new provision would allow the continued use of STA for exports of controlled items to a foreign consignee in one of the STA-36 countries so long as the foreign consignee has a valid license authorizing such a use of STA. The consignee would need to certify that it has such a license and, in addition, provide a copy of it to the U.S. exporter before License Exception STA may be used.

H. Country Groups

This rule creates three new country groups in part 740 of the EAR following consideration of public comments described below recommending reorganization of various lists of countries in the EAR. Specifically, this rule adds two new columns to Country Group A to incorporate the lists of countries previously set forth in the text of License Exception STA, and it adds one new column to Country Group D to incorporate the list of countries subject to a U.S.

arms embargo proposed in the July 15 (framework) rule to be set forth in § 740.2. Several commenters addressed the various groupings of countries in the EAR and noted possible ways to reduce the number of such groupings or highlighted areas where the current groupings and those proposed in the June 21 (transition) rule could be simplified. One commenter noted that many such groupings were nearly identical to each other and to existing Country Groups in Supplement No. 1 to part 740 of the EAR. This commenter suggested that several such groupings be replaced by existing country groups. This commenter also recommended that certain countries listed in § 740.2(a)(12) of the transition rule that currently are subject to limited exceptions to the policy of denial under § 126.1 of the ITAR be removed from § 740.2(a)(12) in the final rule; BIS did not accept this recommendation because BIS believes it is appropriate to limit the use of license exceptions to countries subject to a U.S. arms embargo as a matter of foreign policy. One commenter suggested that the countries currently listed in § 740.2(a)(6) could be combined with the countries listed in proposed § 740.2(a)(12) with a single *de minimis* level for both groups. Other commenters recommended a 10% *de minimis* level for both § 740.2(a)(6) and § 740.2(a)(12) countries. A commenter also substituted the term STA-36 for references to destinations listed in § 740.20(c)(1), demonstrating the usefulness of a shorthand reference for this group of countries.

BIS recognizes that a number of the country groupings in the EAR are similar to each other and to the Country Groups in Supplement No. 1 to part 740 of the EAR. The small differences between some of these country groupings reflect the fact that each country grouping generally implements a policy tailored to certain destinations that do not exactly match the broad Country Groups in Supplement No. 1 to part 740. A comprehensive revision of country

groupings in the EAR is outside the scope of this rule, but BIS acknowledges that it is an appropriate subject to be examined in the future as part of a retrospective review.

In addition, the countries listed in § 740.2(a)(6) are countries that are subject to broad export controls and, in some cases, comprehensive embargoes that encompass items of no military significance. The countries listed in § 740.2(a)(12) of the proposed transition rule are subject to United States arms embargoes. Moreover, paragraph (a)(6) applies to all items that are subject to the EAR whereas paragraph (a)(12) applies to the distinctly military items that are in "600 series" ECCNs. BIS believes that the distinctly military nature of "600 series" items justifies a stricter *de minimis* treatment compared to the broader universe of items that are subject to the EAR, and thus BIS does not adopt the commenter's suggestion.

Although not adopting their specific recommendations, BIS believes that these commenters raised valid points concerning the need for clarity in grouping countries in the EAR. Accordingly, this rule revises Supplement No. 1 to part 740 to add new columns A:5 and A:6 to Country Group A and to add a new column D:5 to Country Group D. Column A:5 lists the 36 destinations that currently are in § 740.20(c)(1), Column A:6 lists the eight destinations that currently are in § 740.20(c)(2), and Column D:5 lists the destinations subject to a United States arms embargo that were listed in § 740.2(a)(12) of the June 21 (transition) rule and July 15 (framework) rule. These changes are to format only and are not intended to change any controls.

XII. Part 742 – Control Policy

A. National Security (NS) Review Policy

In the July 15 (framework) rule, BIS proposed revising the review policy for license applications for items controlled for national security reasons by adding a new paragraph

(b)(1)(ii) to § 742.4 of the EAR. The proposed rule stated that in addition to the policy set forth in existing paragraph (b)(1)(i) of § 742.4, items classified under the "600 series" ECCNs would be subject to a general policy of denial when destined to a country subject to a U.S. arms embargo.

BIS received a comment on the proposed review policy that observed that such a policy would be more stringent than the policy for embargoed destinations and significant items under the ITAR. BIS has revised the proposed review policy in response to a commenter's observation as further discussed below.

To harmonize the EAR's policy with that of the ITAR, a new paragraph (b)(1)(ii) to § 742.4 is adopted to state that when destined for a country listed in D:5 in Supplement No. 1 to Part 740 of the EAR, items classified under "600 series" ECCNs will be reviewed consistent with the United States arms embargo (§ 126.1 of the ITAR). Although "600 series" items do not warrant control on the U.S. Munitions List, they are nonetheless items specially designed for military uses or applications or otherwise identified on the WAML and thus the stated review policy is appropriate. The scope of the U.S. arms embargoes is, however, not the same for each arms embargoed country. Section 126.1 of the ITAR has a detailed description of the policies for each such country to which BIS will defer.

One commenter noted that the proposed transition rule listed in § 740.2(a)(12) all the countries in § 126.1 of the ITAR, but that the preamble referred only to § 126.1(a) of the ITAR. Although at one point in its text, the preamble to the transition rule referred to § 126.1 of the ITAR, in other places it referred to § 126.1(a). While this comment referred to the section on restrictions on license exceptions, the issue is more strongly related to license review policy. BIS's intent is to apply the general policy of denial for "600 series" items to all destinations that

are subject to a United States arms embargo. For this reason, BIS is not removing any destinations that are subject to limited exceptions found in other paragraphs of § 126.1 from the list of arms embargoed destinations. The general policy of denial provides adequate discretion to approve a license when the interagency license application review process pursuant to Executive Order 12981, as amended, recommends doing so in accordance with the national security and foreign policy of the United States and if no other law prohibits such approval. In other words, BIS is maintaining the status quo for "600 series" items to such destinations to conform to the State Department's policy and practice.

B. Regional Stability (RS) License Requirements

The July 15 (framework) rule proposed to individually list each of the new "600 series" ECCNs that would be controlled for RS Column 1 reasons in § 742.6(a)(1), which currently lists in a single sentence all ECCNs or portions thereof that are subject to the RS Column 1 controls of that paragraph. That framework was difficult to read and the listing of ECCNs duplicated information provided by the combination of ECCN entries and the Commerce Country Chart in Supplement No. 1 to part 738. This final rule simplifies and streamlines § 742.6(a)(1), which provides that a license is required for items designated in their ECCNs as subject to RS Column 1 controls to all destinations other than Canada, which is consistent with the format of describing other reasons for control in part 742. This change to § 742.6(a)(1) is in format only; it does not alter the license requirements for any item that is subject to the RS Column 1 reason for control. New paragraph (a)(1) continues to exclude from its coverage items described in paragraphs (a)(2) or (a)(3) of § 742.6 because those items are subject to their own special RS Column 1 controls. To conform to this rule's removal of ECCN 9A018.a, this rule revises § 742.6(a)(4)(i) to remove three references to ECCN 9A018.a.

C. RS Review Policy

BIS proposed in the November 7 (aircraft) rule to revise paragraph (b)(1) of § 742.6 to read that applications for "600 series" ECCN items listed in paragraph (a)(1) and destined to a country subject to a U.S. arms embargo would be reviewed in accordance with U.S. arms embargo policies and generally would be denied. In addition, a general policy of denial for a regional stability ("RS") column 1 reason would apply to license applications for "parts," "components," "accessories," "attachments," software, or technology "specially designed" or otherwise required for F-14 aircraft. BIS revised the November 7 proposed license application review policy in paragraph (b)(1) for "600 series" ECCN items destined to U.S. arms embargoed countries, stating that such applications generally would be denied. BIS adopts in this final rule the same purpose and rationale described for the national security review policy in Section XII.A. above for the RS review policy, which is that when destined for a country listed in D:5 in Supplement No. 1 to Part 740 of the EAR, items classified under "600 series" ECCNs will be reviewed consistent with the United States arms embargo policies (§ 126.1 of the ITAR).

The June 21 (transition) rule proposed that paragraph (b)(1) of § 742.6 be further revised to add a case-by-case review to determine whether the "600 series" transaction is contrary to the national security or foreign policy interests of the United States, while retaining all provisions as published in a final rule which implemented the 0Y521 ECCN series, published April 13, 2012 (77 FR 22191). The June 21 (transition) rule proposal for case-by-case review is adopted in this rule without change.

XIII. Part 743 -- Special Reporting

A. Conventional Arms

The July 15 (framework) rule proposed to create a new semi-annual reporting requirement for "600 series" items that would be specifically identified in new § 743.4(c)(1) as items that require reporting under the Wassenaar Arrangement. One commenter described addition of this conventional arms reporting as "premature" as it was "unlikely" to be applicable to any "600 series" items. BIS did not agree with this comment. The framework must be established for this reporting to abide by U.S. multilateral commitments. Section 743.4 is adopted as it was proposed in the July 15 (framework) rule.

B. Major Defense Equipment

As set forth in § 123.15 of the ITAR, Section 36(c) of the Arms Export Control Act requires that a certification be provided to the Congress prior to approval of certain high-value exports of major defense equipment, other defense articles, or firearms. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export. While this process is not statutorily required for items subject to the EAR, BIS proposed in the June 21 (transition) rule to institute similar procedures in the EAR for certain exports of items that were classified as Major Defense Equipment (MDE) under the ITAR and are now subject to the EAR. BIS is adopting these procedures for certain exports of MDE in this final rule. "600 Series Major Defense Equipment" means any item listed in ECCN 9A610.a, 9A619.a, 9A619.b or 9A619.c, which has nonrecurring research and development costs of more than $50,000,000 or total production cost of more than $200,000,000. The Defense Security Cooperation Agency (DSCA) maintains a list of MDE items, currently categorized by USML category, available online at http://www.dsca.osd.mil/samm/ESAMM/Appendix01.htm ("DSCA List").

This final rule adopts the July 15 (framework) rule proposal to create a new § 743.5, which provides that BIS will notify the Congress of transactions that include "600 Series Major

Defense Equipment" – i.e., any "600 series" items identified on the DSCA List -- valued in excess of $14,000,000 for destinations outside of the new Country Group A:5 and $25,000,000 for destinations listed in the new Country Group A:5. Notification will not be required for exports made under License Exception GOV. When a license application is submitted, BIS will draw the necessary information to make the congressional notification from the license application. Section 740.2, Restrictions on License Exceptions, discussed above, is also revised to preclude use of license exceptions, other than License Exception GOV, for such transactions.

BIS received eleven comments on the congressional notification proposal. In general, the commenters complained that notification would be cumbersome and defeat many of the potential efficiencies of the EAR for transitioned items. The commenters also asserted that congressional notification is not required for items subject to the EAR. BIS does not agree with such comments. BIS recognizes that congressional notification procedures may impose a regulatory burden for some export transactions. However, BIS is not requiring notification for any transactions that would not now require notification under the ITAR and the Arms Export Control Act. Thus, there will be no increased burden on exporters as a result of the new notification requirements in the EAR.

Six commenters stated that the threshold for congressional notification should be based on the value of the "600 series" items in the license application, not the total contract under which the items are sold. BIS accepts this recommendation. BIS recognizes that the total value of a contract that includes transitioned items may also include substantial sums for items subject to the ITAR or subject to the EAR, but which are not "600 Series Major Defense Equipment." Therefore, to ensure that only transactions that include more than the applicable threshold of "600 Series Major Defense Equipment" items trigger the notification requirement, BIS is

revising the notification requirement threshold to the value of the "600 Series Major Defense Equipment" items included in the contract.

Five commenters requested that BIS specify that dual notification of a transaction is not required. BIS accepts the commenters' request. If a transaction includes more than the threshold amount of ITAR MDE or other ITAR items triggering the ITAR congressional reporting requirement, and also triggers the BIS requirement due to the value of the "600 Series Major Defense Equipment" items, it would serve little purpose to require that both BIS and DDTC notify the Congress for the same transaction. Therefore, BIS is revising the notification requirement to state that transactions that have been, or are concurrently being, notified to the Congress by DDTC do not require congressional notification by BIS. One commenter also suggested that applicants must provide notice of prior notification by providing BIS with the Congressional Notification Identification Number on their application in SNAP-R. BIS agrees with the suggestion and has amended the EAR accordingly. BIS, however, will not approve the license for items subject to the EAR until the applicable period for congressional notification has expired.

One commenter noted that the congressional notification procedures require that the exporter provide BIS with the written contract under which the items are being sold, and that this requirement is unique in the EAR. BIS acknowledges that the requirements that exporters whose transactions meet the thresholds for congressional notification to provide the written contract for the sale of the items is unique in the EAR. But, BIS believes that relatively few transactions will require congressional notification each year and that those transactions are of such a size that it is unlikely that they will be concluded without a written contract. Additionally, a written contract is required for these transactions under the ITAR, so there is no increase in regulatory burden.

Four commenters requested that BIS include the definition of Major Defense Equipment in part 772. BIS accepts this recommendation and has included a definition in part 772.

XIV. Part 744 – End-User and End-Use Controls

A. "Military End Use" in §§ 744.17 and 744.21

In the July 15 (framework) rule, BIS proposed amending the definition of "military end use" used in § 744.17 (Restrictions on certain exports and reexports of general purpose microprocessors for 'military end uses' and to 'military end users.') and § 744.21 (Restrictions on certain 'military end uses' in the People's Republic of China (PRC)). In both sections, the definition of "military end use" was revised to include incorporation into items classified under "600 series" Product Groups A, B or C ECCNs and for the "use," "development," or "production" of items classified under "600 series" Product Group A, B or C ECCNs. For consistency, BIS is making clarifying changes to the proposed language to ensure greater understanding of the scope of the provision. BIS received no public comments on these amendments to the military end use definition, and this final rule adopts the July 15 (framework) rule's proposal without substantive change.

B. China Military End-Use Control

In the June 21 (transition) rule, BIS proposed to make all "600 series" items subject to the China Military End Use provision set forth in § 744.21 through a new paragraph (a)(2), which provided a general prohibition on exports to China of "600 series" items without a license. One commenter to the June 21 (transition) rule stated that this amendment would create an unnecessary burden for "600 series" paragraph .y items and that .y items should only be restricted for export to China if they are intended for a military end use. In addition, the

commenter said that there is no need to restate the denial policy for non-.y "600 series" items because this is currently reflected in § 742.6 (Regional Stability).

BIS does not agree with this recommendation, and is adopting the June 21 (transition) rule addition of paragraph (a)(2) without change. "600 series" items were previously on the USML or the WAML and therefore are presumptively for a military end use. Accordingly, BIS is imposing under § 744.21 a license requirement for all "600 series" items, including paragraph .y items, destined for China. Paragraph .y items are "specially designed" "parts," "components," "accessories," and "attachments" for defense articles on the USML or for other military items (i.e., "600 series" items), and the definition of "military end use" in § 744.21 includes incorporation into a military item. The commenter's concerns regarding an unnecessary burden on paragraph .y items is outweighed by the national security need for a license requirement. As to the commenter's concern regarding restating the denial policy with respect to other "600 series" items, paragraph (a)(2) does not do this. Other "600 series" items are subject to multiple reasons for control on the CCL as well as to end-use and end-user controls, and different licensing review policies may apply.

After interagency review, BIS is amending the proposed text in § 744.21(f) removing references to "Product Group A, B or C." This change is intended to clarify the intent of the July 15 (framework) rule, which was to maintain the scope of current policy with respect to defense articles that will remain on the USML or defense articles that will transfer to the CCL as "600 series" items.

XV. Part 746 – Embargoes and Other Special Controls

A. Iraq

The July 15 (framework) rule proposed to revise paragraph (b)(2) of § 746.3 (Iraq) of the EAR to make "600 series" items, which are arms or arms-related, subject to the Iraq arms embargo provisions. No comments were received on this provision. This final rule revises that proposal by specifying that license applications for the export, reexport, or transfer to the Government of Iraq of "600 series" items will be subject to the review policies set forth for such items in §§ 742.4(b) and 742.6(b) of the EAR to cross reference the review policies set forth in part 742 elsewhere in this rule.

B. UN Embargoes

In the July 23, 2012 final rule on Export and Reexport Controls to Rwanda and United Nations Sanctions Under the Export Administration Regulations (77 FR 42973), BIS amended § 746.1 to limit the use of license exceptions to countries subject to a United Nations Security Council arms embargo. The July 15 (framework) rule and the June 21 (transition) rule proposed restrictions in § 740.2(a)(12) on license exceptions for "600 series" items destined to countries subject to a U.S. arms embargo (a list that includes countries subject to United Nations Security Council arms embargoes). One commenter recommended that BIS make available license exceptions in addition to GOV for items being sent to countries subject to United Nations Security Council arms embargoes as implemented under the EAR. The commenter stated in support of the recommendation that some circumstances in which controls related to arms embargoes could be superseded by license exceptions was contemplated in a proposed amendment to paragraph (b)(3)(vi) (General Prohibition Three – Foreign-Produced Direct Product Reexports) of § 736.2 set forth in the June 21 (transition) rule.

BIS does not agree with the commenter's reasoning and is not adopting the recommendation. Part 746, as stated in § 746.1(a), is the focal point for all the EAR requirements for transactions involving sanctioned and embargoed countries. Thus, the availability of license exceptions to those countries is governed primarily by the provisions in part 746. This rule does amend § 746.1 to clarify that the availability of license exceptions for Iraq, North Korea, and Iran will continue in effect as set forth in § 746.3 (Iraq), § 746.4 (North Korea), and § 746.7 (Iran) rather than being governed by the more general restrictions being implemented in § 746.1.

XVI. Part 748 – Applications and Documentation

A. Classification Requests to Confirm that Items are not "Specially Designed"

In response to public comments received regarding the scope of the proposed definition of "specially designed" in the June 19 (specially designed) rule, this final rule adds a new paragraph (e) to § 748.3 (Classification requests, advisory opinions, and encryption registrations) to establish a process whereby the public may submit classification requests to confirm that a "part," "component," "accessory," "attachment," or "software" is not "specially designed." This new paragraph describes this process and identifies the criteria that must be met and the review criteria that will be used by the Departments of Commerce, State and Defense. A consensus determination of these three agencies is required to confirm that a "part," "component," "accessory," "attachment," or "software," is not "specially designed" based on this new paragraph. The policy objective of this new provision is to replicate in the EAR the practice that the State and Defense Departments have adopted with respect to their consideration of commodity jurisdiction requests. Thus, the new paragraph (e) maintains the status quo with

respect to the government's consideration of the control status of items that may be within the scope of a "600 series" ECCN or other specially designed catch-all provision that might have once seemed to have been within the scope of one of the ITAR's catch-all provisions. In other words, if the State Department would have issued a commodity jurisdiction determination that an item was not within the scope of one of the USML's catch-all provisions and was not otherwise subject to the ITAR, then the Commerce Department, after interagency consensus, would issue a similar classification determination that the same item was not within the scope of a "600 series" ECCN.

B. Unique Submission Requirements

1. License Exception STA eligibility requests for "600 series" items

The July 15 (framework) rule proposed a new paragraph (g) to §740.20 in License Exception STA that identified the requirements and process that would be used by license applicants to request License Exception STA eligibility for "600 series" "end items." The public comments regarding License Exception STA were generally favorable, but some commenters made suggestions for how the process could be improved or simplified for these requests.

Three commenters recommended that BIS allow applicants to submit License Exception STA eligibility requests either on their own or with an application for the export of the requested item. In the July 15 (framework) rule, BIS proposed that License Exception STA eligibility requests could only be submitted at the time of a license application to minimize the potential of a large number of submissions at one time. However, as the review of the USML Categories has been completed and the revised USML Categories and corresponding "600 series" ECCNs have been published in proposed form, BIS, along with the Departments of Defense and State, has determined that the universe of "600 series" "end items" that require a prior review from the U.S.

Government should be limited to ECCNs 8A609.a (vessels), 0A606.a (vehicles), and 9A610.a (aircraft); only ECCN 9A610.a is included in this final rule and BIS will create ECCNs 8A609.a and 0A606.a in future final rules. All other "600 series" "end items" will be automatically eligible for License Exception STA, although the exporter must still ensure that the item and other aspects of the transaction are not restricted under § 740.2 and the transaction meets the applicable terms and conditions of License Exception STA. There will nonetheless still be restrictions on the use of License Exception STA for various types of software and technology, as described below.

Given this much smaller universe of "600 series" "end items" that will require the submission of License Exception STA eligibility requests, BIS accepts the commenter's recommendation to allow the public to submit License Exception STA eligibility requests at any time and will no longer require such requests to be submitted at the time of a license application requesting authorization for an export, reexport, or transfer (in-country). However, to assist in the tracking and efficient interagency review of such requests, these License Exception STA eligibility requests must be submitted via the BIS Simplified Network Application Process – Redesign (SNAP-R) system unless BIS authorizes submission via the BIS-748-P Multipurpose Application form. Accordingly, this final rule revises § 748.1(d) to add License Exception STA eligibility requests to the list of applications that must be submitted via SNAP-R unless BIS authorizes paper submissions. In SNAP-R and on the BIS-748-P, a request for License Exception STA eligibility will be submitted as an export license application, but in the future these requests will be filed electronically as a separate work item type in SNAP-R. This will occur once the SNAP-R system is revised to accommodate STA eligibility requests as a separate work item type. These changes are limited to the process that will be used in SNAP-R for

submitting License Exception STA eligibility requests. The types of information required to be submitted will be the same as that proposed in the July 15 (framework) rule.

Upon reflection, BIS has determined that the July 15 (framework) rule's proposal to list the "600 series" end items approved for STA in a newly proposed Supplement No. 4 to part 774 would be unduly complex. As noted above, the end items in only three ECCNs will require a specific determination to be eligible for License Exception STA. Given this small number, BIS believes that readers of the regulations will find it easier to identify the approved end items if they are listed in their respective ECCNs rather than in a separate supplement. Accordingly, such end items will be listed in the ECCNs under which they are classified. To avoid a break in the series of supplements to part 774, in this final rule, Supplement No. 4 to part 774 contains a description of the order of review of the CCL as discussed below.

This final rule also makes some conforming changes in Supplement No. 2 to part 748 (Unique Application and Submission Requirements) under the new paragraph (w) (License Exception STA eligibility requests for "600 series" end items) to conform to BIS's decision not to add a new Supplement No. 4 to part 774. This final rule revises the first three sentences of paragraph (w) to specify that to submit an STA eligibility request the applicant must mark an (X) in the "Export" box in Block 5 (Type of Application); mark an (X) in the "Other" box and insert the phrase "STA request" in Block 6 (Documents submitted with Application); and include the specific "600 Series" ECCN in Block 22 (ECCN). This final rule also removes the reference to Supplement No. 4 to part 774 and adds a reference to the "600 series" ECCN where such end items determined to be STA eligible through this new process would be identified on the CCL. Also to add greater specificity, this final rule uses the term "end item" for purposes of paragraph (w).

This rule also adds two sentences to paragraph (w) to clarify that if an applicant cannot provide some of the information described under paragraph (w), the U.S. Government will still evaluate the request. This new text also clarifies that the U.S. Government will use resources and information that may only be available to the U.S. Government in evaluating License Exception STA eligibility requests, as a way to encourage applicants that even if they feel that they may not have information in certain areas that the U.S. Government will also use its resources and expertise in evaluating these requests. However, this new text also clarifies that when submitting such requests applicants should provide as much information as they can based on the criteria noted in paragraph (w) to assist the U.S. Government in evaluating these License Exception STA eligibility requests. Lastly, for the changes to paragraph (w), this final rule is removing the term "otherwise" before the phrase "or is available in countries that are not regime partners or close allies." The term otherwise was not needed to convey the intended meaning of the sentence, so BIS removed it.

One commenter recommended that the timeline for the review of License Exception STA eligibility requests should be similar to those set forth by § 740.17(b)(2) for ENC classifications, where a determination would be made thirty days after the submission of the request. BIS does not accept this recommendation because these "STA requests" are not the same as requests for ENC classification, which consists more of a technical review. The STA eligibility requests involve not only a technical review of the end item but also a broader policy review to determine whether such end items should be eligible for License Exception STA. These "STA requests" are not part of a license application requesting an authorization for an export, reexport or in-country transfer. However, BIS has determined using the timelines set forth in Executive Order 12981 and § 750.4, as was proposed in the July 15 (framework) rule, is the best approach to

establish clear guidelines for the timeline for the interagency reviews conducted by the Departments of Commerce, State and Defense.

One commenter requested "ECCN entry" be changed to "end item" in § 740.20(g)(5)(i) because BIS is not making the entire ECCN eligible, but only a specific end item. BIS does not accept this change because in certain cases BIS may approve an ECCN entry for License Exception STA eligibility, but in other cases the end item approved for STA eligibility may be more narrowly defined. Therefore, BIS is not changing the "ECCN entry" as requested, but is adding "or end item" to add greater specificity. This will clarify that when BIS publishes final rules adding License Exception STA eligibility to the EAR for "600 series" end items, it may be done at the higher (i.e., more general description) ECCN level or specific end item level (e.g., a specific model number).

Two other commenters requested BIS allow the STA eligibility requests to cover the entire ECCN subject to the request versus the specific end item in the request. BIS is not making the requested changes. As noted, the STA eligibility requests are not limited to a specific model and can be requested at the ECCN level or ECCN "items" paragraph level. However, BIS anticipates that initially the end items that are determined to be eligible for License Exception STA under the § 740.20(g) process will likely be at the specific end item level. Over time as the U.S. Government has an opportunity to review more of these requests, it may be possible that broader descriptions can be developed and authorized for License Exception STA. However, to protect U.S. national security interests a review of the end items classified in ECCN 9A610.a must be made by the U.S. Government prior to any of those end items being determined to be eligible for License Exception STA.

Two commenters requested BIS provide applicants with an opportunity to participate in unclassified interagency discussions on their License Exception STA eligibility requests similar to the opportunity to participate in open sessions of interagency discussions associated with the interagency licensing review process. BIS does not need to make any regulatory changes to address this comment. Requesters who submit "STA requests" under § 740.20(g) are participating in the review process in an important way. Therefore, such requesters are encouraged to submit any information that they believe would be relevant to the U.S. Government review of the License Exception STA eligibility requests. In reviewing and evaluating such requests, if BIS or one of the other departments has a question regarding what was submitted, a representative from BIS will likely contact the applicant through SNAP-R to request an answer to the specific question or request additional information. This process is similar to the typical level of applicant participation that occurs in the license application review process, so BIS is not making any additional changes to the EAR or internal license review processes of the U.S. Government to create a greater role for the applicant in the interagency review process for License Exception STA eligibility requests.

One commenter requested BIS allow an extension of the review period for STA eligibility if agreed to by the applicant. This commenter suggested this could be implemented in § 750.4(f) (Procedures for processing license applications) by allowing for an additional review period of 10 calendar days, with an extension if agreed to by the applicant. BIS is not accepting this change because the License Exception STA eligibility requests and the license applications requesting an authorization for an export, reexport or in-country transfer are no longer going to be linked in this final rule, so the concern with the License Exception STA timeline interfering with the timeline for the review of the license application is no longer an issue.

One commenter thought it would be useful to provide further clarity on the proposed "STA eligibility" review process, and its precise relationship to the ACEP licensing process. If it is the intent to review STA eligibility requests in tandem with the ACEP licensing review process, this commenter is concerned whether such a review would provide adequate administrative due process. As noted above, the License Exception STA eligibility requests will not be reviewed in tandem with the license application review process, so this concern is already addressed. In addition, as described in § 740.20(g), in the event that STA eligibility is denied, exporters are able to seek reconsideration of the denial and are encouraged to provide any additional information supporting their request. Further, a denial of STA eligibility does not preclude an exporter from applying for a license for the same export.

One commenter requested that BIS mandate applicants who receive a notification from BIS authorizing the use of License Exception STA for specific end items to share such determinations with other parties. BIS does not accept this change. Applicants who receive an approval may share that notification, but BIS does not believe that mandating that party to share the notification received from BIS is warranted. BIS will communicate such determinations based on an amendment to the EAR as described in § 740.20(g)(5)(i). BIS believes this combination of a voluntary sharing approach followed by a regulatory change to inform the public is the best approach.

2. License application for a "600 series" item that is equivalent to a transaction previously approved under a State license or other approval

This final rule is making changes to Supplements Nos. 1 (Item Appendix, and BIS-748P-B: End-User Appendix; Multipurpose Application Instructions) and 2 (Unique Application and

Submission Requirements) to part 748 to allow for the consideration of previous State licenses or other approvals that are equivalent to a new license application for a "600 series" item. These changes are being made to address a comment regarding how previous ITAR licenses or other approvals could be considered as part of the EAR license review process. Other changes included in this final rule address the use of ITAR licenses and other approvals that remain valid (see Section III.C above).

One comment requested BIS create an ID code in SNAP-R to automatically convert ITAR agreements to BIS licenses. Another commenter suggested implementing an amendment capability as it relates to licenses. BIS does not accept the suggested change to create an ID code in SNAP-R that would allow applicants for "600 series" items to automatically transfer previous ITAR agreements (e.g., MLA or TAA) to a BIS license because of technical limitations in the SNAP-R and the importance of reviewing these new proposed exports, reexports, and transfers (in-country) that will be made under the EAR licenses being applied for at the time of the new applications.

However, BIS does agree that an export, reexport or in-country transfer previously authorized under an ITAR license or other approval (e.g., MLA or TAA) may be relevant to the review of a subsequent EAR license application if the transaction in question is equivalent to the transaction previously authorized. Therefore, BIS is making a change that was not proposed previously in the July 15 (framework) rule to revise the license application process to provide guidance to applicants on how to have a previous State license or other authority be considered as part of the license review process for a "600 series" item.

To implement this change, BIS is revising the instruction in Supplement No. 1 to part 748 (BIS-748P, BIS-748P-A: Item Appendix, and BIS-748P-B: End-User Appendix; Multipurpose

Application Instructions) to create a process in SNAP-R for applicants to input a State license or other approval number in Block 24. The ITAR license or other approval number will alert BIS and the other U.S. Government agencies reviewing a particular "600 series" application that the new application is equivalent to a previous State license or other approval.

Only those license applications where the particulars (e.g., the description of the item, the purchaser, ultimate consignee and end-user(s)) are the same in both the EAR license application and the previously issued ITAR authorization, will receive full consideration under this paragraph. In some instances, review under this paragraph may result in a quicker processing time. The State license number or other identifier, such as a MLA or TAA identifier, must be included in Block 24 of the BIS license application, as noted above. Lastly, this final rule is adding a Note to paragraph (x) to clarify license applications submitted under paragraph (x) will still be reviewed on their own merits and in accordance with license review procedures and timelines identified in part 750.

BIS agrees with the second commenter who suggested an amendment capability for licenses would improve the efficiency of the EAR licensing process as the current EAR does not allow for amendments to licenses. Amendments to licenses are addressed with the submission of a replacement license when a change needs to be made to a previously authorized license for a change not described in § 750.7(c) in accordance with the instructions contained in Supplement No. 1 to part 748 of the EAR, Block 11. At this time, BIS is not able to implement a process in this final rule to allow for amending of existing EAR licenses. However, BIS intends to reconsider this idea once the single licensing form is developed and the export control IT system has greater flexibility to address such changes, including creating an efficient process for allowing license holders to submit such requests for changes to a license and allowing for

identification and efficient tracking of such changes. These types of improvements in the IT system will better ensure relevant U.S. Government enforcement officials can identify such approved changes to verify compliance with approved amended licenses.

XVII. Part 750 – Application Processing, Issuance, and Denial

In the June 21 (transition) rule, BIS proposed revising § 750.4 to address Congressional notification for the export of "600 Series Major Defense Equipment" and revising § 750.7 to extend the validity period of BIS licenses and permit shipment to and among multiple end users. These proposals, public comments thereto, and final decisions are discussed in more detail below.

A. Calculating Processing Times

As proposed in the June 21 (transition) rule, this rule amends § 750.4(b) to add the congressional notification process associated with requests to export "600 Series Major Defense Equipment" to the list of actions not included in license application processing time calculations.

B. Shipment to Approved End Users

BIS licenses generally designate one ultimate consignee and may have many designated end users. DDTC authorizations may designate multiple foreign end users. The June 21 (transition) rule proposed to revise § 750.7(c) explicitly to allow direct shipments to approved end users on an export or reexport license if those end users are listed by name and location on such license. BIS received no comments that directly referred to this proposed revision, but one commenter expressed concern that EAR licenses would afford less flexibility than ITAR agreements, which may allow shipments *among* approved end users outside the United States in addition to direct shipment to approved end users from the United States. BIS acknowledges that

this is a valid concern; therefore, this rule amends proposed § 750.7(c)(1)(ix) by allowing direct export, reexport and transfer (in-country) to *and among* approved end users provided they are listed by name and location on such license and that the license does not contain any conditions that cannot be complied with by the end user, and by removing a proposed restriction on exports and reexports to unlisted end users. This rule also makes conforming changes to § 758.5.

C. Extended Validity

Current ITAR licenses are generally valid for four years. Agreements under the ITAR may be valid as long as ten years. Prior to the effective date of this rule, BIS licenses were generally valid for two years. In order to harmonize the EAR with the ITAR, the June 21 (transition) rule proposed to revise § 750.7(g) to extend the validity period of BIS licenses issued hereafter from two years to four years, with some exceptions, unless otherwise specified on the license.

Three commenters expressed support for this extension, and none expressed opposition to it. However, one commenter suggested a default ten-year validity period for replacing an ITAR agreement. BIS does not accept the suggested revision, but BIS notes that exporters may request an extended validity period pursuant to § 750.7(g)(1) beyond four years. Such requests will be reviewed on a case-by-case basis. Grounds for requesting extension would include having had agreements on similar matters previously approved by the Department of State for a longer period. BIS believes that setting up a new process for a default validity period would restrict the flexibility of the reviewing agencies without significantly lessening the burden on the applicant, as the same information would have to be supplied under a default process as will be required for a license application and request for extended validity.

D. Specificity on Application

Three commenters asserted that BIS's proposed licensing process is more burdensome than DDTC licensing because the ITAR allows identifying general categories rather than parsing out each part covered by an application. BIS believes that most general categories of items transitioning from the USML will fall into general categories in the EAR as well, such as the .x paragraphs of the "600 series" ECCNs. Therefore, the burden should be comparable. For example, if a collection of parts specially designed for a military aircraft were formerly controlled under USML Category VIII(h) and were not identified in the revised USML Category VIII(h), then they would be controlled under ECCN 9A610.x. BIS does not and would not generally expect more detail on a BIS license application in this regard than what DDTC would generally expect on one of its license applications.

XVIII. Part 756 – Appeals

This final rule adopts the position described in the July 15 (framework) rule that STA eligibility decisions cannot be appealed through part 756. BIS is maintaining this position for the reasons set forth in that rule, i.e., that the decision to grant STA eligibility is a foreign policy determination and because consensus is required among the considering agencies to do so. In addition, exporters should keep in mind that a denial of STA eligibility does not preclude the exporter from submitting a license application for the same transaction. This rule amends the regulatory text proposed in the July 15 (framework) rule to remove ambiguity about its scope.

XIX. Part 758 -- Export Clearance Requirements

A. AES Filing Regardless of Value, Except for .y Items

The June 21 (transition) rule proposed to revise § 758.1 to require that information on all exports of "600 series" items be filed in AES regardless of value or destination. Six commenters opposed this requirement. They cited difficulties in separating "600 series" items from other CCL items in their internal systems, and stated that applying different clearance requirements for items eligible for the same license exceptions was confusing. BIS did not accept these suggestions. Due to the nature of "600 series" items as items specially designed for military applications or end items, the U.S. Government needs to retain a degree of visibility into the movement of these items. This final rule adopts the amendment to § 758.1 from the proposed rule, except with respect to .y items, which is discussed further below.

Three commenters requested that .y items not be subject to as stringent requirements. BIS agrees, given the lesser military significance of .y items. To lessen the AES requirements on .y items, BIS has removed .y items from the mandate to file in AES for all exports. Thus, the AES filing requirement for .y items would be the same for all other AT-only controlled items on the CCL.

The June 21 (transition) rule proposed to revise § 758.1 to require AES filing for all exports under License Exception Strategic Trade Authorization (STA), regardless of value, to enable the U.S. Government to obtain information about low-value shipments of these items. That rule also proposed to revise § 758.2 to preclude the option of post-departure filing for exports of "600 series" items because this option is not permitted for ITAR-controlled exports now, and the rule proposed removing the option of post-departure filing for License Exception

STA and Authorization VEU because the nature of these authorizations requires pre-departure filing of this information to ensure compliance with their terms and conditions. These proposals are adopted in this final rule.

B. Furnishing of ECCNs to Consignees

Section 758.6 requires that exports of items on the CCL be accompanied by a Destination Control Statement (DCS) identifying the items as subject to the EAR. Given the nature of the "600 series" items and requirements related to them, additional information identifying "600 series" items is necessary. The June 21 (transition) rule proposed to revise § 758.6 to require a more specific DCS for "600 series" items, which would require exporters to identify in the text of the DCS the ECCNs of all "600 series" items being exported to ensure that consignees are aware that they are participating in a transaction that includes such items.

BIS received comments on this proposal requesting that BIS not change the DCS, as it is pre-printed on certain export control documents, so tailoring it to different shipments is burdensome. Taking these views into account, but in continued recognition of the need to identify "600 series" items to consignees and national authorities, BIS has revised § 758.6 to require that the ECCN for each "600 series" item being shipped be provided on the same documents on which the DCS is required, but not in the text of the DCS itself. This rule requires that the ECCN for each "600 series" item must be entered on the invoice and on the bill of lading, air waybill, or another export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad. This final rule does not change the text of the DCS requirement; it merely adds a new "[g]eneral requirement" heading to the previously existing requirement.

BIS received one comment that requested that BIS require the ECCN for all items, not just "600 series" items, in the DCS to assist foreign parties in classification. BIS recognizes the value to foreign parties of requiring exporters to furnish the ECCN for all items shipped. However, this rule's purpose is to revise the EAR to allow the transition of the "600 series" from the ITAR to the EAR. Therefore, BIS does not accept this recommendation as it is outside the scope of this final rule. BIS does, however, urge exporters to advise foreign parties to the transaction of the ECCNs of all exported items.

BIS received eight comments requesting that it not require the inclusion of the ECCN for "600 series" items in the DCS. These commenters argued that there would be substantial burden in revising their information technology (IT) and compliance systems to insert the ECCN into the DCS and further burden in maintaining a separate DCS for "600 series" items. Consistent with the discussion above, BIS agrees with commenters that the burden of including ECCNs in the DCS paragraph outweighs the value of notifying national authorities, consignees, and other parties of ECCNs via that statement. Therefore, BIS has determined that the ECCN must be included on the export control documents in a manner that will allow national authorities, consignees, and others who review those documents to quickly and easily determine the ECCN of each "600 series" item in a shipment, but will not require changes to the DCS paragraph. This will alert those interested parties to the export control classification of the "600 series" items and facilitate their determination of what controls are applicable to the particular "600 series" items. Allowing exporters flexibility in the placement of the ECCNs on the documents will allow each exporter to minimize the regulatory burden by adopting practices that fit most easily with its systems while helping to protect U.S. national security interests.

Two commenters noted that the ECCN is already included in most export control documents, so inclusion in the DCS was unnecessary. BIS accepts this recommendation to the extent that it suggested that the ECCN requirement be removed from the DCS paragraph and applied to "export control documents" more generally and notes that exporters will have flexibility as to how to include the ECCN on "export control documents." This flexibility should minimize the impact of this requirement for those exporters that already include the ECCN on their export control documents.

Five commenters suggested that BIS substitute written notification to consignees of 600-series status as a condition of license exception use. BIS does not accept this recommendation. License Exception STA already requires written notification of the ECCN as a condition of use, and this requirement will continue to apply with the addition of the "600 series" items to the CCL. Inclusion of the ECCN on the export control documents is desirable because it provides notice of the ECCN to parties in addition to the Ultimate Consignee, including freight forwarders and national authorities. It also assists U.S. Customs and Border Protection agents with an opportunity to conduct compliance checks to ensure that the information on the export control documents matches the electronic export information in AES.

One commenter suggested requiring the ECCN in the business agreements, such as contracts, that the parties enter into in connection with an export transaction. BIS does not accept this suggestion. While this may represent a good compliance practice, BIS does not deem it appropriate to dictate what terms must be included in the parties' commercial agreements. BIS does not generally see the agreements, and they do not travel with the items during shipment. As noted above, several of the goals served by the inclusion of the ECCN on the "export control documents" are served by the fact that the documents travel with the items.

One commenter stated that including the ECCN in the DCS would not raise awareness by foreign parties of the need for compliance with US export controls. BIS does not agree with this comment. Including the ECCN on the "export control documents" will increase the ability of foreign parties and national authorities to determine the relevant export controls. Additionally, requiring exporters and reexporters provide the ECCN is intended to improve compliance by ensuring that recipients of the items have a basis for determining license requirements.

C. Removal of Obsolete References in Revised Text

In part 758, this rule removes references in revised text to the Shipper's Export Declaration or SED, because this form no longer exists.

XX. Part 762 – Recordkeeping

The July 15 (framework) rule and the June 21 (transition) rule both proposed revising § 762.2 to reference new recordkeeping requirements. The July 15 (framework) rule proposed to add references to § 743.4, for Conventional Arms Reporting, and § 740.20(g), for License Exception STA eligibility requests for "600 series" end items. Descriptions of the underlying requirements are found in Sections XIII.A and XVI.B.1 above, respectively. As described in Section XI.F above, the June 21 (transition) rule proposed to add a requirement to § 740.20, note to paragraph (c)(1), that parties abroad must have been identified on a license or other approval issued by either BIS or DDTC prior to receiving "600 series" items under License Exception STA; this rule adds paragraph (b)(51) to conform to that requirement. The June 21 (transition) rule also proposed to add references to § 740.11(b)(2)(iii) and (iv) (as described in Section XI.D of this rule), for exports made for or on behalf of a department or agency of the U.S. Government or at the direction of the Department of Defense. This rule adopts the proposed revisions to four

paragraphs in § 762.2 to reference the additional records to be maintained in §§ 743.4, 740.20(g), and 740.11(b)(2)(iii) and (iv) and adds a reference to the existing recordkeeping requirement in § 740.9(a)(3), for temporary exports of technology. Lastly, the rule adds two new paragraphs to reference the "specially designed" definition in § 772.2 (described below in Section XXIII) and a note to paragraph (c)(1) of § 740.20 of the EAR (described below in Section XXIV.C.5).

BIS received two comments related to the recordkeeping references in response to the July 15 (framework) rule. One comment states that the addition of the reference to § 743.4, for Conventional Arms Reporting, is premature, because no items are currently subject to the reporting requirement. BIS does not accept this recommendation. This rule provides the framework for the "600 series" within the EAR. It creates a reporting requirement for items listed on the Wassenaar Arrangement Munitions List and the UN Register of Conventional Arms. Therefore, a reference to that reporting requirement in § 762.2 (Records to be retained) is appropriate. One comment states that the government should not depend on the recipients of its responses to License Exception STA eligibility requests to maintain records of those responses. BIS notes that although responses are transmitted through SNAP-R, SNAP-R is not intended to be a recordkeeping archive. Therefore, BIS does not accept this recommendation, and this final rule will require that any person who submits a License Exception STA eligibility request to maintain records of such a request in accordance with the new provisions added to part 762.

Lastly, as a result of proposals made in the June 19 (specially designed) rule, in this final rule, BIS is adding a new paragraph (b)(50) to § 762.2 as a conforming change to notify the public that if they rely on the paragraph (b)(4), (b)(5), or (b)(6) exclusions of the "specially designed" definition that the documentation related to such release must be retained in

accordance with part 762 (Recordkeeping) of the EAR. One public comment in response to the June 19 (specially designed) rule raised concern that the documentation requirements referenced in the note to paragraphs (b)(4) and (b)(5) could be overlooked and suggested BIS add a reference to § 762.2. BIS agreed with the commenter's suggestion and is adding this change to the final rule, along with other changes to the recordkeeping requirements referenced above. As described in more detail below in Section XXIII.A, paragraph (b)(6) is a new "development" based exclusion that is being added to the definition of "specially designed" in this final rule. Because the paragraph (b)(6) exclusion is also a "development" based exclusion similar to (b)(4) and (b)(5) that includes the same types of documentation requirements, BIS is also adding a reference to paragraph (b)(6) to § 762.2 in this final rule.

XXI. Part 764 – Foreign-Produced Direct Products and Denial Orders

Because of the expansion of the provisions at § 736.2(b)(3) to include "600 series" items, the June 21 (transition) rule proposed to remove the penultimate paragraph in Supplement No. 1 to part 764. That penultimate paragraph states that the standard denial order "does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology." One commenter objected to removing this paragraph on the grounds that foreign parties may be unaware that their foreign-made items are subject to the EAR. BIS does not agree with the commenter's concern. Under General Prohibition 4 of the EAR, § 736.2(b)(4), a party is responsible for ensuring that its transactions involving a denied person do not violate the terms of the applicable denial order. BIS also notes that the current standard denial order includes foreign-made items containing above a *de minimis* level of U.S. content. In transactions

involving a denied person, foreign parties thus already need to determine whether foreign-made items are subject to the EAR. This rule adopts the provision as it was proposed.

XXII. Part 770 – Interpretations

The November 7 (aircraft) rule proposed to remove Interpretation 9 from part 770. As discussed below, paragraph (b)(3) of the "specially designed" definition being revised in this final rule is intended to capture the scope of Section 17(c) of the Export Administration Act of 1979, as implemented in the note to USML Category VIII(h) and Interpretation 9 to part 770 of the EAR, and apply it to the remainder of the USML and CCL. This means that any part, component, accessory, or attachment that was specifically designed or modified for a military aircraft but that would not be controlled under USML Category VIII(h) as a result of the note to USML Category VIII, would not be controlled by ECCN 9A610.x which controls such items if "specially designed" for a military aircraft and not elsewhere enumerated. Therefore, Interpretation 9 is no longer needed in the EAR and is being removed in this final rule.

This final rule is also removing Interpretation 10 from part 770. This revision was not previously proposed, but the interpretation's description of differing Commerce and State jurisdiction is out of date and no longer accurate and conflicts with the structural changes adopted in this final rule. Therefore, the interpretation is removed as a conforming change.

XXIII. Part 772 – Definitions (including Specially Designed)

A. "Specially Designed" Definition

In conjunction with the Department of State, BIS published a proposed definition of "specially designed" on June 19, 2012 (77 FR 36409). The definition proposed in that rule took

into account public comments received in response to an earlier proposed definition in the July 15 (framework) rule, and would create, insofar as practicable, a common definition of "specially designed" for use under the CCL and the USML. As seen in the July 15 (framework) rule, the definition of "specially designed" proposed in the June 19 (specially designed) rule adopted a *catch and release* approach because the agencies found that it was easier to describe what the term did not or should not include rather than what it does include. Thus, paragraph (a) of the definition proposed in the June 19 (specially designed) rule contained three broad bases for items to be "specially designed" – the *catch*. If an item were caught by at least one of the three bases in paragraph (a), then paragraph (b) contained five exceptions to that item's being "specially designed" – the *release*.

The *catch-and-release* construct must be robust enough to capture all items that may warrant being controlled as "specially designed." In order to protect U.S. national security interests, the paragraph (a) *catch* must be broad in scope. If paragraph (a) overreaches in certain cases, that can be tolerated to some degree, but as much as possible paragraph (b) of the definition tries to *release* those "parts," "components," "accessories," "attachments," and "software" that do not warrant being treated as "specially designed." However, it is important for protecting U.S. national security interests that only those "parts," "components, "accessories," "attachments," and "software" that the U.S. Government has determined in all cases do not warrant being controlled as "specially designed" are *released* under paragraph (b).BIS received 31 comments in response to the proposed definition of "specially designed" contained in the June 19 rule. Most commenters felt the proposed definition in the June 19 rule was a significant improvement over the July 15 (framework) rule proposal, but many expressed concerns about complexity, ambiguity of some of the terms used, and treatment of items that

have undergone minor modifications in form or fit (more specific description of these comments and BIS's responses to them are addressed further herein). One commenter asserted that BIS should have prepared a regulatory flexibility analysis of the effect of the proposed definition instead of having Commerce's Chief Counsel for Regulations certify that the change would not have a significant impact on a substantial number of small entities, but this assertion was not supported by any specific information on the economic impact of adopting the proposed definition. BIS continues to believe that defining the term "specially designed" in the EAR, rather than leaving it undefined outside the MTCR context, helps all businesses by reducing uncertainty about how to classify their items. Small and medium-sized exporters who may not have export counsel or the resources available to obtain such assistance are less likely to need assistance to comply with a defined term than an undefined term. In addition, some commenters argued that a "natural" definition for the term already exists and that establishing a regulatory definition that would apply to all uses of "specially designed" needlessly complicates a "straightforward" and "easily-understood" term. From extensive reviews of license applications, discussions with BIS's Technical Advisory Committee members, and the diverse comments received from the public, BIS has concluded that organizations within similar industries have been and are continuing to apply wide-ranging interpretations of "specially designed." Some organizations have obtained commodity jurisdiction (CJ) determinations from the Department of State for a specific item and have then extrapolated the determination to similar items across multiple product lines despite potential differences in fact patterns, while others have limited the scope of CJs from applying to other product lines. They have applied the lessons learned from such cases to their application of "specially designed."

Some organizations have applied the Missile Technology Control Regime (MTCR) definition of "specially designed" to all of their items, while other organizations have limited the applicability of the MTCR definition to items controlled for MT reasons only. Still other organizations have interpreted the text of § 120.3(a)(ii) of the ITAR to mean that if an item has any performance equivalent to a non-controlled item, even if some modification has been made that differentiates the item from a non-controlled item, then the item at issue is not subject to the ITAR or, by implication, caught under the "specially designed" description of an ECCN. Some have made this interpretation despite the parenthetical in § 120.3(a)(ii) describing performance equivalent as "defined by form, fit *and* function" (emphasis added). On the other hand, many organizations treat any item that has been slightly modified in fit or form for a controlled item as "specially designed," even if the modifications made are insignificant.

Two public comments even raised meeting minutes from a 1975 meeting of the Coordinating Committee on Export Controls (COCOM), which helps demonstrate the length of time for which the interpretation of "specially designed" has been an issue. These commenters referred to these 1975 meeting minutes to support their position that an exclusive use based interpretation of "specially designed" is warranted. However, given COCOM ceased to exist on March 31, 1994, the minutes are not instructive for purposes of this final definition of "specially designed." In addition, as identified in the June 19 (specially designed) rule, a single definition based on exclusive use would not be adequate to protect U.S. national security interests or to account for the variety of ways in which the term "specially designed" is used under the EAR.

It is clear to BIS and other agencies involved in export controls that there is no "natural" definition or interpretation of "specially designed," and that this has led to competitive disparities for similarly situated organizations. Consequently, a single regulatory definition of "specially

designed" is warranted. A single regulatory definition is the only way in which to adequately address the various and inconsistent interpretations of the term that are discussed above and is the clearest path for protecting U.S. national security interests and ensuring the U.S. Government is meeting its multilateral regime commitments. The United States has national discretion to establish a definition that is consistent with multilateral regime commitments, and this definition meets that requirement. However, while finalizing a definition of "specially designed" with this rule, BIS and its interagency partners share the goal of reducing the use of "specially designed" to describe controlled items and intend to work to do so through the multilateral regimes and through the Advanced Notice of Proposed Rulemaking published on June 19, 2012 (77 FR 36419) ("June 19 ANPRM"), which is one of the first steps in that process.

The public comment period closed on the June 19 ANPRM on September 17, 2012. BIS received four comments in response to the ANPRM. Two public commenters noted the challenges and difficulties that would arise in trying to enumerate all of the components that would warrant control as "specially designed" components. Both commenters also noted that given the progress that has already been made in developing a suitable definition of "specially designed" under ECR, it is preferable to continue with the track of adopting a single "specially designed" definition for use under the EAR and the ITAR, informed by the public comments received in response to the June 19 (specially designed) rule.

The other two commenters were more optimistic about the feasibility of enumerating "specially designed" components. The third commenter in particular made a number of suggestions for how the "specially designed" components controlled in Category 5 – Part II ("Information Security") could be enumerated, which BIS is still evaluating. The fourth commenter was quite supportive of the concept of enumerating "specially designed"

components, but did not provide specific examples for how to describe the enumerated components, except to restate a comment that this commenter also submitted in response to the June 19 (specially designed) rule, which was to use the term "required" in place of "specially designed."

As noted above, BIS and its interagency partners will continue to evaluate these comments and, consistent with the goal of ECR of trying to make the control lists as "positive" as possible, will continue to evaluate where "components" can be enumerated on the CCL and the USML and, where possible, to enumerate such "components." However, the limited response to the June 19 ANPRM and the two commenters who specifically indicated the challenges and difficulties they perceived in relying on such an approach to enumerating "specially designed" "components" further reinforces BIS's assessment regarding the need for the use of the term "specially designed" in particular under the .x and .y paragraphs that will play such an important role in the "600 series" being added to the CCL, in addition to the other uses of "specially designed" on the CCL outside of the "600 series."

These comments also further reinforce BIS's assessment that the "specially designed" definition included in this final rule, which was further refined based on the comments received in response to the June 19 (specially designed) rule, would make a significant step forward toward resolving this long-standing issue under U.S. export controls. BIS believes adopting this definition of "specially designed" is the most feasible approach to defining the controls for "specially designed" "components" in the vast majority of cases on the CCL where "specially designed" is used as part of the control parameter. However, BIS will continue to evaluate the comments received in response to the June 19 ANPRM and where feasible develop proposals for enumerating or describing certain "components" on the CCL.

The Departments of Defense, State, Commerce, Homeland Security, and Justice reviewed all comments in preparing the "specially designed" definition for this final rule. BIS understands that this implementation will change, and possibly increase, the number of items previously treated as "specially designed;" and thus controlled items. Adopting the definition in this rule is, however, necessary to eliminate the various and inconsistent interpretations, establish a level playing field for organizations, and appropriately reflect the national security and foreign policy concerns of the United States. In addition, the possible increase would likely be for those organizations noted above that were interpreting "specially designed" based on misperceptions of the perceived "natural" meaning of "specially designed," which likely were not consistent with U.S. law and policy in regards to how the U.S. Government has interpreted "specially designed." In certain cases, the public may have relied on U.S. Government interpretations for what was not "specially designed" through the CJ or commodity classification automated tracking system (CCATS) processes and for these items determined not to be "specially designed," the final definition includes changes to preserve those legacy determinations made through previous CJs and CCATS under certain limitations. A discussion of the comments and changes made to the June 19 (specially designed) rule are addressed below.

1. Introductory text to the definition of "specially designed"

The June 19 proposed definition included introductory text that outlined the sequential analysis that would be followed in evaluating the "specially designed" definition. Several commenters that supported the definition indicated the linear process outlined for reviewing the definition was helpful and an improvement. These commenters agreed the structure of the definition would lend itself to a decision tree process where the public could answer a series of yes/no questions that would ultimately result in a consistent interpretation regarding what is and

what is not "specially designed." Going off this theme, some commenters also suggested developing formal decision trees and other regulatory guidance to assist the public in understanding and applying the "specially designed" definition. Other commenters suggested simplifying some of the introductory text because it was redundant with other portions of the definition.

BIS addressed these comments by significantly simplifying (and thus expanding) the introductory text to the definition. The introductory text in the "specially designed" definition in this final rule simply states that when applying this definition, follow the sequential analysis set forth in the definition. However, to address those commenters who thought additional guidance would be helpful, the introductory text will now include a cross reference to direct the public for additional guidance on the order of review of "specially designed," including how the review of the term relates to the larger CCL in a new Supplement No. 4 to part 774 – Commerce Control List Order of Review, that is also being implemented in this final rule.

BIS created Supplement No. 4 to part 774 to allow for more detail to be provided regarding the steps to be followed in applying the "specially designed" definition and also how and when the public should review the "specially designed" definition in the larger review of the CCL. BIS added this guidance as a new supplement to part 774 because other supplements, such as Supplements No. 2 and No. 3 also provide guidance on interpreting the CCL. BIS's decision to add this new Supplement No. 4 also took into account the widespread use of "specially designed" on the CCL and in the new "600 series" in deciding that additional guidance is warranted on the appropriate order of review. In addition to the new supplement, BIS is also developing outreach materials to be used on the BIS website and outreach seminars to further public understanding of the "specially designed" definition added to the EAR in this final rule,

along with the larger order of review for the CCL. The "specially designed" definition will play a key role in ECR. BIS and DDTC are committed to ensuring the public will have the necessary support and training materials available through the targeted outreach program BIS and State are developing to ensure the public is able to understand and use the new "specially designed" definition effectively.

2. Paragraph (a) – identifying "specially designed" items

Under the "catch" provisions of the proposed June 19 definition, one must determine if, as a result of "development" activities, an item meets the scope of any one of paragraphs (a)(1), (a)(2), or (a)(3). Under paragraph (a)(1), an item is caught if, as a result of "development," it has properties "peculiarly responsible for" achieving or exceeding the performance levels, characteristics, or functions described in the relevant ECCN or USML paragraph. Paragraph (a)(1) would apply to all commodities, including materials, as well as software; the paragraph does not, however, generally apply to technology. Controlled technology is generally identified by the already-defined term "required" and the General Technology Note in Supplement No. 2 to part 774 rather than the term "specially designed." The scope of items controlled under paragraphs (a)(2) and (a)(3) would be more limited, but the scope of control arguably would be broader than paragraph (a)(1). Under paragraph (a)(2), a "part" or "component" would be caught if, as a result of "development," it is necessary for an enumerated or referenced commodity or defense article to function as designed. Under paragraph (a)(3), an accessory or attachment would be caught if, as a result of "development," it would be used with an enumerated or referenced commodity or defense article to enhance its usefulness or effectiveness.

In response to paragraph (a), commenters were generally supportive of the "peculiarly responsible" standard in paragraph (a)(1), and some commenters advocated using this same

standard in paragraph (a)(2). Other commenters recommended inserting text that paragraph (a)(2) only applies to "application specific" "parts" and "components" or those having the performance levels that are the bases for control. Also, one commenter supported the MTCR's "exclusive use" standard to be used for all "specially designed" references, regardless of whether MT controls are implicated. Another commenter recommended creating an AT control only for components subject to a catch-all control. BIS does not accept these recommendations as they are inadequate to protect U.S. national security interests or to account for the variety of ways in which the term "specially designed" is used under the EAR.

For purposes of determining when a "part" or "component" is "specially designed," an item may be controlled for reasons other than the level of technical sophistication or contribution to enabling a component or end item to reach the parameters identified in an ECCN or USML paragraph. For example, a particular "part" may not be considered sophisticated in and of itself, but it may be essential to the repair or continued operation of a "component" or "end item" that is technically sophisticated or described on the CCL or USML. BIS believes that it is necessary to extend the "catch" of the "specially designed" definition to reach these less sophisticated "parts" or "components" that warrant control for national security or foreign policy reasons. In addition, BIS believes that a peculiarly responsible standard solely used to determine what "parts" and "components" are "caught" under "specially designed" would present too much room for subjectivity in terms of when a "part" or "component" would meet the peculiarly responsible standard.

BIS needs a definition that is clear and objective such that if ten people were provided with the same set of facts, they would consistently make the same determination whether a "part" or "component" was "caught" under "specially designed." The peculiarly responsible standard is

a good indicator for what is special and warrants control under "specially designed" which is why the (a)(1) criterion is included in this final rule. However, the peculiarly responsible standard should not be the sole criterion for what "parts," "components," "accessories," "attachments" or "software" would be "caught" under "specially designed." Because of its utility in identifying "specially designed" items, in particular for end items and material, BIS has maintained the "peculiarly responsible" standard in proposed paragraph (a)(1) and only made minor conforming edits to (a)(1) based on other changes described further below.

Additional commenters requested clarification, with respect to paragraph (a)(2), on interpreting the terms "necessary" and "to function as designed." For example, commenters questioned whether anti-lock brake systems or airbag systems modified for vehicles in USML Category VII would be necessary for the vehicles to function as designed. Similarly, some commenters presented concerns for determining when an accessory or attachment enhances the usefulness or effectiveness under paragraph (a)(3), while other commenters stated that the text in (a)(3) would simply repeat the definition of "accessory" and "attachment." To address these concerns, one commenter recommended that paragraph (a)(3) be removed and that paragraph (a)(2) be revised to read as follows: "is a 'part,' 'component,' 'accessory,' or 'attachment' used in or with commodities enumerated on the CCL or the USML."

BIS agrees that the wording proposed in paragraph (a)(2) presents ambiguity for fact patterns like the two items described above. BIS also concurs that paragraph (a)(3) unnecessarily repeats text from already-defined terms. Consequently, with this final rule, BIS is eliminating paragraph (a)(3) and moving "accessories" and "attachments" to a revised paragraph (a)(2), that catches "parts," "components," "accessories," "attachments" or "software" "for use in or with a commodity or defense article enumerated or otherwise described on the CCL or the

USML." BIS believes that this change enhances clarity and furthers the intent of paragraph (a)(2), and the proposed (but now eliminated) paragraph (a)(3), to be a broad "catch." This simplified approach will catch any "part," "component," "accessory," "attachment" or "software" that is in any way for use in or with (regardless of the perceived insignificance) a commodity or defense article enumerated or otherwise described on the CCL or USML. While this change will result in more "parts," "components," "accessories," "attachments" and "software" being caught under paragraph (a)(2) than the June 19 proposal, the release provisions in paragraph (b) will likely be applicable for many of the "parts," "components," "accessories," "attachments" and "software" that would not otherwise have been previously caught by the draft paragraph (a) in the June 19 proposal.

BIS is also amending paragraph (a)(2) to include "software" with "parts," "components," "accessories," and "attachments" in this final rule. One commenter expressed concerns that "software" would be caught under paragraph (a) but not released under paragraph (b), which could potentially catch more "software" than intended. BIS shares this concern, and is including "software" within the *release* provisions of paragraph (b) in this final rule.

One commenter contended it was unfair that if its "part" or "component" was excluded under paragraph (a)(1) for the "part" or "component" to then potentially get caught under "specially designed" on the basis of the broader paragraph (a)(2). This comment misses the point that both the *catch* provisions of paragraph (a) and the *release* portions of paragraph (b) are intended to work together to identify those items that warrant being "specially designed." Viewing one paragraph of the definition in isolation misses the larger objectives of the definition, which is to ensure that the appropriate items are classified as "specially designed" based on answering a series of simple yes/no questions. Paragraph (b) discussed below is

structured in a similar way as paragraph (a) where the public should review each paragraph of (b) to determine whether a particular "part" "component," "accessory" or "attachment" or "software" is "specially designed." One distinction between paragraph (a) and (b) is that once exporters determined their "part," "component," "accessory," "attachment," or "software" is excluded on the basis of any paragraph under (b), no further review of the definition of "specially designed" will be necessary.

3. Changes to Note to paragraph (a)(1)

Several commenters indicated the Note to paragraph (a)(1) was a very good addition to the "specially designed" definition in the June 19 (specially designed) rule. However, BIS decided based on some of the comments received that appeared to misunderstand the relationship between paragraphs (a)(1) and (a)(2) that providing an example of an end item or material in the Note to paragraph (a)(1) (demonstrating the applicability and inapplicability of the peculiarly responsible standard) would be more helpful than a component example. Therefore, BIS is replacing the component example of ECCN 2B207.a with an end item example based on ECCN 1A007. The intent of the Note to paragraph (a)(1) is not changing. This final rule is only adding the ECCN 1A007 example because it better reflects the items that will most likely be captured under the (a)(1) criteria and helps to avoid the confusion certain commenters were having in understanding the relationship between paragraphs (a)(1) and (a)(2). Specifically, the Note intends to make clear that "parts" or "components" not meeting the "peculiarly responsible" standard of paragraph (a)(1) may still be caught under the broader controls of paragraph (a)(2).

4. Paragraph (b) – excluding items caught under paragraph (a) from "specially designed"

The June 19 definition of "specially designed" proposed five exclusions under paragraph (b) for "parts," "components," "accessories," and "attachments" that would otherwise be caught as "specially designed" under paragraph (a). The *release* portion of the definition plays an important role in the definition and as noted above works together with paragraph (a) to refine the set of "parts," "components," "accessories" and attachments" that get "caught" under "specially designed." As discussed above, BIS is expanding paragraph (b) to allow software to be eligible for these exclusions with the exception of paragraph (b)(2) which is specific to certain "parts" and minor components specified in that paragraph. Below is a description of the proposed paragraph (b) exclusions, the comments received, and the changes made to the exclusions in this final rule.

5. Paragraph (b)(1) -- resolving potential jurisdictional conflicts and determining order of review

Under the June 19 proposal, paragraph (b)(1) would clarify that a "part," "component," "accessory," or "attachment" enumerated on the USML is excluded from the definition of "specially designed" within any ECCN on the CCL. In response to proposed paragraph (b)(1), one commenter stated the provision avoids jurisdictional disagreements, while another commenter stated that the provision was redundant and thus added confusion. An additional commenter expressed concerns of a conflict or overlap between proposed Category VIII(h)(1) and proposed ECCN 9A610.y. BIS does not agree that there is a conflict or overlap between proposed Category VIII(h)(1) and proposed ECCN 9A610.y.

BIS agrees that proposed paragraph (b)(1) is redundant, but it was included to remind readers that any "part," "component," "accessory," or "attachment" enumerated on the USML is subject to the ITAR. No further review of the catch-all provisions (or other provisions) of the CCL or the EAR definition of "specially designed" is necessary. To streamline the definition of "specially designed," BIS is removing the text in paragraph (b)(1) proposed in the June 19 (specially designed) rule and addressing jurisdictional issues and the order of review in the new Supplement No. 4 to part 774, which was discussed above.

Several commenters requested guidance regarding how items subject to past CJs or CCATS determinations would be treated under the "specially designed" definition. Specifically, whether a CJ determination ruled that an item was not subject to the ITAR or a CCATS where an item that was subject to the EAR was not classified as a "specially designed" item would be treated for purposes of the "specially designed" definition. These commenters suggested a grandfathering provision be added to address such past U.S. Government CJ and CCATS determinations.

In addition to addressing these legacy CJs and CCATS, some commenters suggested that although the paragraph (b) exclusions would exclude many of the types of items that should be excluded from "specially designed" ultimately either a broadening of some of the paragraph (b) exclusions was needed or, alternatively, some type of U.S. Government review mechanism needed to be created to allow for some discretion in terms of perceived insignificant items that may get "caught" under paragraph (a) of the "specially designed" definition, but not warrant control as a "specially designed" item. As discussed below, BIS is making additional changes to broaden the scope of some of the paragraph (b) exclusions and is making certain changes in this final rule to improve the clarity of these exclusions based on the comments received.

This final rule is also revising the definition proposed in the June 19 (specially designed) rule by adding a new paragraph (b)(1) to address the treatment of past CJ and CCATS determinations. In the case of a CJ determination where an item was determined to not be subject to the ITAR and the CJ determination indicated a classification on the CCL other than as a "specially designed" item, such items would remain under that classification and not be "caught" under the "specially designed" definition. Paragraph (b)(1) would *release* such "parts," "components," accessories," "attachments," and "software." This grandfathering provision is added because in these fact-specific cases the U.S. Government has already reviewed the specialness of a particular "part," "component," accessory," "attachment," or "software" and made a determination that such an item is not "specially designed." Therefore, such items do not warrant being "caught" under the "specially designed" definition and can be released under paragraph (b)(1) that is being added in this final rule. Under the November 7 (aircraft) rule, BIS proposed a similar grandfathering provision under the .y.99 concept for items determined to be EAR99 in past CJs or CCATS determinations and for items classified under other ECCNs. Such classifications would be grandfathered in. After further review of the public comments, BIS has decided a better and simpler approach is to address issues related to past CJ and CCATS determinations in the definition of "specially designed" itself under the new paragraph (b)(1).

The paragraph (b)(1) exclusion grandfathering is based on past CJ determinations that indicated that the classification of the "part," "component," "accessory," "attachment," or "software" on the CCL was in a ECCN paragraph that does not use "specially designed." BIS is aware that in certain cases a CJ may have been issued that did not include a recommendation regarding the appropriate CCL classification, but a subsequent CCATS determination provided the classification. In such cases, a resubmission of the CCATS may be made under the new

process identified in § 748.3(e), which is also included in this final rule, as was discussed above (see Section XVI.A.). Provided there is a consensus interagency agreement with the original CCATS determination that such an item is not "specially designed," such an item would not be caught under "specially designed" and would be released under the new paragraph (b)(1) exclusion added in this final rule. The grandfather requests made pursuant to § 748.3(e) should include the original CCATS number, as described above.

The new paragraph (b)(1) exclusion is also forward looking. Paragraph (b)(1) provides a U.S. Government review mechanism for those "parts," "components," "accessories," "attachments," or "software" where a person believes such a "part," "component," "accessory," "attachment," or "software" is so insignificant or minor that it should not be considered "specially designed." This new paragraph (b)(1) acknowledges that there are additional "parts," "components," accessories," "attachments," or "software," that may warrant also being *released* from "specially designed" because of their perceived insignificance to the functioning of the item, but in order to protect U.S. national security interests, the U.S. Government, through a consensus determination of the Departments of Commerce, State and Defense, may make such determinations, either through the CJ process or the new CCATS interagency process outlined in § 748.3(e). The new paragraph (b)(1) is not a new idea. It is, in effect, merely the codification for classification determinations of the current practice with respect to the State and Defense Departments' consideration of commodity jurisdiction requests.

6. Paragraph (b)(2) -- parts common across all product lines that should be excluded from "specially designed"

The June 19 proposed definition of "specially designed" included an exception for single, unassembled "parts" commonly used in multiple types of commodities not enumerated on the

USML or the CCL, with illustrative lists provided for threaded fasteners, other fasteners, and basic hardware. The preamble of the proposed rule noted that minor components were intentionally excluded from the scope of paragraph (b)(2).

Commenters generally supported the concept of paragraph (b)(2), but some requested that the scope of paragraph (b)(2) be expanded to include minor components and to supplement the illustrative lists to specify more "parts" or "components" that could be *released* under paragraph (b)(2). In addition, some commenters requested that BIS confirm that variations in form or fit would not exclude a "part" from qualifying for the exclusion in paragraph (b)(2) and that BIS clarify the phrases "single unassembled" and "multiple types of commodities."

With this final rule, BIS is confirming that variations in form or fit do not exclude parts or minor components from qualifying for paragraph (b)(2) and is thus adding the phrase "regardless of form or fit" to that paragraph to make the intent of the exclusion more explicit. Moreover, BIS concurs with the concerns regarding ambiguity of "single unassembled" and "multiple types of commodities." BIS agrees with the commenters that using the phrase "single unassembled" is redundant since that phrase is already captured in the definition of "part." With respect to "multiple types of commodities," the intent was to provide an exception in (b)(2) for "parts" that are common across different products, such as aircraft and vehicles. "Multiple types of commodities" was not meant to apply to "parts" common across different models of aircraft only or different versions of vehicles only. To improve clarity, BIS is removing both "single unassembled" and "multiple types of commodities" from (b)(2) in this final rule.

While BIS did not intend for paragraph (b)(2) to include minor components, it appears that the June 19 proposal included at least one minor component - nut plates. After reviewing the public comments, BIS has decided to retain nut plates and allow certain minor components to

qualify for (b)(2). However, BIS is also reducing the scope of (b)(2) by removing the terms "other fasteners" and "basic hardware." The "parts" that were proposed to be described under "other fasteners" and "basic hardware" will now be positively listed and will no longer constitute an illustrative list. Based on the public comments, BIS does not believe that "basic hardware" provides enough clarity and that it could be construed more broadly than intended. Therefore, these changes result in making paragraph (b)(2) a positive list, with the exception of the illustrative list for threaded fasteners.

These changes to (b)(2) allow for greater flexibility in terms of allowing certain minor components to be released, which was requested in several of the comments. These changes also ensure the "parts" and minor "components" *released* under the paragraph (b)(2) exclusion will stay within clearly defined parameters. This will ensure that any *release* from "specially designed" under paragraph (b)(2) will be consistent with U.S. national security interests by not allowing any other "parts" or other minor "components" to be released under paragraph (b)(2) than those noted in paragraph (b)(2). As noted above, there will be "parts" or other minor "components," that will not be released on the basis of paragraph (b)(2). This does not mean such "parts" or "components" are necessarily "specially designed" because another paragraph (b) exclusion may potentially *release* such "parts" or other minor "components." In addition, "components," "accessories," "attachments," or "software" that are not eligible for the paragraph (b)(2) exclusion may potentially be released under another paragraph (b) exclusion. If not, and they are caught by paragraph (a), then they would be "specially designed" and controlled under the relevant ECCNs.

7. Paragraphs (b)(3) – (b)(6) -- how the exclusions work together

Before getting into the discussion of the paragraph (b)(3) comments and provisions implemented in this final rule, it is important that the public understand how proposed paragraphs (b)(3), (b)(4) and (b)(5) work together. Having a better understanding of how these three exclusion paragraphs work together will help the public better understand the intent and scope of these three exclusion paragraphs, as well as the new paragraph (b)(6), discussed below, which was not contained in the June 19 (specially designed) proposed rule but is being added in this rule to simplify the application of paragraph (b)(4) . Paragraph (b)(6) is another example of a "development" exclusion similar to paragraphs (b)(4) and (b)(5) discussed here in relation to paragraph (b)(3). The June 19 (specially designed) rule definition included paragraphs (b)(3), (b)(4) and (b)(5). Each of these paragraph (b) exclusions would play an important and distinct role in the *release* portion of the "specially designed" definition. Some commenters seemed to have issues regarding understanding the role of these three different paragraphs and conceptually how they would work together to achieve the policy objectives of *releasing* certain "parts," "components," "accessories," "attachments," or "software."

The important thing to remember is that paragraph (b)(3) is the "production" exclusion. There is thus no need to know the original "development" history of the "part," "component," "accessory," "attachment," or "software" to rely on the paragraph (b)(3) exclusion. The paragraph (b)(3) exclusion recognizes that once a "part," component," "accessory," "attachment," or "software" is used in the "production" of an EAR99 item or an item described on the CCL that is only controlled for AT-reasons that is not in a 'catch-all' paragraph, such a "part," "component," accessory," "attachment," or "software" regardless of its original "development" history or its original significance has crossed over into broader commercial applicability and would no longer warrant control as "specially designed."

This paragraph basically adopts the concept in the note to USML Category VIII (the "17(c) note") and the carve-outs in USML Categories XI(c) and XII(e) that preclude an electronic, fire control, or other part, component, accessory or attachment that was once specifically designed or modified for a defense article from being ITAR controlled if it has entered into "normal commercial use." BIS does not want its catch-all provisions pertaining to parts, components, accessories, and attachments to be more restrictive than the comparable provisions in the USML. Thus, for example, if an aircraft part would not be ITAR controlled as a result of the note in USML Category VIII, the part would not be controlled by 9A610.x as a result of the application of the definition of "specially designed." Moreover, the policy in ITAR § 120.3(a) states that items designed or modified for military applications should not be ITAR controlled if they have predominant civil applications or performance equivalents to those of an article used in civil applications. To the extent an item meeting these standards nonetheless warrants control, the U.S. Government has an obligation to positively identify it on the USML or in a particular ECCN. If it does not, then such items should not be captured within the scope of a "specially designed" catch-all provision. Paragraph (b)(3) accomplishes this already existing ITAR policy in the EAR and applies it across the CCL. It is, thus, not a new idea, but merely a consolidation of existing control concepts in one definition.

Unlike in paragraph (b)(3), in order to rely on either paragraphs (b)(4) and (b)(5), and also the new paragraph (b)(6) described below, the "development" history is important and must be known. The paragraphs (b)(4) and (b)(5), and also the new paragraph (b)(6), exclusions *release* certain "parts," "components," "accessories," "attachments," and "software" if the person has "knowledge" of the "development" history and that meets the stated criteria in paragraphs (b)(4) or (b)(5). In summary, paragraph (b)(3) is the "production" exclusion.

Paragraphs (b)(4) and (b)(5), and also the new paragraph (b)(6) described below, are the "development" exclusions.

Some commenters noted concerns that applying paragraphs (b)(4) and (b)(5) for items that are decades old may be difficult because the original development history may no longer be known. If the original "development" history is no longer known, then a person could not rely on the paragraphs (b)(4) or (b)(5) exclusion or the new paragraph (b)(6) being added in this final rule. However, if the "part," "component," "accessory," "attachment" or "software" was truly "developed" for use in the "production" of those lower level items or for no particular purpose, the chances are good that the "part," "component," "accessory," "attachment," or "software," would have subsequently been used in the "production" of an item that would meet the criteria of paragraph (b)(3), in which case the "part," "component," "accessory," "attachment," or "software" would be excluded from "specially designed" on the basis of paragraph (b)(3) regardless of the original "development" history. Again, paragraphs (b)(4) and (b)(5) are not new ideas. Central to the existing ITAR and EAR export control structures is the concept that an item is not "specially designed" for a controlled item if it was deliberately made for use in both controlled and uncontrolled applications, i.e., a "dual-use" item. The primary difference between the current concept and this new definition is that one must now be able to prove the design intent through contemporary documentation in order to be able to rely upon this *release* part of the mechanism. Without such documentation, parts and components that are used in or with controlled items and that do not otherwise meet one of the *release* provisions of paragraph (b) are "specially designed" items. BIS understands from the public comments that this is a more aggressive control stance than many perceive to be the case today. BIS nonetheless believes that it is better for the national security and other objectives of the reform effort in that it controls the

items the U.S. Governments wants to control and creates more reliable, predictable rules that are easier to comply with.

8. Paragraph (b)(3) (i.e., the "production" exclusion) -- releasing commodities and software equivalent to existing commodities and software used in the "production" of items that are not on the USML or CCL or controlled for AT reasons only

In the June 19 (specially designed) rule, BIS proposed an exclusion under paragraph (b)(3) for "parts," "components," "accessories," or "attachments" "caught" under paragraph (a) if such items have the same form, fit, and performance capabilities as a "part," "component," "accessory," or "attachment" used in or with a commodity that (i) is or was in "production" and (ii) is either not enumerated on the USML or CCL, or is described in an ECCN controlled only for AT reasons. Additionally, while proposed paragraph (b)(3) requires the same form, fit, *and* performance capabilities, BIS can also confirm that paragraph (b)(3) does not require a design intent analysis and eliminates any concern that market fluctuations resulting in more sales to military applications in some years but not others could lead to an item's having its classification status changed as a result.

The most prevalent comment submitted in response to proposed paragraph (b)(3) was that the paragraph was too narrow by requiring the same form, fit, *and* performance capability for it to apply. Commenters recommended various changes, including allowing "minor" changes in fit, certain changes in form, or only requiring the same performance capability. One commenter recommended that only certain types of changes in fit be allowed, and the commenter specified that those changes should be allowed for mounting, control values on electronic parts, or cosmetic changes. Other commenters requested clarification on specific instances of changes in

form or fit, such as for conversion from British imperial units to metric units or changes to mounting brackets. Additionally, should the same form, fit, and performance capability be required, some commenters requested that BIS create a process to release items caught by "specially designed" if changes in form or fit are found to be insignificant, which BIS has accepted, but addressed the requested change under the discussion of revised paragraph (b)(1) above instead of here. Commenters also suggested that commodities previously determined under a CJ to be subject to the EAR should remain under EAR jurisdiction and not revert back to the ITAR under a "specially designed" control in the USML. BIS has also accepted this change, but addressed the requested change under the discussion of revised paragraph (b)(1) and new § 748.3(e) CCATS process above instead of here.

The June 19 proposed paragraph (b)(3) follows the same construct as § 120.3 of the ITAR in requiring the same form, fit, *and* performance capabilities. BIS used the criteria of the same form, fit, and performance capabilities because one change to a specific "part" or "component" may be deemed to be minor or insignificant; however, the same change to the same "part" for a different "component" or end item may not be minor or insignificant. Consequently, BIS and its interagency partners do not agree with the comments that allowing a subjective significance test for changes made to any "part," "component," "accessory," or "attachment" would be appropriate in the context of the paragraph (b)(3) exclusion.

However, BIS and its interagency partners agree that there is a way to allow for certain changes in form and fit within the scope of the paragraph (b)(3) exclusion, while not opening the door of subjectivity that was at the core of the original rationale for requiring the same form, fit and performance capabilities. BIS is revising the introductory text of the paragraph (b)(3) exclusion to specify the commodity or software must have the same function, performance

capabilities and the same or 'equivalent' form and fit as a commodity or software used in or with an item that is in "production" that meets the criteria of paragraph (b)(3)(ii). The inclusion of 'equivalent' form and fit addresses the public comments in this area and provides relief for insignificant or minor changes in form or fit, while still keeping this exclusion within the carefully drawn bounds of what was originally intended in the June 19 (specially designed) rule. Such permissible changes in fit must be clearly identified to ensure no change in form or fit that may affect U.S. national security interests is released under paragraph (b)(3). The revised paragraph (b)(3) in this final rule addresses the comments in this area, while keeping consistent with the larger objectives BIS intends for the "specially designed" definition.

9. Revised Note to paragraph (b)(3) and new Notes 2 and 3 to paragraph (b)(3)

As a result of changes BIS is making to paragraph (b)(3) in this final rule to address the comments, BIS found it necessary to also make changes to the Note to paragraph (b)(3) included in the June 19 (specially designed) rule, and to add two notes to paragraph (b)(3). These two additional notes will further bound the paragraph (b)(3) exclusion to ensure the exclusion is not interpreted more broadly than intended.

The original Note to paragraph (b)(3) included in the June 19 proposal is being redesignated as Note 1 to paragraph (b)(3) in this final rule. Some public comments requested additional guidance regarding the applicability of the Note to paragraph (b)(1) included in the June 19 (specially designed) rule proposal. BIS acknowledges that additional guidance should be provided regarding the applicability of the proposed Note to paragraph (b)(1). BIS is also including additional text to the Note to paragraph (b)(1) to describe the difference between development activities for "feature enhancements" versus those that "change the basic

performance or capability" to address these comments requesting additional clarification. Specifically, this final rule is adding the phrase "such as those that would result in enhancements or improvements only in the reliability or maintainability of the commodity (e.g., an increased mean time between failure (MTBF))" after the phrase "'development' activities" to further clarify the types of commodities or software that may be subject to subsequent "development" activities, but still stay within the scope of the paragraph (b)(3) exclusion.

BIS is adding a new Note 2 to paragraph (b)(3) to define the term 'equivalent' for purposes of the limited form and fit changes that are being allowed under the revised paragraph (b)(3) in this final rule. This new note will clarify that with respect to a commodity, 'equivalent' means that its form has been modified *solely* for fit purposes. As noted above, to allow for certain changes in form and fit to be permissible within the scope of the paragraph (b)(3) exclusion, it is important that the permissible form and fit changes be clearly defined. This new note will ensure the paragraph (b)(3) exclusion is not interpreted more broadly than is intended by BIS and also aid the public's understanding.

At the suggestion of commenters, BIS is also adding a new Note 3 to paragraph (b)(3) to define form, fit, performance capabilities and function for commodities and software in the context of the paragraph (b)(3) exclusion. Because form, fit, and performance capability are important terms used in the paragraph (b)(3) exclusion and have been referenced widely under the ITAR, BIS is adopting the explanatory text of the ITAR from the Note to § 120.4 of the ITAR, subject to slight revisions to make the definitions specific to the EAR. This explanatory text is being added as a new Note 3 to paragraph (b)(3) in this final rule. This new note will provide additional guidance to the public on how to interpret changes in form, fit, performance capabilities and function in the context of the paragraph (b)(3) exclusion.

BIS is also making additional changes to the text of paragraph (b)(3) to improve the clarity of what was proposed in the June 19 (specially designed) rule and to address the expansion of paragraph (b)(3) to include "software." Because software is being included in the paragraph (b) *release*, BIS is revising the introductory text of paragraph (b)(3) to add two references to "software." Also, for the paragraph (b)(3)(ii) criteria, BIS is replacing "enumerated" with "described" in relation to an ECCN controlled only for AT reasons because the use of 'enumerated' in that context conflicts with the definition of the term in Note 1, as was noted in the public comments.

Commenters also suggested deleting the reference to "production" and removing the reference to paragraph (b)(3) in Note 1 to the definition as proposed in the June 19 (specially designed) rule. BIS does not accept this recommendation. BIS is maintaining the reference to "production" as (b)(3) is intended to address equivalence to existing items already in "production," as opposed to those in "development." Also, BIS is maintaining the reference to AT controls in (b)(3) of Note 1, because some AT controls have "specially designed" in their descriptions. BIS is removing the reference to "enumerated" because the public found this aspect of paragraph (b)(3)(ii) and its relationship to Note 1 unnecessarily complicated. This change will improve clarity and simplify applying the definition.

Lastly, in evaluating whether the paragraph (b)(3) exclusion or any of the other paragraph (b) exclusions is broad enough in scope, it is important to review the specific paragraph (b) exclusion, such as paragraph (b)(3), in light of the other paragraph (b) exclusions included in this final rule. In the case of paragraph (b)(3), it is particularly important to also consider the revised paragraph (b)(1) described above that is creating a 'release' process whereby the public may submit additional "parts," "components," "accessories," and "attachments" for reconsideration

when they believe the changes in form or fit would make them no longer eligible for the paragraph (b)(3) exclusion, but still believe such items should be treated as insignificant or minor and therefore not warrant being "specially designed." This revised and slightly expanded paragraph (b)(3), working with the additional potential 'release' under paragraph (b)(1) through the CJ process or the CCATS process described in § 748.3(e), addresses the public comments in regards to the paragraph (b)(3) exclusion being unnecessarily limited in scope.

10. **Paragraphs (b)(4) and (b)(5), and the new paragraph (b)(6) (i.e., the "development" exclusions) -- incorporating intent during the development phase for consideration of whether to exclude certain commodities from "specially designed"**

To address the concern that a first use of a "part" or "component" could result in the part or component being considered "specially designed," BIS incorporated aspects of design intent into proposed paragraphs (b)(4) and (b)(5) and the new paragraph (b)(6) being added in this final rule. As noted above in the discussion on the relationship among paragraphs (b)(3), (b)(4) and (b)(5), and the new paragraph (b)(6), paragraphs (b)(4) and (b)(5) and the new paragraph (b)(6) are the "development" exclusions. Under the June 19 proposal, paragraph (b)(4) would exclude "parts," "components," "accessories," and "attachments" if they were or are being developed with a reasonable expectation of (i) use in or with commodities described on the CCL and commodities not enumerated on the CCL or USML, or (ii) use in or with commodities not enumerated on the CCL or USML. Paragraph (b)(5) would exclude "parts," "components," "accessories," and "attachments" that are developed for no particular application.

Some commenters mistakenly believed that paragraphs (b)(4) and (b)(5) depend on predominant market share of the item, while other commenters correctly understood that (b)(4)

and (b)(5) were not dependent on predominant market share, but requested confirmation that their understanding was correct. BIS can confirm that market share does not have an impact on the applicability of paragraphs (b)(4) and (b)(5). Paragraphs (b)(4) and (b)(5) are rather dependent on intent during the "development" of the item. By definition, market share cannot be an issue because at the time of its "development" the item had not yet been released to the market. Likewise, an evolving market (e.g., shift from primarily civilian customers to military customers) following release of the "part," "component," "accessory," "attachment" or "software" does not change the earlier determination made during the time of "development." This approach essentially adopts the policy of § 120.3 of the ITAR that the "intended use of the article . . . after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article" is subject to controls. Thus, again, BIS is not introducing a new concept in export control law, but rather applying more broadly in the EAR for classification purposes and in one definition a concept that is already in the ITAR's statement of policy regarding the types of unspecified items that warrant control for export. In other words, the jurisdictional and classification status of an item should be set at its production and development stages and not affected by how it is later used. If something is so significant that it warrants control regardless of the intention of the designer, then it is the U.S. Government's obligation to positively list that item on the USML or the CCL.

"Knowledge" of the original design intent must be demonstrated, however, by documents contemporaneous with "development," in their totality, as required under the Note to proposed paragraphs (b)(4) and (b)(5), which is now becoming Note to paragraphs (b)(4), (b)(5) and (b)(6) in this final rule as described below. Thus, for a reseller, laboratory, or other non-manufacturer to rely upon (b)(4) or (b)(5) or the new paragraph (b)(6) in determining that the item is not

"specially designed," such party must examine the source of "development" for documentation or have some other reliable source regarding the original "development" history. This requirement does not increase the burden common to compliance practices today. It is possible, though, for a non-manufacturer or any other party to use the exclusions under new paragraph (b)(1), or paragraphs (b)(2) or (b)(3), as discussed above, without having to rely on paragraphs (b)(4) or (b)(5) or the new paragraph (b)(6), which do require "knowledge" of the original design intent based on the totality of documentation contemporaneous with the "development" to demonstrate the criteria in exclusion paragraphs (b)(4) or (b)(5) or the new paragraph (b)(6).

With respect to (b)(4), BIS also received additional comments requesting clarification of the term "reasonable expectation," as well as replacing "described" with "enumerated" in (b)(4)(i), replacing "commodities" with "end items" in (b)(4)(i), replacing "use" with "ultimate use" in both (b)(4)(i) and (b)(4)(ii), and adding "both" to (b)(4)(i). To clarify "reasonable expectation," BIS has decided to replace the phrase with the term "knowledge," which is already defined in part 772 of the EAR. By adopting the already defined term "knowledge" for paragraph (b)(4), the release portion of the definition of specially designed will establish a more objective standard that will be more easily understood by the public. In developing the "specially designed" definition BIS has tried to rely as much as possible on established EAR terms and concepts. The public has generally been quite supportive of this approach of relying on established concepts and terms as much as possible in developing the "specially designed" definition. Adopting the term "knowledge" for paragraph (b)(4) and the new paragraph (b)(6) in this final rule is another example of simplifying the "specially designed" definition, while also establishing a more objective definition by relying on established terms and concepts under the EAR. BIS does not accept replacing "described," "commodities," or "use" as those

recommendations would make the paragraph (b)(4) exclusion too narrow. BIS did not accept the recommendation to add "both" to (b)(4)(i), but BIS is adding the term "also" to (b)(4)(ii) in this final rule. BIS is making this change to make the relationship between (b)(4)(i) and (ii) more explicit in terms of the criteria that must be met for a "part," "component," "accessory, "attachment," or "software" to be excluded on the basis of the paragraph (b)(4) exclusion.

For paragraph (b)(5), for the same rationale noted above for the changes to paragraph (b)(4), BIS, in this final rule, is also replacing "reasonable expectation" with "knowledge." Because "knowledge" is now going to be included in the paragraph (b)(5) exclusion, BIS is also deleting the proposed Note to paragraph (b)(5). BIS is making this change because including the explanation of the definition of "knowledge" from the June 19 (specially designed) rule would be redundant given "knowledge" is already a defined term in part 772.

As a clarification to what was proposed in the June 19 (specially designed) rule, BIS is making some additional changes to the wording of the paragraph (b)(5) exclusion. These changes do not change the scope of the exclusion proposed on June 19, but clarify what is being excluded from "specially designed" on the basis of paragraph (b)(5). First, after the word "developed," BIS is adding the phrase "as a general purpose commodity." BIS is also adding an "i.e.," in this final rule after that new phrase to specify that a general purpose commodity is one that was or is being "developed" with no "knowledge" of intended use in a particular commodity or type of commodity.

In this final rule, BIS is removing the phrase "particular application" from what was proposed (b)(5) in the June 19 (specially designed) rule and replacing it with "particular commodity" because commenters expressed concerns with the use of "application," and BIS believes that using "commodity" will ensure maintaining the appropriate scope of (b)(5) and

enhance clarity. In addition, to further address the public comments in this area in terms of adding greater specificity, BIS is adding a second qualifier with the phrase "or type of commodity" in this final rule. BIS is adding two illustrative examples for a particular commodity by adding the examples of an F/A-18 or HMMWV. For example, if the person has "knowledge" a component was or is being developed for a F-18 or other military aircraft, such a commodity is *not* a general purpose commodity and therefore could *not* be excluded from "specially designed" on the basis of paragraph (b)(5). BIS is also adding two illustrative examples for "a type of commodity" by including the examples of an aircraft and machine tool. For example, if the person has "knowledge" a part was or is being developed for an aircraft, such a commodity is *not* a general purpose commodity and therefore could *not* be excluded from "specially designed" on the basis of paragraph (b)(5).

BIS is adding a new paragraph (b)(6) in this final rule that will *release* from "specially designed" "parts," "components," "accessories," "attachments, and "software" where there is "knowledge" that it would be for use in or with commodities or software described in an ECCN controlled for AT-only reasons and also EAR99 commodities or software. This paragraph (b)(6) exclusion that is being added in this final rule will also *release* from "specially designed" those "parts," "components," "accessories," "attachments" and "software" where the item was or is being developed with "knowledge" that it would be exclusively for use in or with EAR99 commodities or software.

By adding the (b)(6) exclusion, BIS can simplify the application of paragraph (b)(4), including aligning it more closely with the structure and terminology used in paragraph (b)(3), along with addressing those scenarios where there is "knowledge" that the "part," "component," "accessory," "attachment," or "software" was developed for use in or with commodities or

software ECCNs controlled for AT-only reasons and EAR99 or exclusively for use in or with EAR99 commodities or software. BIS believes having a separate paragraph (b)(6) exclusion to *release* such "parts," "components," "accessories," "attachments," and "software," will be easier to understand than trying to fit this exclusion within the scope of paragraph (b)(4). Finally, for the Note to paragraphs (b)(4) and (b)(5), one commenter stated that the recordkeeping requirement could be overlooked, and another commenter requested that military specifications be included as an example of documentation to establish the elements of (b)(4) or (b)(5). BIS is also updating the title of this note to reflect the new paragraph (b)(6) exclusion being added to the definition in this final rule. The revised note is Note to paragraphs (b)(4), (b)(5) and (b)(6). To address the concern of overlooking recordkeeping requirements, BIS is inserting a reference to the "specially designed" recordkeeping requirement in § 762.2 (Records to be maintained) under a new paragraph (b)(50) as described below. BIS does not accept, however, the recommendation to add military specifications to the note. Generally, military specifications are not determinative of jurisdiction and are just one factor for consideration. Thus, they do not warrant inclusion in the illustrative list of contemporaneous documentation included in that note.

11. Implementation of definition of "specially designed"

Like the rest of this final rule, this definition of "specially designed" will become effective as of [INSERT 180 DAYS AFTER DATE OF PUBLICATION]. Some commenters asked that BIS phase and test the implementation for "600 series" items only. BIS does not accept this recommendation. In order to ensure consistency with the multilateral regimes and reduce further complexity, BIS is adopting this definition of "specially designed" for all uses of the term on the CCL. Because this definition is an important concept under the EAR, BIS will work to conduct outreach and develop tools to help the public's review and use of the term. The

Department of State has indicated it also intends to conduct similar outreach with the public for the use of the term under the ITAR.

B. Other Definitions

BIS proposed adding or revising several definitions to part 772 of the EAR under ECR. These definitions will aid in aligning the CCL with the USML by adopting common definitions for terms used in the CCL and the USML where possible. In total, this final rule adds or revises fifteen CCL terms. Specifically, this final rule adds twelve definitions to the EAR: "600 series," "600 Series Major Defense Equipment," "accessories," "attachments," "build-to-print technology," "component," "end item," "equipment," "facilities," "material," "part" and "systems." This final rule also revises three definitions currently in the EAR: "military commodity," "dual use," and "specially designed."

New or revised definitions for these terms were proposed in one or more of three rules published under ECR: the July 15 (framework) rule; the November 7 (aircraft) rule; and the June 19 (specially designed) rule. Definitions of "end item," "accessories and attachments," and "specially designed" originally were proposed in the July 15 (framework) rule and were re-proposed in revised form in the June 19 (specially designed) rule. The term "600 Series Major Defense Equipment" was not previously proposed as a definition; however, the concept was introduced in the June 21 (transition) rule and several commenters requested that it be included as a definition in part 772 of the EAR. As described in the June 21 (transition) rule, the definition addresses items for which notification would be required to Congress prior to approval of certain high-value exports. This rule also revises the term "dual use" as a conforming change, although the change was not previously proposed.

1. 600 series

This final rule adopts the definition of "600 series" that was proposed in the July 15 (framework) rule without any substantive changes, except to remove a reference to the Commerce Munitions List, a phrase used in several of the proposed rules that has been removed to avoid confusion regarding whether the "600 series" is part of the CCL. BIS did not receive any comments on the definition of 600 series.

2. 600 Series Major Defense Equipment

This rule adopts a definition of "600 Series Major Defense Equipment" that includes all of the elements that were in the proposed Major Defense Equipment section of the June 21 (transition) rule, but adds an element, limiting "600 Series Major Defense Equipment" to items contained in specified "600 series" ECCN paragraphs. BIS did not receive any comments on the definition of Major Defense Equipment.

3. Component

This final rule adopts the definition of "component" that was proposed in the July 15 (framework) rule without any changes.

One commenter suggested removing the example of "battery" from the "component" definition because of potential ambiguity regarding whether a battery would be considered a "component" or an "end item." Specifically, the commenter questioned whether an item, such as a car battery that can put out an electrical charge whether it is incorporated into an automobile or not, would cause ambiguity regarding whether it is an "end item" or a "component." BIS is not changing the example of the "battery" in the definition of "component." The revised "end item" definition that was proposed in the June 19 (specially designed) rule also addressed this comment regarding the reference to a car battery in the example of "component." BIS believes the primary reason for the commenter's confusion was the use of the term "stand-alone" in the "end

item" definition that was proposed in the July 15 (framework) rule. The re-proposed "end item" definition included in the June 19 (specially designed) rule addressed this issue by removing the term "stand-alone." This change to the definition of "end item" also addressed the comment here by resolving any potential perceived ambiguity regarding whether a "component," such as car battery, would be an "end item."

Two commenters suggested that the definition of "component" improperly equates "components" and assemblies. The commenters noted that "components" and assemblies should be distinct terms, as such, the definition of "component" should be limited to items that are not subject to disassembly. BIS does not agree with the commenter's suggestion. During drafting of the July 15 (framework) rule, members of BIS's Technical Advisory Committees (TACs) advised BIS that assemblies should be within the scope of the "component" definition. Based on the guidance provided by BIS's TACs and the U.S. Government's own analysis, BIS stated in the "component" definition that, for purposes of the definition, an assembly and a "component" are the same. At this time, given only two commenters raised this issue, and BIS's TACs, which comprise representatives from various industries, advised taking BIS's proposed approach, BIS will not incorporate the suggestion because information from the TACs suggested that a number of industries involved in exporting treat assemblies as components and therefore the "component" definition should reflect this.

In addition, BIS does not agree that the criteria provided by one of the commenters for distinguishing between an assembly and a "component" would be sufficient. The criteria provided by the commenter would likely result in inadvertent decontrols of "components" on the CCL where a case could be made that the item in question is an assembly and not a "component." The term "component" is used extensively on the CCL and the term "assembly"

much less so, so taking this commenter's approach would likely have far reaching impacts on the scope of the CCL, which likely would be inconsistent with U.S. Government multilateral regime commitments to control certain components. As noted in the BIS response to the next comment, the U.S. Government intends to discuss with the Wassenaar Arrangement four entries in which the terms "components" and "assemblies" are used in the same ECCN. The U.S. Government may reevaluate this issue after those discussions are complete.

One commenter noted the need to update the headings and descriptions of certain items enumerated on the CCL. The commenter noted as an example that ECCN 9A003, which currently controls previously undefined "specially designed assemblies and components" should be changed to reflect the new definitions of "components" and "parts." BIS has already taken steps to address this comment with the development of another ECR rule, *Revisions to the Export Administration Regulations (EAR) to Make the Commerce Control List (CCL) Clearer.* This rule is referred to as the (CCL Clean-up) rule. It will implement changes that published in a proposed rulemaking also entitled *Revisions to the Export Administration Regulations (EAR) To Make the Commerce Control List (CCL) Clearer* (77 FR 71214, November 29, 2012). In the (CCL Clean-up) rule, BIS will make a number of changes to the CCL to incorporate the terms "parts" and "components" in specific ECCNs and to address other issues such as the use of both "assemblies" and "components" in a number of ECCNs to conform to the definitions of "parts" and "components" added in this final rule. These changes in the way "parts" and "components" are used on the CCL will ensure that no changes are made to the status quo in terms of how the U.S. Government interprets these ECCNs.

One commenter asked for clarification as to whether "software" can also be considered a "component." BIS is clarifying here that the definition of "components" does not include "software." "Software" is defined separately under part 772 of the EAR.

One commenter provided an alternative definition of "components" that would remove the discussion of "major components" and "minor components." This commenter thought these proposed changes would add clarity and better distinguish "components" from "accessories and attachments." BIS is not incorporating this suggestion. The references to major components and minor components that were proposed in the July 15 (framework) rule provide additional specificity regarding what is a "component." This additional text identifying the two types of components (*i.e.*, major components and minor components) does not create ambiguity regarding what is a "component" and what is an "accessory" or an "attachment." In addition, although the terms "minor component" and "major component" are not widely used on the CCL, BIS intends over time and in conjunction with the multilateral export control regimes to use these ancillary terms of the "component" definition to further refine the scope of certain ECCNs.

4. Equipment

In response to the comments received on the July 15 (framework) rule, this rule changes the definition of "equipment" from that definition that was proposed in the July 15 (framework) rule. The new definition of "equipment" being adopted by BIS is consistent with the definition of "equipment" proposed by DDTC in its November 28, 2012 proposed rule regarding Category XI (77 FR 70958).

One commenter contended that there is no need to separate the "equipment" definition from the "end item" definition. The commenter noted that the term "equipment" is mentioned in the "end item" definition and is treated no differently from an "end item." Accordingly, the

commenter suggested that breaking "equipment" out as a separate definition adds confusion rather than clarity, and recommended that it be folded into the "end item" definition. BIS does not incorporate the suggestion because "equipment" is a sub-set of "end items," but not all "end items" would meet the "equipment" definition. Similar to the relationship between the broader term "item" and narrower terms of "commodity," "software," and "technology," the relationship between the broader term "equipment" and "end items" is not mutually exclusive. The term "equipment" is used extensively on the CCL and is used in the "600 series," including in the ECCNs added with this final rule. In addition, the term "equipment" is used extensively on the multilateral export control regime control lists, including the Wassenaar Arrangement Munitions List (WAML). Therefore, BIS has determined that adding a definition for this term is warranted and will assist the public in understanding the meaning of this term when used on the CCL.

One commenter suggested replacing the phrase "assembled for a specific purpose" with the phrase "gathered, collected or compiled for a specific purpose" to avoid confusion about whether sets of tools or devices are assemblies or equipment. BIS does not agree with this suggestion. However, to clarify any confusion about the difference between "component" and "equipment," this rule changed the definition of "equipment" to be a "combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a specialized function of an end item or system." BIS believes that this change to the definition of "equipment" clarifies any confusion raised by the proposed definition.

For example, a laser device incorporated into a cutting saw that allows the operator to precisely line up the cut would be a "component." A laser device that is assembled for the purpose of allowing a person to determine a straight line on a wall to hang a picture is an example of a laser device that would be "equipment." The definitions of "component" and

"equipment" added to the EAR with this final rule are clear enough in scope to allow the public to make such distinctions.

5. Facilities

This final rule adopts the definition of "facilities" that was proposed in the July 15 (framework) rule without any changes.

One commenter suggested removing the phrase "a particular purpose" from the definition of "facilities," and replacing it with the more specific phrase, "the particular purpose stated in the export control item using the term 'facilities.'" BIS agrees with the commenter's general assumption regarding how controls on "facilities" are typically worded under the EAR, but the purpose of the definition of "facilities" in part 772 is not intended to impose controls on any particular type of facility. The further identification of the types of "facilities" subject to control is in the particular ECCN entries and does not need to be referenced in the definition of "facilities" in part 772. In the context of ECCNs or other controls under the EAR, such as end use controls that use the term "facilities," those controls will specify the types of "facilities" that are subject to control. Therefore, no additional text is needed in the definition to clarify the type of "particular purpose" that is controlled for an ECCN or other EAR control that uses the term "facilities."

6. Material

This final rule adopts the definition of "material" that was proposed in the July 15 (framework) rule, with a minor non-substantive change to ensure that the definition conforms to the definitions of "accessories" and "attachments" being added to part 772 in this final rule and discussed below. This conforming change separates the terms "accessories and attachments"

into two distinct terms, “accessories” and “attachments,” as was proposed in the June 19 (specially designed) rule.

One commenter identified certain Product Group C ECCNs in CCL Category 1 controlled for Nuclear Nonproliferation (NP) reasons that were perceived to be inconsistent with the proposed “material” definition because they extend NP controls to certain end items, components, accessories, attachments, parts, software, systems, equipment, or facilities. BIS addresses this comment in this final rule by adding a sentence to the end of the definition making clear that material classified as a Product Group C ECCN remains classified as that ECCN even if the material can be identified as an “end item,” “component,” “accessory,” “attachment,” “part,” “software,” “system,” “equipment,” or “facility.” This new sentence also identifies the Product Group C ECCNs that deviate from the general definition. For example, ECCN 1C232 controls “Helium-3 (^{3}He), mixtures containing helium-3, and products or devices containing any of the foregoing.” Thus, a product containing the material Helium-3 (^{3}He) that is also identifiable as a “component” or “part,” is still controlled under ECCN 1C232.

One commenter suggested that “software,” “system,” “equipment,” and “facilities” are so unlikely to be mistaken as “crude or processed matter” as to not warrant mention in the definition of “material,” unless the intention is to make “material” a catch-all. This commenter believes the “material” definition should simply be limited to the first part of the proposed definition, meaning material “is any list-specified crude or processed matter.” BIS does not agree because the term “processed matter” in particular has the potential to be interpreted broadly unless the exclusions are included in the definition of “material” as was proposed in the July 15 (framework) rule. For example a “part” or “component” of an engine prior to entering the manufacturing process will likely be a type of processed material, such as a piece of hardened

steel. As the production process progresses, the "material" such as the hardened steel will transition from "processed matter" to a "part" or a "component" or some other type of item excluded from the "material" definition. Once the processed "material" is identifiable as one of those types of items excluded from the "material" definition, it would no longer be controlled under Product Group C as a "material" and should therefore be controlled under the other ECCN entry as a "part" or "component" in either Product Groups A or B.

One commenter recommended the deletion of the definition of "material" because the commenter had not identified a need for such a definition. The commenter also noted the proposed definition is in a negative, rather than the desired positive, format. BIS does not agree that this definition is not needed because adding this definition of "material" helps to better align the CCL with how the term "material" is used under the USML and also how it is used under the Wassenaar Arrangement's WAML. BIS does not agree the definition is written in the negative. The first part of the definition is written in positive terms and the second part excludes in a positive fashion those items within the scope of those other defined terms identified in the last sentence to the "material" definition.

7. Military commodity

This final rule adopts the definition of "military commodity" that was proposed in the July 15 (framework) rule. In response to comments, this final rule makes the reference to the "600 series" Related Controls paragraphs more explicit by moving the Related Controls reference to the beginning of the list of "600 series" ECCNs referenced in the "military commodity" definition. In addition, this final rule adopts a more general reference to the related controls paragraphs for the "600 series," instead of identifying specific "600 series" ECCNs, as was originally proposed in the July 15 (framework) rule. This approach is not substantively

different from the proposal in the July 15 (framework) rule. Including a general reference to the "600 series" instead of separately listing each "600 series" ECCN will reduce the need to update this definition each time ECCNs are added to or removed from the "600 series."

One commenter suggested that, in the definition of "military commodity," the phrase "Related Controls for" be relocated to before reference to "600 series" ECCNs. This would make it clear that none of these ECCNs covers "military commodities." BIS agrees that moving the "(Related Controls)" reference to the beginning of the "600 series" ECCNs referenced in the "military commodity" definition will communicate more clearly the intent of this cross reference to these "600 series" ECCNs.

8. Part

This final rule adopts the definition of "part" that was proposed in the July 15 (framework) rule without any changes.

One commenter suggested expanding the scope of the "part" definition to include passive electrical parts. Specifically, this commenter suggested expanding the scope of the definition to include basic building block electrical parts, including, for example, capacitors, resistors, connectors, and thermistors, that are passive single-function parts (i.e., excluding active components such as integrated circuits that perform active, and in some cases, multiple functions). The definition of "part" proposed in the July 15 (framework) rule was intended as much as possible to create a common definition of this term under the EAR and the ITAR. BIS does not adopt the suggested change because it would blur distinctions between what is a "part" and a "component." Adopting the commenter's suggested change would broaden the scope of the "part" definition and would create a fundamental difference between the EAR definition and the ITAR definition of "part."

One commenter suggested deleting the definition of "part" and all references to "parts" in the EAR and ITAR. To support this position, the commenter cites the examples given in the definition of "part" that are explicitly excepted from the definition of "specially designed." BIS is not incorporating either this suggested change of removing all "parts" references from the CCL or the suggestion to not add a definition of "parts" to part 772 of the EAR. The intent of the CCL, among other things, is to control certain "parts." As such, certain ECCNs describe "parts" that are subject to control under those ECCNs. The "600 series" ECCNs in particular would in most cases control "parts" under the .x and .y "items" paragraphs. This includes several of the ten ECCNs added to the CCL in this final rule. In terms of the reference to "parts" and "specially designed," this person was referring to the definition of "specially designed" that was proposed in the July 15 (framework) rule. This same type of exclusion was also proposed in the June 19 (specially designed) rule and the definition of "specially designed" included in this final rule. However, the commenter appears to be confused regarding the relationship between certain "parts" that may be excluded under paragraph (b)(2) of the "specially designed" definition and the definition of "parts." Not all "parts" that are controlled on the CCL are "specially designed" "parts." The commenter incorrectly infers that, because certain "parts" are excluded from "specially designed" on the basis of being excluded under paragraph (b)(2), all "parts" should therefore not be controlled on the CCL. This is not a correct interpretation of either the "specially designed" definition or the intent of the U.S. Government in terms of how "parts" should be controlled on the CCL. The paragraph (b)(2) exclusion under "specially designed" also includes other criteria, which further refine the set of "parts" that would be excluded from "specially designed" on the basis of that exclusion paragraph.

9. System

This final rule adopts the definition of "system" that was proposed in the July 15 (framework) rule without any changes.

One commenter expressed difficulty in distinguishing between what items would be captured under certain terms, in particular, the proposed definitions of "end items," "components" and "systems." The commenter urged BIS to provide examples, illustrations, charts, or annotations to assist exporters in the uniform application of these terms. This commenter noted that the consequences of which definition applies is important, particularly under the proposed "specially designed" definition and with respect to whether something is considered a "component" for purposes of License Exception STA eligibility for the "600 series." BIS already addressed some of these concerns by proposing in the June 19 (specially designed) rule a revised definition of "end item" that would clarify the relationship between "end items" and "components." BIS is also developing a targeted outreach program to support exporters whose items will move from the USML to the CCL and who are less familiar with the EAR. As part of that outreach, BIS also intends to develop decision tools and other types of support information to assist the public in understanding and applying the definitions added or revised in this final rule, similar to the decision tree that was developed and posted on the BIS website in 2012 for License Exception STA. The June 19 (specially designed) rule, in particular the lengthy preamble discussion that included numerous examples for how to apply the term "specially designed," is representative of the types of training materials that BIS intends to develop for assisting the public in understanding and applying these other key terms.

In the short-term, there will be some degree of adjustment as the public and the U.S. Government apply these new definitions. BIS is committed to supporting stakeholders during this transition period. These definitions will provide significant benefits by adding more

specificity to the EAR for how these terms are defined and used in the CCL. In addition, these terms will play an important role in delineating between items on the USML and on the CCL.

One commenter noted that, in the definition of "accessories and attachments" proposed in the July 15 (framework) rule, a "system" is addressed separately from an "end item," but the definition of "end item" includes systems, and the definition of "systems" includes "end items." This commenter believes the implication is that BIS considers "systems" as both "end items" and elements of "end items." This commenter thought additional explanation or examples would be helpful.

In terms of the definition of "accessories and attachments" proposed in the July 15 (framework) rule and re-proposed as separate stand-alone definitions in the June 19 (specially designed) rule, an "accessory" or "attachment" is not necessary, but enhances the operation of a "component," "end item" or "system." The definitions of "system" and "accessories" and "attachments" are not intended to be mutually exclusive. For example, a "system" could be made up of a combination of "accessories." If such a "system" still met the definition of "accessories," the item would be considered an "accessory" as well as a "system."

Similarly, the definitions of "system" and "end item" are not intended to be mutually exclusive. A "system" can be an "end item," provided the "system" in question also meets the definition of "end item." However, not all "systems" will meet the definition of "end item." For example, some "systems," such as landing gear for an aircraft, consist of a combination of "parts" and "components" that form a portion of a larger "end item" (e.g., an aircraft). In other cases, such as a computer system (consisting of a monitor, CPU, keyboard, and mouse), where a "system" is a combination of "end items" designed, modified, or adapted to operate together to perform a specialized function, the "system" itself may also meet the definition of "end item."

One commenter suggested that, in the definition of "system," the phrase "a specialized function" be changed to "the function specified in the export control item using the term 'system,'" because there is no other specialized function which is relevant to export controls.

BIS does not incorporate this suggestion. Defined terms from part 772, such as "system" or "facilities," that are used in the ECCN entries are further refined with control parameters included in those ECCNs. For that reason, BIS does not adopt this change.

10. Build-to-print technology

This final rule adopts the definition of "build-to-print technology" that was proposed in the November 7 (aircraft) rule with a minor non-substantive change to conform to the standard format used in part 772 (i.e., the defined term appears first in italics and is followed with a sentence that begins the definition).

Several commenters suggested broadening the scope of the proposed build-to-print technology definition, and one commenter noted that the proposed definition is not the same as the current ITAR definition. BIS does not accept the comment to broaden the scope of the build-to-print technology definition. Similar to how the term is used in the ITAR, the scope of the EAR definition is meant to be narrow. The suggested broadening of the definition would not be consistent with how the term is defined and used under the ITAR and also would be inconsistent with the policy objectives for the use of this term under the EAR for purposes of the "600 series." Lastly, the EAR and ITAR definitions are slightly different because of the different regulatory terms used; however, the substantive control is identical. As much as possible, a common definition of build-to-print technology is being added to the EAR in this final rule to correspond to the ITAR definition, but both definitions will be tied to the respective regulations.

11. Accessories

This final rule adopts the definition of "accessories" that was proposed in the June 19 (specially designed) rule. No comments were submitted on the proposed definition.

12. Attachments

This final rule adopts the definition of "attachments" that was proposed in the June 19 (specially designed) rule. No comments were submitted on the proposed definition.

13. End item

This final rule adopts the definition of "end item" that was proposed in the June 19 (specially designed) rule.

Two commenters suggested clarifying the applicability of the end item definition as it relates to integrated circuits (ICs) by adding the phrase "capable of operating by itself and performing functions independent of any other item." The concern was whether an IC would be an end item instead of a component. To further clarify this point, these commenters also suggested adding the term "computers" to the illustrative list of end item examples.

BIS does not accept adding the phrase "capable of operating by itself and performing functions independent of any other item" because it is not needed because the definition of "component" is adequate in its scope to capture ICs. However, to address the concern that ICs might be viewed incorrectly as end items, BIS clarifies here that ICs are classified as "components" and not an end item, which should address these two commenters' concern. BIS does accept the suggestion of adding the term "computers" to the illustrative list of end item examples.

One commenter suggested adding the phrase "like electricity" as an example of another energy source that could be used to place an end item in its operating state. This commenter also

suggested adding the term "fully" before the phrase operating state for clarity. BIS does not accept these changes because the intent of the definition is clear without these additions.

14. Dual use

A conforming change is implemented in § 730.6 that was not previously proposed as was described above. To conform to the change to § 730.6, the definition of "dual use" in part 772 is also revised by adding the phrase "and certain munitions items listed on the Wassenaar Arrangement Munitions List (WAML)" in order to harmonize with the revised description of the scope of the EAR.

XXIV. Part 774 – The Commerce Control List

A. Product Group Headings

This rule implements changes proposed in the July 15 (framework) rule to the Product Group A heading by adding the new terms "end items," "accessories," "attachments," and "parts." These changes help with the structural alignment of the CCL and USML by ensuring these terms and control lists' product group headings are used in a consistent way. The July 15 (framework) rule also proposed adding double quotes around the term "materials" in Product Group C. After evaluating the terms used in the heading of all the product groups, this rule adds double quotes around the terms "end items," "equipment," "accessories," "attachments," "parts," "components," "systems," "software," "technology," "production equipment," and "materials" because these terms are defined in part 772.

B. ECCN 0A919

Under ECCN 0A919, the EAR controls the reexports of certain foreign-made munitions not otherwise subject to the ITAR. The July 15 (framework) rule proposed expanding ECCN

0A919 to also include foreign-made munitions items that incorporate more than 10% "600 series" controlled content. The June 21 (transition) rule proposed to further revise ECCN 0A919 to conform to the proposed revisions of the *de minimis* and foreign-produced direct product rules set forth in that proposed rule. The *de minimis* level for "600 series" ECCNs is 0% for countries in Country Group D:5 of Supplement No. 1 to part 740 and 25% for all other countries (see § 734.4 of the EAR). The foreign-produced direct product rules for "600 series" ECCNs may be found in § 736.2(b)(3) of the EAR.

One commenter stated, "The definition of "military commodity" and the chapeau exclude any item in the "600 series." Thus, a commodity listed in 0A600.a, b, or c. [sic] of 100% foreign manufacture might be decontrolled by the chapeau, and recontrolled by virtue of having more than 10% 600 series parts and components. At a minimum, the text needs to be rewritten to eliminate the conflict and to clarify the intent." ECCN 0A919 is not intended to control foreign made "600 series" commodities as such. One must apply the characteristics within the Items paragraphs, only to the scope of commodities described in the Heading of the ECCN. The Items paragraphs further define what is caught by the broad description of the heading of ECCNs; they do not expand the scope of the heading of an ECCN.

One commenter on the June 21 (transition) rule recommended adding "U.S. origin" to paragraph d.2. BIS agrees this clarification is helpful and has done so in two places with the Items paragraphs.

One commenter noted that proposed paragraphs .a and .c seem to contradict each other. BIS agrees that the text of the paragraphs in the Items section needs clarification. BIS noticed that the first introductory text was an undesignated paragraph. This rule removes paragraph .a, because it is for the most part the definition of "military commodities," and replaces it with the

introductory text, ""Military commodities" having all of the following characteristics:" The word "with" in the introductory text is replaced with "having" to conform to Wassenaar Arrangement wording. The definition for "military commodities," from part 772, is added to the Related Definitions section of ECCN 0A919 for the convenience of the reader. Paragraph .b is redesignated as paragraph .a and is revised to read, "produced and located outside the United States." This change was made for two reasons. Some people were not clear that ECCN 0A919 only controls foreign-produced "military commodities" that are located outside the United States. Paragraph .c is redesignated as paragraph a.2 and is revised to remove the phrase "for a reason other than presence in the United States," because this phrase made the sentence confusing. Basically, there are three ways a foreign-made "military commodity" could be subject to the ITAR: (1) The foreign-made "military commodity" contains an ITAR item; (2) The foreign-made "military commodity" is a direct product of ITAR technology; and (3) The foreign-made "military commodity" is in the United States. If none of the three scenarios exists, the foreign-made item is not subject to the ITAR, but may be subject to the EAR and classified under ECCN 0A919.

One commenter requested clarification about the jurisdiction of ECCN 0A919 commodities that are located in the United States. When a "military commodity" is in the United States, it is under the jurisdiction of the Department of State and subject to the ITAR. One commenter disagreed with the whole concept of ECCN 0A919, because the commodity would have one classification (0A919) and jurisdiction (BIS) when outside the United States and another classification and jurisdiction (Department of State's DDTC) when in the United States. BIS has concluded that 0A919 may be complex, but it is necessary for national security reasons. Therefore, BIS does not accept the recommendation to remove ECCN 0A919.

Paragraph .d is redesignated as paragraph a.3 and is revised by adding the word "Having" to the beginning of the phrase to conform to Wassenaar Arrangement wording. Paragraph d.1 is redesignated as paragraph a.3.a and is revised by adding ECCNs 6A003.b.3 and b.4.c, because these cameras were added by the publication of the Wassenaar rule on July 2, 2012. These changes were included in the July 15 rule, though prematurely. Paragraph d.2 is redesignated as paragraph a.3.b and is revised by adding the words "U.S.-origin" as suggested by a commenter for clarity. Paragraph d.3 is redesignated as paragraph a.3.c and is published as proposed. Double quotes are added around the term "military commodity" in the related controls and related definitions sections of ECCN 0A919, because this term is defined in part 772 of the EAR.

C. Aircraft and Related Items "600 series" ECCNs: Establishment of "600 Series" ECCNs for Certain Military Aircraft and Related Items in ECCNs 9A610, 9B610, 9C610, 9D610, and 9E610

In the November 7 (aircraft) rule, BIS proposed to control certain military aircraft and related items that the President determines no longer warrant control in USML Category VIII under new ECCNs 9A610, 9B610, 9C610, 9D610, and 9E610. Specifically, the November 7 (aircraft) rule proposed that ECCN 9A610 would control the following: "end items" in paragraphs .a through .k (while reserving paragraphs .b through .e); Unmanned Aerial Vehicle (UAV)-related items identified on the Missile Technology Control Regime (MTCR) Annex in paragraphs .l through .n; "parts," "components," "accessories," and "attachments" "specially designed" for commodities in paragraphs .a through .k or defense articles in USML Category VIII in paragraph .x; and commodities "specially designed" for a commodity in 9A610 or defense article in USML Category VIII and warranting less strict controls because of little or no

military significance in paragraph .y. ECCN 9A610 would also include items currently controlled under ECCN 9A018 paragraphs .a, .c, .d, .e, and .f.

The November 7 (aircraft) rule also proposed the following related ECCNs. ECCN 9B610 would control test, inspection, and production equipment and related commodities "specially designed" for the "development" or "production" of commodities enumerated in ECCN 9A610 or USML Category VIII. ECCN 9C610 would control materials "specially designed" for aircraft and related commodities controlled by ECCN 9A610 that are not specified elsewhere on the CCL, such as in CCL Category 1, or on the USML. ECCN 9D610 would control software "specially designed" for commodities in ECCNs 9A610, 9B610, or 9C610. Finally, the November 7 (aircraft) rule proposed that ECCN 9E610 would control technology that is required for commodities in ECCNs 9A610, 9B610, or 9C610, as well as for software in ECCN 9D610.

This rule adopts these new ECCNs with the changes described below.

1. Review of public comments related to "600 series" for certain military aircraft and related Items

In response to the November 7 (aircraft) rule, BIS received a number of comments on the proposed "600 series" for military aircraft, and these comments are addressed below in this section. BIS also received comments in response to the November 7 (aircraft) rule that pertain to other aspects of ECR, such as grandfathering existing ITAR authorizations, ITAR exemptions versus EAR license exceptions, the definition of "specially designed," and various licensing issues. These comments are addressed in this final rule under the applicable topic to which they relate. Finally, additional comments in response to the November 7 (aircraft) rule addressed issues outside of the scope of ECR, such as recalibrating controls on encryption and revisiting

the proposed intra-company transfer license exception. As these comments are outside of the scope of the proposed rules addressed under this final rule, they are not addressed herein.

2. Comments regarding ECCN 9A610

Two commenters submitted comments that any UAV that is specially designed for a military application, is not in Category I of the MTCR Annex, and does not include any specially designed capability covered by the USML, should be transferred to the CCL under either ECCN 9A610 or 9A012. In addition, two commenters stated that the November 7 (aircraft) rule did not specifically address whether ECCN 9A012 would be eliminated in the same manner as ECCN 9A018.

The Department of Defense-led review of USML Category VIII found that technical capabilities for UAVs do not provide the flexibility to differentiate as finely as the comment suggested between critical and non-critical military systems. Consequently, the November 7 (aircraft) rule did not propose to include UAVs in ECCN 9A610, and this final rule makes no changes to that proposal. With respect to ECCN 9A012, BIS did not propose any amendments in the November 7 (aircraft) rule to 9A012, including removal of the ECCN, because 9A012 would continue to control UAVs and related items that are not enumerated on USML Category VIII and are not "specially designed" for a military use.

One commenter suggested that Note 1 to ECCN 9A610.a should be revised to make clear that the requirements of pre-1956 manufacture applies only to "unarmed military aircraft," and not to other types of aircraft listed in the note. Specifically, the commenter proposed that unarmed military aircraft be moved into a new sentence as follows: "Other unarmed military aircraft, regardless of origin or designation, manufactured before 1956 and unmodified since manufacture are also included in the term 'military aircraft'."

BIS accepts this recommendation in part. A comma has been added after "lighter than air aircraft" to more clearly separate "unarmed military aircraft" from the rest of the series of items so that the pre-1956 manufacture applies only to "unarmed military aircraft." The suggested sentence is not adopted as BIS believes that the change made to the sentence addresses the concern.

In response to both the Department of State's proposed rule for USML Category VIII and BIS's November 7 (aircraft) rule, one commenter recommended that bearings used in the landing wheels of stealth aircraft should be moved from proposed USML Category VIII(h)(1) to the CCL. In support of this recommendation, the commenter stated that these bearings do not relate to stealth or combat capabilities of the aircraft.

Both the State Department's and the Commerce Department's proposed rules contemplated that parts, components, accessories, attachments, and equipment "specially designed" for enumerated aircraft possessing low observable characteristics would remain subject to the ITAR, and that such parts, components, accessories, attachments and equipment were retained on the USML for reasons beyond stealth capability. Neither rule stated that all parts merely "used" on those enumerated aircraft would be subject to the ITAR. Parts that are not "specially designed" but rather common to the military aircraft enumerated in Category VII(h)(1) and to other military aircraft and that are not enumerated on the USML or to civilian aircraft would be subject to the EAR. BIS believes that no change to the proposed rule is needed to clarify this point.

One commenter believed that some ground equipment falling under ECCN 9A610.f does not warrant NS and RS controls. The commenter recommended that the beginning of paragraph .y read as follows: "Specific 'parts,' 'components,' 'accessories and attachments' and associated

ground support equipment 'specially designed' for a commodity subject to control in this ECCN or a defense article in USML Category VIII…" Further, the commenter suggested that the following ground support equipment be added to 9A610.y: blade positioning poles; dollies and carts; hand tools; inlet and other covers; jacks; tow bars; and tie down straps, lines, rings, and related hardware.

The Departments of Defense, State, and Commerce reviewed the specified ground equipment for inclusion in 9A610.y and found that such items do not in all cases merit inclusion in the .y paragraph. Thus, the interagency review found that such items are adequately described under the .x paragraph as parts, components, accessories, or attachments for ground equipment in 9A610.f and that the "specially designed" parameter sufficiently limits excessive control of such items.

One commenter stated that ECCN 9A610.h would cover "canopies," but the November 7 (aircraft) rule did not clarify whether 9A610 would also cover other types of windows or transparencies, such as door windows, cabin windows, or lenses, etc., regardless of their special characteristics (e.g., ballistic protection or electromagnetic interference). The commenter further suggested that transparencies for aircraft, other than canopies, should be identified in 9A610.y.

Proposed 9A610.h was intended to apply to parachute canopies, which are not related to windows and other transparencies used in aircraft. Nevertheless, the Departments of Defense, State, and Commerce reviewed transparencies for inclusion in 9A610.y and found that such items do not merit inclusion in the .y paragraph. Rather, such items are adequately controlled depending on whether they are "specially designed" for defense articles in USML Category VIII or commodities in 9A610.a. Consequently, no change has been made as a result of this comment.

Two commenters provided separate lists of commodities that they believed warranted control under the .y paragraph due to little or no military significance. These commodities included the following: air vents and outlets; cabin doors and door seals; crew and cabin seats; cargo rings; drain lines; fire extinguishers; flame and smoke/CO_2 detectors; heating, air conditioning, and air management equipment; helicopter control mixers; junction boxes; lithium-ion batteries and battery cells; map cases; ram air turbines; reservoirs; steps for crew and passenger entry and exit; windows and window seals; fasteners; light bulbs, fixtures, and lenses; safety items used when the aircraft is on the ground, known as "red gear" (e.g., safety pins with remove-before-flight streamers, engine outlet and inlet covers, grounding wires, etc.); flightline ground-handling/support equipment (e.g., tow vehicles and tow bars); lifts, jacks, ladders, and stands; power, hydraulic, heating, and cooling carts; ground crew-to-pilot communication gear; intermediate and depot-level support equipment for structural and hydraulic test and maintenance; non-Radar Cross Section (RCS) paints, coatings, primers, and application equipment; access doors and hatches; cargo systems and furnishings; fittings; light plates; insulation blankets; intercostals and gussets; floor panels and floor structure; seat tracks; shims; wire bundles; and labels, placards, name plates, and signs.

The Departments of Defense, State, and Commerce reviewed the suggested items and agreed to add fire extinguishers, flame and smoke/CO_2 detectors, and map cases to ECCN 9A610.y. Many of the other items, such as fasteners, were not added to 9A610.y because the agencies believe that the definition of "specially designed" would preclude many of these items from being classified under ECCN 9A610.x. (Fasteners are further addressed in the response immediately below.) Finally, other items suggested do not, in all cases, warrant control under the AT-only .y controls. Thus, they were not added to the list.

In addition to recommending that fasteners be included in the .y paragraph, two commenters addressed further concerns regarding fasteners. Specifically, one commenter stated that fasteners designed for military aircraft are often special combinations of characteristics that are widely used in fasteners for civil applications. In addition, the commenter stated that multipart fasteners and fastening systems for military aircraft are often interchangeable with those for civilian aircraft. For these reasons, the commenter recommended that fasteners should be considered EAR99 or 9A991.d, but not 9A610.x. Another commenter supported the idea that the USML should control critical fasteners that contribute to the properties of key U.S. origin aircraft that have low observable features or characteristics, while recognizing that other types of fasteners are truly commercial in nature and require little or no export control.

As discussed under the section on "specially designed," certain fasteners are precluded from being classified under ECCN 9A610.x due to paragraph (b)(2) of the definition of "specially designed," and multipart fasteners may be eligible for the (b)(3) exclusion in the definition. If the fasteners were determined to be in an ECCN paragraph that does not contain "specially designed" as a control parameter or as EAR99 items under a prior CJ, they would also be precluded from being "specially designed" under 9A610.x. Finally, in light of the proposed addition of paragraph (b)(1) to the definition of "specially designed," organizations may submit a CCATS pursuant to new § 748.3(e) to request that a fastener be removed from control under 9A610.x if the fastener otherwise meets the definition of "specially designed."

One commenter stated the understanding that only forgings "specially designed" for a specific list of U.S. origin aircraft that have low observable features or characteristics or U.S. Government technology demonstrators will be subject to continued control on the USML and that all other forgings "specially designed" for military aircraft would be on the CCL.

Forgings would only be controlled on the CCL if the commodity for which they are "specially designed" is also on the CCL. Some parts and components for military aircraft are specifically enumerated in USML Category VIII(h). For many of the entries in Category VIII(h), parts and components "specially designed" therefor are also controlled. Consequently, forgings "specially designed" for such items are also controlled under USML Category VIII(h).

One commenter stated that castings, forgings, and other unfinished products for parts in 9A610.x are themselves 9A610.x if they are clearly identifiable by material composition, material, geometry, or function as controlled by 9A610.x. The commenter further stated support that this language is consistent with WAML Category 16 when they are identifiable for material composition, geometry, or function. In addition, the commenter stated that although many forgings have a part number on them, they should not be on the CCL based on that part number unless the forging itself is identifiable as that part by material composition, geometry, or function. BIS does not agree with the commenter's interpretation of the regulations. "Note 1" to ECCN 9A610.x states that forgings, castings, and other unfinished products, such as extrusions and machined bodies, are also controlled by 9A610.x if they "have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 9A610.x." The note does not refer to part numbers. Thus, whether a forging or casting is stamped with a part number is not relevant to determining whether it is controlled by 9A610.x.

3. Additional changes made to ECCN 9A610

BIS is amending proposed ECCN 9A610 to make conforming changes due to the finalization of certain proposed rules published after the November 7 (aircraft) rule. The Related Controls paragraph is amended to reflect the revised *de minimis* level for "600 series" items, as

proposed in the June 21 (transition) rule and finalized in this rule. In addition, references using the defined term "accessories and attachments" have been changed to "accessories" and "attachments" to reflect the separation of those defined terms, as proposed in the June 19 (specially designed) rule and finalized in this rule.

BIS has added the phrase "mechanical properties" to the forgings and castings note to 9A610.x because there may be circumstances when the mechanical properties, as well as the material composition, geometry or function, of a forging, casting, or unfinished product may have been altered specifically for a 9A610.x part or component. BIS believes that the omission of "mechanical properties" from the list proposed in the November 7 (aircraft) rule was an error, and it is being corrected in this rule.

In the November 7 (aircraft) rule, Note 1 to 9A610.a was generally intended to exclude all military aircraft manufactured before 1956 that do not have weapons from being controlled under 9A610. In order to make this concept more clear and to conform with the current text of the WAML, BIS is revising Note 1 and adding a Note 2 to 9A610.a to clarify that military aircraft manufactured before 1946 and meeting the parameters described in Note 2 are not controlled under 9A610. Further, to address such aircraft manufactured from 1946 to 1955, BIS is adding a new 9A610.y.29 for military aircraft manufactured during that timeframe that also meet the parameters described in that provision. BIS is making these changes to improve clarity and to comply with multilateral regime requirements.

BIS is also revising 9A610.f, .g, and .i to conform to the WAML. Also, BIS is renumbering entries within the Items paragraph to allow for ease of future revisions to the ECCN. These are not substantive revisions to the November 7 (aircraft) rule.

4. Comments regarding ECCN 9B610

Two commenters believed that the proposed text for ECCN 9B610 is too open-ended and appears to add additional control to hardware. They recommended revising the heading of the ECCN to read as follows: "Test, inspection and production 'equipment' 'specially designed' for the 'development' or 'production' of commodities enumerated in ECCN 9A610 and having embedded technology that is exclusively or predominately used in the 'development' or 'production' of the enumerated end item." BIS believes that the use of "specially designed" is sufficiently limiting to preclude ECCN 9B610 from being an open-ended control. Therefore, no change has been made to 9B610 as a result of this comment.

One commenter stated that all entries in 9B610.a through .y list the limiting text "specially designed" with the exception of 9B610.b for environmental test facilities. Under 9B610.b, only the word "designed" is used. To avoid over-controlling items, the commenter suggested using "specially designed" in 9B610.b. BIS accepts this recommendation, and has amended 9B610.b to replace "designed" with "specially designed."

BIS is also making correctional and clarifying changes to this ECCN. BIS is correcting the scope of controls for 9B610.a to read: "Test, inspection, and production 'equipment' 'specially designed' for the 'production,' development,' repair, overhaul or refurbishment of commodities…" This change conforms to the text proposed in 9B619.a. Also, BIS is adding a reference to new USML Category VIII(h)(i) in the Related Controls paragraph.

5. Comments regarding ECCNs 9D610, 9E610, and availability of License Exception STA

As previously discussed under the section on License Exception STA, BIS is removing proposed Supplement No. 4 to part 740 to move restrictions on the use of License Exception STA for "600 series" software and technology to the STA paragraph in the License Exceptions

section of the applicable "600 series" ECCN. To effect this change for ECCNs 9D610 and 9E610, BIS has revised the Items paragraphs of those ECCNs to specifically name the restricted software or technology in the ECCN itself.

Following this new framework, ECCN 9D610.b now controls software for the "development" or "production" of items previously described in paragraphs (a)(1) through (a)(15) in proposed Supplement No. 4 to part 740. While this revision does not substantively affect the reasons for control applying to the software at issue (or any software controlled under 9D610), this change more positively enumerates this software in 9D610.b. To correspond with this change, the following additional revisions have been made to 9D610: revised descriptions of the applicability of the reasons for control to the specific paragraphs within 9D610, revised description of eligibility under the STA paragraph in the License Exceptions section of 9D610 to add that paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for software described in 9D610.b, and removal of the note to the License Exceptions section.

For ECCN 9E610, 9E610.b now controls "technology" (other than "build-to-print technology") "required" for the "development" or "production" of any of the items previously described in paragraphs (a)(1) through (a)(15) in proposed Supplement No. 4 to part 740. As with 9D610, this revision does not substantively affect the reasons for control that apply to such technology. To correspond with this change, the following additional revisions have been made to 9E610: revised descriptions of the applicability of the reasons for control to the specific paragraphs within 9E610, revised description of eligibility under the STA paragraph in the License Exceptions section of 9E610 to add that paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for software described in 9E610.b., removal of the note to the

License Exceptions section, and an insertion of a note to paragraph .a with respect to "build-to-print technology" for the "production" of items in paragraphs b.1 through b.15.

In addition to inserting 9D610.b, BIS is also not finalizing 9D610.b and .c that were proposed in the November 7 (aircraft) rule to control software related to commodities controlled for MT reasons under ECCNs 9A610 and 9B610. BIS is making this change to conform with the revised applicability of the MT reason for control to ECCN 9D610, which simplifies the description of software subject to MT controls.

BIS did receive comments pertaining to the specific software and technology that was proposed to be restricted from use of License Exception STA under the November 7 (aircraft) rule. Descriptions of the comments with BIS's responses are below.

One commenter recommended that the words "except for Military Commercial Derivative Aircraft" be deleted from paragraphs (a)(6) and (a)(7) of Supplement No. 4 to part 740. The commenter reasoned that this exclusion refers to technology in ECCN 9E003, and could thus result in confusion that 9E003 technology is subject to the limitations on the use of STA and GOV described in Supplement No. 4. BIS does not accept this recommendation. The reference to military commercial derivative aircraft is a carve-out of the STA license exception and is not limited to ECCN 9E003.

One commenter stated that the use of an aircraft weight threshold (i.e., 21,000 pounds) to determine which landing gear, parts, and components are subject to the restrictions in paragraph (a)(7) in Supplement No. 4 to part 740 is impractical. Instead, the commenter recommended that BIS specifically identify those categories of aircraft that would be subject to paragraph (a)(7). BIS does not accept this recommendation. Using the categories of aircraft as the parameter to identify the software and technology to be excluded from STA and most GOV eligibility would

be impractical. This would lead to an exhaustive list that would be constantly changing based on new developments.

Two commenters expressed concerns that the scope of software under 9D610 and technology under 9E610 that would be restricted from STA eligibility is too broad. They commented that the restriction would apply to nearly every part and component on an aircraft platform, that the items affected are common to commercial aircraft for which technology and software can already be exported without a license, and that many STA-eligible countries already participate in the development and production of the items at issue and have comparable indigenous software and technology. In addition, one of the commenters felt that this framework makes the use of STA more complex. The restriction on the use of License Exception STA applies to software and technology related to parts and components "specially designed" for military aircraft controlled under USML Category VIII or ECCN 9A610. While there may be similarities between these items and commercial equivalents, the interagency review identified these items as warranting closer review. In addition, the use of License Exception STA for "600 series" items is to support military activities rather than development activities. As a result, parts and components may be exported or reexported under License Exception STA, but certain software and technology related to the "development" or "production" of the specified parts and components may not be exported or reexported under STA. Also, as previously described, BIS is changing the STA framework to make it less complex.

No changes have been made to reduce the scope of aircraft software or technology subject to the restriction on the use of License Exception STA. However, as described in section XXIV.C.6, BIS is correcting 9D610 and 9E610, which impacts the scope of software and technology, respectively, controlled under those ECCNs. Also, as previously mentioned, BIS is

removing proposed Supplement No. 4 to part 740 to make the framework on STA restrictions for "600 series" items less complicated.

One commenter objected to the terminology "types of parts and components" in paragraph (a) of Supplement No. 4 to part 740 (i.e., "License Exception STA may not be used…[for] 'software' or…'technology' for the 'development' or 'production' of any of the types of 'parts' or 'components' listed below."). The commenter stated that this wording implies that other parts and components are captured, and thus "types of" should be deleted.

This final rule does remove the use of "types of" by not finalizing proposed Supplement No. 4 to part 740 and moving the description of the items in that supplement to ECCNs 9D610 or 9E610. However, this change was made to simplify License Exception STA. The use of the term "types of" was not intended to control every part and component of an aircraft, but rather the parts and components with similar functionality.

6. Additional changes made to ECCNs 9D610 and 9E610

BIS is correcting 9D610 and 9E610 to remove software "specially designed" for the "development" or "production" of fuel cells that are "specially designed" for use in UAV or Lighter-than-Air-Vehicles. Such fuel cells will be enumerated in USML Category VIII, so related software should also be controlled under the ITAR rather than the CCL.

BIS is also amending ECCNs 9D610 and 9E610 to make conforming changes due to the finalization of certain proposed rules published after the November 7 (aircraft) rule. The Related Controls paragraph of 9D610 is amended to reflect the revised *de minimis* levels for "600 series" items, as proposed in the transition rule and finalized in this rule. The Related Controls paragraph of 9E610 is also revised to reflect the revised *de minimis* levels, but this final rule removes entirely the reference to ECCN 0A919 foreign-made "military commodities" because

technology would not be considered for conducting a *de minimis* calculation for a commodity. In addition, to improve clarity and make corrections, this rule merges 9D610.y.1 and y.2 into 9D610.y, merges 9E610.y.1 and y.2 into 9E610.y, and inserts the descriptor "software" in 9E610.y since that entry applies to certain technology related to 9D610 software. Finally, after interagency review, on the correct scope of intended controls BIS is removing installation, repair, overhaul, and refurbishing "software" from 9D610; and adding refurbishing "technology" to 9E610.y.

D. Gas Turbine Engines and Related Items "600 series" ECCNs: Establishment of "600 series" ECCNs for Certain Military Gas Turbine Engines and Related Items in ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619

In the December 6 (gas turbine engines) rule, BIS proposed to control certain military gas turbine engines and related items that the President determines no longer warrant control in USML Category VIII (or new Category XIX) under new ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619. These ECCNs were proposed in conjunction with the Department of State's proposal to create USML Category XIX under the proposed rule, *Amendment to the International Traffic in Arms Regulations: Establishment of U.S. Munitions List Category XIX for Gas Turbine Engines*, (12/06/11, 76 FR 76097) (RIN 1400-AC98). Specifically, the December 6 (gas turbine engines) rule proposed that ECCN 9A619.a through .d would control, while reserving paragraphs .e through .w, gas turbine engines "specially designed" for military use that would not be controlled under proposed USML Category XIX, digital engine controls "specially designed" for gas turbine engines in ECCN 9A619, hot section components and related cooled components "specially designed" for gas turbine engines in ECCN 9A619, and engine monitoring systems for gas turbine engines and components in ECCN 9A619. ECCN

9A619.x would consist of "parts," "components," "accessories and attachments" (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are "specially designed" for a commodity in ECCN 9A619 (other than ECCN 9A619.c) or a defense article in proposed USML Category XIX and not elsewhere specified in the CCL or on the USML. Paragraph .y would consist of eight specific types of commodities that, if "specially designed" for a commodity subject to control in ECCN 9A619 or a defense article in proposed USML Category XIX, warrant less strict controls because they have little military significance.

The December 6 (gas turbine engines) rule also proposed the following related ECCNs. ECCN 9B619 would controls test, inspection, and production "equipment" and related commodities "specially designed" for the "development" or "production" of commodities enumerated in ECCN 9A619 or proposed USML Category XIX. One specific item, a bearing puller, was enumerated in the proposed .y paragraph of 9B619. ECCN 9C619 would control materials "specially designed" for commodities controlled by 9A619 not elsewhere specified in the CCL or on the USML. ECCN 9D619 would control software "specially designed" for the "development," "production," operation, or maintenance of military gas turbine engines and related commodities controlled by 9A619. Finally, the December 6 (gas turbine engines) rule proposed that ECCN 9E619 would control "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619.

This rule adopts these new ECCNs with the changes described below.

1. Review of public comments related to "600 Series" for certain military gas turbine engines and related items

In response to the December 6 (gas turbine engines) rule, BIS received a number of comments on the proposed "600 series" for military gas turbine engines, and these comments are addressed below in this section. BIS also received comments in response to the December 6 (gas turbine engines) rule that pertain to other aspects of ECR, such as the *de minimis* threshold for "600 series" items, grandfathering existing ITAR authorizations, ITAR exemptions versus EAR license exceptions, etc. These comments are addressed in this final rule under the applicable topic to which they relate. Finally, additional comments addressed issues outside the scope of ECR, such as program licensing and the proposed intra-company transfer license exception. As these comments are outside of the scope of the proposed rules addressed under this final rule, they are not addressed herein.

2. Comments regarding separate USML category and "600 series" ECCNs for gas turbine engines

One commenter stated that gas turbine engines and associated equipment should be controlled under the same USML category that controls the end-item platform and that delineating between the end-item platform and engine components may be difficult in some cases. In addition, the commenter stated that if a new USML category is created for gas turbine engines, then the category should include the existing USML Category VIII note regarding Section 17(c) of the Export Administration Act (EAA), as amended. The commenter believed that omission of the note could be interpreted to mean that certification by the Federal Aviation Administration would no longer be applicable to determine licensing jurisdiction for aircraft engines.

The Departments of Defense, State, and Commerce believe that gas turbine engines are sufficiently different to warrant a separate USML category and separate "600 series" ECCNs, so BIS is maintaining the use of the 9Y619 series for controlling certain military gas turbine engines. With respect to the note in USML Category VIII regarding Section 17(c) of the EAA, the agencies believe that any concerns with the removal of the note would be adequately addressed by the definition of "specially designed." Thus, if an engine or engine part or component would not be subject to the ITAR as a result of the application of the note to USML Category VIII (the "17(c)" note) then that engine or part, by virtue of the application of the definition of "specially designed," would not be subject to the controls of 9A619.

3. Comments regarding ECCN 9A619

For the Related Controls paragraph of ECCN 9A619, one commenter stated that the phrase "directly related" should be replaced with "required" in the sentence "[m]ilitary gas turbine engines and related articles that are enumerated in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations."

BIS does not accept this recommendation as the phrase "directly related" is intended to correlate with the wording used in USML Category XIX. The reference to USML Category XIX in the Related Controls does not impose any requirements independent of those in USML Category XIX, so there is no need to define that term for purposes of the EAR. Any interpretation of that term must be consistent with the requirements of the ITAR.

One commenter pointed out potential overlapping controls with ECCN 9A619.a and proposed USML Category XIX. ECCN 9A619.a controls military gas turbine engines "specially designed" for a military use that are not controlled in USML Category XIX(a), (b), or (d).

However, proposed USML Category XIX(c) also controls such engines. The commenter recommended that 9A619.a be revised to exclude engines enumerated in USML Category XIX(c), in addition to XIX(a), (b), and (d). BIS accepts this recommendation and has included USML Category XIX(c) along with the reference to XIX(a), (b), and (d) in ECCN 9A619.a.

Two commenters stated that the definition of "military gas turbine engines" used in ECCN 9A619.a should be added to § 772.1 of the EAR and to the USML. BIS does not accept the recommendation to add "military gas turbine engines" to § 772.1 as the text was intended to provide objective criteria by which to determine jurisdiction and classification rather than to provide a definition.

Four commenters raised several concerns regarding the control of hot section components under proposed ECCN 9A619.c. The commenters believed that 9A619.c would be a significant expansion of controls for such items as many components would move to the USML and be considered significant military equipment under the ITAR. Further, one commenter requested confirmation that the listed hot section components are the only hot section components controlled. Two commenters recommended that the definition of hot section components be consistent with the current USML definition, which was published by DDTC in 2008. In addition, one commenter recommended that 9A619.c be split into two parts as follows – (i) hot section parts and components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) "specially designed" for gas turbine engines controlled in this ECCN 9A619; (ii) uncooled turbine and exhaust system components not specified in 9A619.c.1 (i.e., uncooled intermediate and low turbine vanes, blades, disks, and "tip shrouds;" exhaust liners, tail cones, and nozzles) for engines controlled in

this ECCN 9A619 or in USML XIX, except for engines controlled by USML XIX(f)(1). The commenter further recommended that the description of items in 9A619.c was redundant in identifying subsets of parts already more broadly described and that proposed USML Category XIX(f)(2) contained a reference to "combustor shells" whereas proposed 9A619.c did not.

When reviewing gas turbine engines and related items, the Departments of Defense, State, and Commerce did not intend to move hot section parts and components currently controlled on the CCL to the USML. To address this concern and others raised with regard to proposed 9A619.c, BIS is revising 9A619.c and adding two new paragraphs .d and .e. 9A619.c controls hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) "specially designed" for gas turbine engines controlled in 9A619.a. ECCN 9A619.d controls uncooled turbine blades, vanes, disks, and shrouds "specially designed" for gas turbine engines controlled in 9A619.a. ECCN 9A619.e controls combustor cowls, diffusers, domes, and shells "specially designed" for gas turbine engines controlled in 9A619.a. Engine monitoring systems previously proposed for control under 9A619.d are being redesignated as 9A619.f.

One commenter stated that 9A619.d (now redesignated as 9A619.f) should include a definition for "engine monitoring systems" controlled under that entry. BIS does not accept this recommendation. Engine monitoring systems are intended to reflect industry standard terminology. BIS is, however, clarifying the parenthetical description in this entry to better identify those engine monitoring systems controlled under this ECCN.

One commenter recommended that pressure sensors, thermocouples, and wire-harnesses should be considered as parts and components excluded from the "specially designed" definition.

Alternatively, if not excluded, then the commenter stated that such items should be controlled under ECCN 9A619.y. In addition, the commenter recommended that speed sensors, actuators, electro-hydraulic servo valves, fuel flow meters, fuel filters, oil filters, air actuated control valves, and fuel actuated control valves also be controlled under 9A619.y. BIS has determined that such items do not, in all cases, meet the standards for being controlled in a .y control. Thus, to the extent they are "specially designed" for a military aircraft engine controlled in either 9A619.a or USML Category XIX(a), they would be controlled by 9A619.x. BIS notes that this control is materially different than these items' current controls in USML Category VIII(h) and that it substantially furthers the national security and defense industrial base objectives described above.

4. Additional changes made to ECCN 9A619

BIS is also amending ECCN 9A619 to make conforming changes due to the finalization of certain proposed rules published after the December 6 (gas turbine engines) rule. The Related Controls paragraph is amended to reflect the revised *de minimis* level for "600 series" items, as proposed in the June 21 (transition) rule and finalized in this rule. In addition, references using the defined term "accessories and attachments" have been changed to "accessories" and "attachments" to reflect the separation of those defined terms, as proposed in the June 19 "specially designed" rule and finalized in this rule. Finally, the word "paragraphs" has been removed from 9A619.a, and the note to 9A619.a has been amended to reflect the current status of the reform initiative. BIS has not yet published final rules that would create ECCNs 0A606 or 8A609 for vehicles and vessels, respectively. Consequently, BIS is revising the note to make clear that those ECCNs are still proposed and do not currently exist in the EAR.

BIS is clarifying that 9A619.d applies to "tip shrouds" rather than just "shrouds." Also, BIS has added the phrase "mechanical properties" to the forgings and castings notes to 9A619.e and 9A619.x because there may be circumstances when the mechanical properties, as well as the material composition, geometry or function, of a forging, casting, or unfinished product may have been altered specifically for a 9A619.x part or component. BIS believes that the omission of "mechanical properties" from the list proposed in the December 6 (gas turbine engines) rule was an error, and it is being corrected in this rule.

5. Comments regarding ECCNs 9B619 and 9C619

One commenter stated that the Unit paragraphs in the List of Items Controlled sections of ECCNs 9B619 and 9C619 should contain a unit of measure and recommended that "$ value" be used. BIS concurs with the comment, and ECCNs 9B619 and 9C619 have been revised accordingly.

One commenter recommended that ECCN 9B619.y be revised to apply to specific test, inspection, and production equipment "specially designed" for the "production" or "development" of commodities enumerated in 9A619.y, rather than 9A619. BIS does not accept this recommendation as items specifically enumerated in the .y paragraph of 9B619 are not intended to be limited to those items "specially designed" for the "production" or "development" of items identified in the .y paragraph of 9A619.

6. Additional changes made to ECCNs 9B619 and 9C619

BIS is also amending ECCNs 9B619 and 9C619 to make the following conforming changes due to the finalization of certain proposed rules published after the December 6 (gas turbine engines) rule. The Related Controls paragraph of 9C619 is amended to reflect the

revised *de minimis* levels for "600 series" items, as proposed in the June 21 (transition) rule and finalized in this rule. In addition, references in 9B619 using the defined term "accessories and attachments" have been changed to "accessories" and "attachments" to reflect the separation of those defined terms, as proposed in the June 19 (specially designed) rule and finalized in this rule.

7. Comments regarding ECCNs 9D619, 9E619, and availability of License Exceptions STA and GOV

One commenter raised concerns with the wording used in the Related Controls paragraphs of ECCNs 9D619 and 9E619. The December 6 (gas turbine engines) rule provides a reference for technical data or software directly related to articles enumerated in proposed USML Category XIX. Rather than using "directly related to," the commenter proposed using "'required' to achieve the military functionality." BIS does not accept this recommendation as this wording was intended to track the text of proposed USML Category XIX(g). Interpreting "directly related to" in Category XIX(g) is an issue for the ITAR and not the EAR.

For the NS and RS controls in ECCN 9E619, one commenter recommended that "9D619.y" be added to the list of 9Y619 items that are excepted from the NS or RS control. BIS accepts this recommendation, and 9E619 has been revised accordingly to make this correction. In addition, BIS has inserted the word "software" to the description of items excepted from the NS or RS control.

One commenter stated in response to the December 6 (gas turbine engines) rule that the proposed Supplement No. 4 to part 740 would create such complexity that exporters would seek licenses to avoid determining whether License Exceptions STA and GOV are available. The

commenter further noted the complexity in having two separate restrictions varying with respect to "build-to-print technology" in proposed paragraphs (b)(1) and (b)(2) in that supplement.

BIS understands concerns with the complexity in navigating the proposed rule to determine if License Exception STA and portions of License Exception GOV are available for software and technology related to military gas turbine engines. However, BIS believes drawing such distinctions in availability to use STA and GOV is necessary to allow those license exceptions to be used for some portion of the software and technology at issue. Otherwise, drawing a brighter line could result in no software and technology related to military gas turbine engines being eligible for License Exceptions STA and portions of License Exception GOV. However, as discussed previously, BIS is removing proposed Supplement No. 4 to part 740, which will leave the majority of the information necessary to determine whether STA and portions of GOV are available to the applicable "600 series" ECCN. In this case, ECCN 9D619 has been revised to move the list of items in (b)(1)(i) through (ix) and (b)(2)(i) through (vii) in Supplement No. 4 to part 740 to 9D619.b. Thus, 9D619.b would control software "specially designed" for the "development" or "production" of the items previously described in (b)(1)(i) through (ix) and (b)(2)(i) through (vii) of Supplement No. 4 to part 740. The STA paragraph in the License Exceptions section of the ECCN has been revised to read that paragraphs (c)(1) and (c)(2) of STA may not be used for 9D619.b, and the License Exceptions Note has been removed. Paragraph (c)(1) of STA would still be available for 9D619.a software. Similar text with respect to use of GOV for 9D619 has also been added to § 740.11. It is important to note that the revisions to 9D619 do not substantively change the license requirements proposed in the December 6 (gas turbine engines) rule. Therefore, the reasons for control have been revised to

reflect the changes to the Items paragraph, and a parenthetical has been added to 9D619.a to exclude software in 9D619.b from 9D619.a.

In addition, ECCN 9E619 has been revised to move the list of items in (b)(1)(i) through (ix) in Supplement No. 4 to part 740 to Items paragraph .b. Thus, 9E619.b would control technology, other than "build-to-print technology," "required" for the "development" or "production" of the items previously described in (b)(1)(i) through (ix) of Supplement No. 4. As reflected in the new note after Items paragraph .a, "build-to-print technology" "required" for the "production" of items described in paragraphs .b.1 through b.9 in 9E619 is classified under 9E619.a. To correspond to this change, the STA paragraph in the License Exceptions section is revised to read that paragraph (c)(1) of STA may not be used for 9E619.b. This revision does not prohibit the use of paragraph (c)(1) of STA for 9E619.a, which includes "build-to-print technology" for items described in 9E619.b.1 through b.9.

Further, BIS is moving the items previously described in paragraphs (b)(2)(i) through (vii) of Supplement No. 4 to part 740 to Items paragraph .c. Thus, 9E619.c would control technology required for the "development" or "production" of any of the items previously in (b)(2)(i) through (vii) of Supplement No. 4. To correspond to this change, the STA paragraph in the License Exceptions section of 9E619 has been revised to read that paragraph (c)(1) of STA may be used with technology in 9E619.c, which includes "build-to-print technology." BIS has also revised the STA paragraph to provide that paragraph (c)(2) of STA is not available any technology controlled in 9E619.

As with 9D619, these revisions to 9E619 do not substantively change the license requirements proposed in the December 6 (gas turbine engines) rule. As a result, the reasons for

control have been revised to reflect the changes to the Items paragraph, and a parenthetical has been added to 9E619.a to exclude technology in 9E619.b and .c from falling under 9E619.a.

BIS also received comments raising concerns over the software and technology in ECCNs 9D619 and 9E619 that were proposed to be subject to the restrictions described in proposed Supplement No. 4 to part 740. One commenter stated that the same restrictions imposed on significant military equipment under the ITAR should not be imposed on items not deemed to be of substantial military utility or capability when controlled as "600 series" items on the CCL. As a result, the items identified in paragraphs (b)(2)(i) through (iii) and (b)(2)(vii) of Supplement No. 4 to part 740 should be moved to paragraph (b)(1) of Supplement No. 4, which would make "build-to-print technology" for such items eligible for License Exceptions STA and GOV. BIS does not accept this recommendation. Based on the results of the Defense Department-led review of the USML, it was determined that the software or technology used to produce or develop some types of parts and components is more sensitive than the finished parts and components themselves.

Rather than splitting the jurisdiction between the technology (as ITAR controlled) and the parts and components (as EAR controlled), BIS decided to keep the jurisdictional status the same but to impose ITAR-like worldwide licensing obligations on the technology. This approach satisfies the Government's objective of having visibility in to the export of such technology even for use by close allies while allowing for the more efficient flow of parts and components to close allies and the industry's objective of a control structure where both the parts/components and related technology are subject to the same set of regulations.

One commenter stated that development and production software and technology for items described in paragraph (b)(2) of Supplement No. 4 to part 740 are similar to, and in some

cases, less sophisticated than commercial production and development software and technology for the commercial equivalents of such items, which would be classified under ECCNs 9E003 or 9E991. Consequently, the commenter recommended that "build-to-print technology" be authorized under STA for all parts classified under 9A619.x for engines classified under 9A619.a. BIS rejects this suggestion. The controls are warranted because, by definition, the engines and parts at issue are "specially designed" for military aircraft. As such, they warrant control regardless of whether they are more or less sophisticated than their purely civil counterparts.

8. Additional changes made to ECCNs 9D619 and 9E619

BIS is clarifying that 9D619 and 9E619 control software and technology, respectively, for the development of production of "tip shrouds" rather than just "shrouds." Further, BIS is removing the Note to 9D619 and Note to 9E619 because BIS added Supplement No.4 to part 774 for the CCL order of review, which more clearly addresses the concept outlined in those notes. Also, BIS is amending ECCNs 9D619 and 9E619 to make conforming changes due to finalization of certain proposed rules published after the December 6 (gas turbine engines) rule. The Related Controls paragraph of 9D619 is amended to reflect the revised *de minimis* levels for "600 series" items, as proposed in the June 21 (transition) rule and finalized in this rule. The Related Controls paragraph of 9E619 is also revised to remove the reference to ECCN 0A919 foreign-made "military commodities" because technology would not be considered in conducting a *de minimis* calculation for a commodity. Also, to improve clarity, 9D619.y.1 and y.2 are merged into 9D619.y, and 9E619.y.1 and y.2 are merged into 9E619.y. Finally, the wording used in ECCNs 9D619.b.15 and 9E619.c.6 has been revised slightly to parallel the wording used

in State's revised USML Category XIX(e), as published [INSERT DATE OF PUBLICATION], to read "[d]igital engine control systems" rather than "[d]igital engine controls."

E. 9Y018 ECCNs rolled into "600 series"

Consistent with the regulatory construct identified in the July 15 (framework) rule (i.e., to move items from 018 ECCNs to the appropriate "600 series" ECCNs in order to consolidate the WAML and former USML items into one series of ECCNs), this rule moves aircraft, refuelers, ground equipment, parachutes, harnesses, and instrument flight trainers, as well as parts and accessories and attachments for the forgoing that, prior to the effective date of this final rule, were controlled under ECCN 9A018.a.1, .a.3, .c, .d, .e, or .f to new "600 series" ECCN 9A610. In addition, this rule moves military trainer aircraft turbo prop engines and parts and components therefor that were controlled under ECCN 9A018.a.2 or .a.3 to new "600 series" ECCN 9A619. ECCN 9A018.a is removed and reserved and references to 9A018.a are removed from the Regional Stability license requirement paragraph of ECCNs 9A018, 9D018 and 9E018. In addition, this rule removes the sentence about parachute systems in the Related Definition paragraph of 9A018. Related "software" and "technology" that were controlled under ECCNs 9D018 and 9E018, are now controlled under new "600 series" ECCNs 9D610, 9D619, 9E610, and 9E619.

Furthermore, consistent with the July 15 (framework) rule's statement that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule amends the Related Controls paragraphs in ECCNs 9A018, 9D018, and 9E018 to include references to the new "600 series" ECCNs indicated above. Specifically, the Related Controls paragraph in ECCN 9A018 refers to ECCN 9A610, for commodities previously controlled under ECCN 9A018.a.1, .a.3, .c, .d, .e, and .f, and to ECCN 9A619, for commodities previously controlled

under ECCN 9A018.a.2 or .a.3. Similarly, ECCN 9D018 refers to new ECCNs 9D610 and 9D619 for related "software," and ECCN 9E018 refers to ECCNs 9E610 and 9E619 for related "technology."

However, ground vehicles in ECCN 9A018 that would be moved to new "600 series" ECCN 0A606 under a proposed rule that BIS published on December 6, 2011 (76 FR 76085), will continue to be controlled under ECCN 9A018.b until BIS publishes the final rule that would add new "600 series" ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606 to the CCL to control articles the President determines no longer warrant control under Category VII (military vehicles and related articles) of the USML. In addition, related "software" and "technology" for these ground vehicles will continue to be controlled under ECCNs 9D018 and 9E018, respectively, until BIS publishes the final rule that adds the 0x606 ECCNs to the CCL.

F. Supplement Nos. 6 and 7 – Sensitive List and Very Sensitive List

The June 21 (transition) rule proposed adding new Supplement Nos. 6 and 7, the Sensitive List and the Very Sensitive List, respectively, to the Commerce Control List. These lists are referenced in License Exception GOV (§ 740.11) and Wassenaar Arrangement reporting requirements (part 743). As explained in the June 21 (transition) rule, these lists replace the list of items previously set forth in Supplement No. 1 to § 740.11. While the items on the lists are identified by ECCN rather than by Wassenaar Arrangement numbering, the item descriptions are drawn directly from the Wassenaar Arrangement.

Two commenters recommended removing the titles for Supplement Nos. 6 and 7 and only referencing these supplements by location in the EAR, because they thought it was confusing to use the same titles that are used in Wassenaar Arrangement's List of Dual-use Goods and Technologies and Munitions List, but not to use the same numbering system. BIS

does not accept this recommendation, because removing the titles makes the purpose of the lists less clear to the public. The titles and explanations in the notes at the start of each list provide valuable information about the source of the lists, the relation of the items to national security controls, the organizational body that makes changes to the list, and, for those familiar with the Wassenaar Arrangement, provide a context for how changes are made and generally when to expect changes to be made to the lists. Therefore, this rule implements, without change from the June 21 (transition) rule proposal, the addition of Supplement Nos. 6 and 7, the Sensitive List and the Very Sensitive List, respectively. The version of Supplement No. 6 contained in this final rule is modified from that published in the June 21 (transition) rule to reflect revisions to the Sensitive List agreed to by the Wassenaar Arrangement members subsequent to publication of that proposed rule.

G. Supplement No. 4 – Commerce Control List Order of Review

This final rule is adding a new Supplement No. 4 to part 774 - Commerce Control List Order of Review. A different Supplement No. 4 to part 774 listing "600 series" items eligible for License Exception STA was proposed in the November 7 (aircraft) rule. BIS elected to incorporate information on STA eligibility into the relevant ECCN rather than create a Supplement.

This new supplement will provide the public with guidance on the steps that are to be taken (i.e., the order of review) when reviewing the CCL, in light of the new "600 series" and the new definition of "specially designed" also being added in this final rule. This new supplement also clarifies the existing policy in regards to the ITAR taking precedence over the EAR and how the "600 series" takes precedence over the rest of the CCL in terms of the order of review when reviewing the CCL for items that are "subject to the EAR." This new supplement will clearly

identify the steps the public should follow to classify items on the CCL. As described above under the changes to part 738, a new cross reference is also being added to § 738.2 paragraph (c) to direct the public to this new supplement.

XXV. Procedural Amendment – Authority Citation Update

This rule revises the authority citation paragraphs for parts 730, 734, 743, and 750 of the EAR to cite Executive Order 13637 of March 8, 2013 (78 FR 16129, March 13, 2013). That executive order provided authority underlying the issuance of licenses for items that are subject to the EAR by DDTC and directed the Secretary of Commerce to develop procedures for notifying Congress of certain exports. Parts 730, 734, 743, and 750 address the issuance of licenses by DDTC and Congressional notifications. Adding this citation to the EAR authority citation paragraphs is a purely procedural action to keep authority citations listed the Code of Federal Regulations accurate and current. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

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 amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is 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 OMB control number. This final rule would affect the following approved collections: Simplified Network Application Processing System (control number 0694-0088), which includes, among other things, license applications; license exceptions (0694-0137); voluntary self-disclosure of violations (0694-0058); recordkeeping (0694-0096); export clearance (0694-0122); and the Automated Export System (0607-0152).

As stated in the July 15 (framework) rule, BIS believed that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 16,000 annually. As the review of the USML progressed, the interagency group gained more specific information about the number of items that would come under BIS jurisdiction. As of the June 21 (transition) rule, BIS estimated the increase in license applications to be 30,000 annually, resulting in an increase in burden

hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694-0088. BIS continues to review its estimate of this level of increase as more information becomes available. As described below, the *net* burden U.S. export controls impose on U.S. exporters will go down as a result of the transfer of less sensitive military items to the jurisdiction of the CCL and the application of the license exceptions and other provisions set forth in this rule.

Some items formerly on the USML will become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of an eligibility request. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 14,758 hours (12,650 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small

entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that the following proposed rules will not have a significant impact on a substantial number of small entities for the reasons explained below: the July 15 (framework) rule, November 7 (aircraft) rule, December 6 (gas turbine engines) rule, June 19 (specially designed) rule, and June 21 (transition) rule, if promulgated. Summaries of the factual basis for the certification were provided in the respective proposed rules that are being finalized in this rule and are not repeated here. No comments were received regarding the economic impact of this final rule. Consequently, BIS has not prepared a regulatory flexibility analysis.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials

15 CFR Parts 732, 740, 748, 750 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology

15 CFR Parts 736, 738, 770 and 772

Exports

15 CFR Part 742

Exports, Terrorism

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information,

Exports, Reporting and recordkeeping requirements

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties

For the reasons stated in the preamble, the Export Administration Regulations

(15 CFR parts 730 through 774) are amended as follows:

PART 730 - [AMENDED]

1. The authority citation for 15 CFR part 730 is revised 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); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 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; 15 U.S.C. 1824a; 50

U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; 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. 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; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012); Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September 12, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

2. Section 730.3 is revised to read as follows:

§ 730.3 "Dual use" and other Types of Items Subject to the EAR.

The term "dual use" is often used to describe the types of items subject to the EAR. A "dual-use" item is one that has civil applications as well as terrorism and military or weapons of mass destruction (WMD)-related applications. The precise description of what is "subject to the EAR" is in § 734.3, which does not limit the EAR to controlling only dual-use items. In essence, the EAR control any item warranting control that is not exclusively controlled for export,

reexport, or transfer (in-country) by another agency of the U.S. Government or otherwise excluded from being subject to the EAR pursuant to § 734.3(b) of the EAR. Thus, items subject to the EAR include purely civilian items, items with both civil and military, terrorism or potential WMD-related applications, and items that are exclusively used for military applications but that do not warrant control under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 et seq.).

3. Section 730.6 is amended by revising the first and second sentences to read as follows:

§ 730.6 Control purposes.

The export control provisions of the EAR are intended to serve the national security, foreign policy, nonproliferation of weapons of mass destruction, and other interests of the United States, which in many cases are reflected in international obligations or arrangements. Some controls are designed to restrict access to items subject to the EAR by countries or persons that might apply such items to uses inimical to U.S. interests. ***

PART 732 - [AMENDED]

4. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 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 15, 2012, 77 FR 49699 (August 16, 2012).

5. Section 732.1 is amended by adding paragraph (a)(3) to read as follows:

§ 732.1 Steps overview.

(a) * * *

(3) The general information in this part is intended to provide an overview of the steps to be taken for certain requirements in the EAR, though not all of them. Nothing in this part shall be construed as altering or affecting any other authority, regulation, investigation or other enforcement measure provided by or established under any other provision of federal law, including provisions of the EAR.

* * * * *

6. Section 732.2 is amended by revising paragraph (f) to read as follows:

§ 732.2 Steps regarding the scope of the EAR.

* * * * *

(f) Step 6: Direct product rule. Foreign items that are the direct product of U.S. technology, software, or plant or major component of a plant made from U.S. technology or software may be subject to the EAR if they meet the conditions of General Prohibition Three in § 736.2(b)(3) of the EAR. Direct products that are subject to the EAR may require a license to be exported from abroad or reexported to certain countries.

(1) Subject to the EAR. If your foreign item is captured by the direct product rule (General Prohibition Three), then the item is subject to the EAR and its export from abroad or reexport may require a license. You should next consider the steps regarding all other general prohibitions, license exceptions, and other requirements. If the item is not captured by General Prohibition Three, then you have completed the steps necessary to determine whether the item is subject to the EAR, and you may skip the remaining steps. As described in part 734 of the EAR, items outside the U.S. are subject to the EAR when they are:

(i) U.S.-origin commodities, software, or technology, unless controlled for export exclusively by another U.S. Federal agency or unless publicly available;

(ii) Foreign-origin commodities, software, or technology that are within the scope of General Prohibition Two (*De minimis* rules), or General Prohibition Three (Direct Product rule). However, such foreign-origin items are also outside the scope of the EAR if they are controlled for export exclusively by another U.S. Federal Agency or, if technology or software, are publicly available as described in paragraph (b) of this section.

(2) [Reserved]

* * * * *

7. Section 732.3 is amended by revising paragraphs (b)(1) and (f), to read as follows:

§ **732.3 Steps regarding the ten general prohibitions.**

* * * * *

(b) * * *

(1) You should classify your items "subject to the EAR" in the relevant entry on the CCL, and you may do so on your own without BIS assistance. The CCL includes a Supplement No. 4 to part 774 – Commerce Control List Order of Review. This supplement establishes the steps (i.e., the order of review) that should be followed in classifying items that are "subject to the EAR." The exporter, reexporter, or transferor is responsible for correctly classifying the items in a transaction, which may involve submitting a classification request to BIS. Failure to classify or have classified the item correctly does not relieve the person of the obligation to obtain a license when one is required by the EAR.

* * * * *

(f) Step 11: Direct product rule – General Prohibition Three. Items located outside the U.S. that are also produced outside the U.S. from U.S. technology or software or a plant or major component of a plant made from U.S. technology or software may be subject to the EAR if they meet the conditions of General Prohibition Three in § 736.2(b)(3) of the EAR. Direct products that are subject to the EAR may require a license to be exported from abroad or reexported to specified countries. If your foreign item is captured by the direct product rule (General Prohibition Three), then your export from abroad or reexport is subject to the EAR. You should next consider the steps regarding all other general prohibitions, license exceptions, and other requirements. If your item is not captured by General Prohibition Three, then your export from abroad or reexport is not subject to the EAR. You have completed the steps necessary to determine whether your transaction is subject to the EAR, and you may skip the remaining steps.

* * * * *

8. Section 732.4 is amended by:

a. Adding a sentence to the end of paragraph (b)(3)(iv); and

b. Revising paragraph (b)(7).

The addition and revision read as follows:

§ 732.4 Steps regarding using License Exceptions.

*****

(b) ***

(3) *****

(iv) *** If you are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and your item is classified in the "600 series," you should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports.

*****

(7) *Step 26: License applications.* (i) If you are going to file a license application with BIS, you should first review the requirements in part 748 of the EAR. Exporters, reexporters, and transferors should review the instructions concerning applications and required support documents prior to submitting an application for a license.

(ii) If you are going to file a license application with BIS for the export, reexport or in-country transfer for an aircraft controlled under ECCNs 9A610.a, § 740.20(g) permits you to request in the application that subsequent exports of the type of aircraft at issue be eligible for export under License Exception STA. The types of aircraft controlled under ECCN 9A610.a that have been determined to be eligible for License Exception STA pursuant to § 740.20(g) are identified in the License Exceptions paragraph of ECCN 9A610. Supplement No. 2 to part 748, paragraph (w) (License Exception STA eligibility requests), contains the instructions for such applications.

Note to paragraph (b)(7)(ii): If you intend to use License Exception STA, return to paragraphs (a) and then (b) of this section to review the Steps regarding the use of license exceptions.

9. Supplement No. 3 to part 732 is amended by adding paragraphs (b)13. and (b)14. to read as follows:

SUPPLEMENT NO. 3 TO PART 732 – BIS'S "KNOW YOUR CUSTOMER" GUIDANCE AND RED FLAGS

*****

(b) ***

13. You receive an order for "parts" or "components" for an end item in the "600 series." The requested "parts" or "components" may be eligible for License Exception STA, another authorization, or may not require a destination-based license requirement for the country in question. However, the requested "parts" or "components" would be sufficient to service one hundred of the "600 series" end items, but you "know" the country does not have those types of end items or only has two of those end items.

14. The customer indicates or the facts pertaining to the proposed export suggest that a "600 series" item may be reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR).

PART 734 -- [AMENDED]

10. The authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *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. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

11. Section 734.3 is amended by adding a note to paragraph (b)(1)(i) and paragraph (e) to read as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(b) * * *

(1) * * *

Note to paragraph (b)(1)(i): If a defense article or service is controlled by the U.S. Munitions List set forth in the International Traffic in Arms Regulations, its export and temporary import is regulated by the Department of State. The President has delegated the authority to control defense articles and services for purposes of permanent import to the Attorney General. The defense articles and services controlled by the Secretary of State and the Attorney General collectively comprise the U.S. Munitions List under the Arms Export Control Act (AECA). As the Attorney General exercises independent delegated authority to designate defense articles and services for purposes of permanent import controls, the permanent import control list administered by the Department of Justice has been separately labeled the U.S. Munitions Import List (27 CFR Part 447) to distinguish it from the list set out in the International Trade in Arms Regulations. In carrying out the functions delegated to the Attorney General pursuant to the AECA, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States.

* * * * *

(e) Items subject to the EAR may be exported, reexported, or transferred in country under licenses, agreements, or other approvals from the Department of State's Directorate of Defense Trade Controls pursuant to §§ 120.5(b) and 126.6(c) of the International Traffic in Arms

Regulations (ITAR) (22 CFR 120.5(b) and 126.6(c)). Exports, reexports, or in-country transfers not in accordance with the terms and conditions of a license, agreement, or other approval under § 120.5(b) of the ITAR requires separate authorization from BIS. Exports, reexports, or in-country transfers of items subject to the EAR under a Foreign Military Sales case that exceed the scope of § 126.6(c) of the ITAR or the scope of actions made by the Department of State's Office of Regional Security and Arms Transfers require separate authorization from BIS.

12. Section 734.4 is amended by redesignating paragraph (a)(6) as paragraph (a)(7) and by adding a new paragraph (a)(6) to read as follows:

§ 734.4 De minimis U.S. content.

(a) * * *

(6) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin "600 series" items when destined for a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR.

* * * * *

PART 736 -- [AMENDED]

13. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; 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 May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012);.

14. Section 736.2 is amended by revising paragraph (b)(3)(iii) and adding paragraphs (b)(3)(iv) through (vi) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) ***

(3) * * *

(iii) *Additional country scope of prohibition for "600 series" items*. You may not, except as provided in paragraphs (b)(3)(v) or (vi) of this section, reexport or export from abroad without a license any "600 series" item subject to the scope of this General Prohibition Three to a destination in Country Groups D:1, D:3, D:4, D:5 or E:1 (See Supplement No.1 to part 740 of the EAR).

(iv) *Product scope of "600 series" items subject to this prohibition*. This General Prohibition Three applies if a "600 series" item meets either of the following conditions:

(A) *Conditions defining direct product of technology or software for "600 series" items*. Foreign-made "600 series" items are subject to this General Prohibition Three if the foreign-made items meet both of the following conditions:

(*1*) They are the direct product of technology or software that is in the "600 series" as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR; and

(*2*) They are in the "600 series" as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(B) *Conditions defining direct product of a plant for "600 series" items*. Foreign-made "600 series" items are also subject to this General Prohibition Three if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(*1*) Such plant or component is the direct product of "600 series" technology or software as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR, and

(*2*) Such foreign-made direct products of the plant or component are in the "600 series" as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(v) "600 series" foreign-produced direct products of U.S. technology or software subject to this General Prohibition Three do not require a license for reexport or export from abroad to the new destination unless the same item, if exported from the U.S. to the new destination, would have been prohibited or made subject to a license requirement by part 742, 744, 746, or 764 of the EAR.

(vi) *License Exceptions.* Each license exception described in part 740 of the EAR supersedes this General Prohibition Three if all terms and conditions of a given exception are met and the restrictions in § 740.2 do not apply.

* * * * *

15. Supplement No. 1 to part 736 is amended by adding General Order No. 5, to read as follows:

SUPPLEMENT NO. 1 TO PART 736 GENERAL ORDERS

*****

General Order No. 5

General Order No. 5 of [INSERT DATE OF PUBLICATION OF FINAL RULE]; Authorization for Items the President Determines No Longer Warrant Control under the United States Munitions List (USML).

(a) *Continued use of DDTC approvals from the Department of State's Directorate of Defense Trade Controls (DDTC) for items that become subject to the EAR*. Items the President has determined no longer warrant control under the USML will become subject to the EAR as published final rules that transfer the items to the CCL become effective. DDTC licenses, agreements, or other approvals that contain items transitioning from the USML to the CCL and that are issued prior to the effective date of the final rule transferring such items to the CCL may continue to be used in accordance with the Department of State's final rule, *Amendments to the International Trade in Arms Regulations: Initial Implementation of Export Control Reform*, published on [INSERT DATE OF PUBLICATION] in the Federal Register.

(b) *BIS authorization*.

(1) Where continued use of DDTC authorization is not or is no longer an available option, or a holder of an existing DDTC authorization returns or terminates that authorization, any required authorization to export, reexport, or transfer (in-country) a transitioned item on or after the effective date of the applicable final rule must be obtained under the EAR. Following the publication date and prior to the effective date of a final rule moving an item from the USML to the CCL, applicants may submit license applications to BIS for authorization to export, reexport, or transfer (in-country) the transitioning item. BIS will process the license applications in accordance with § 750.4 of the EAR, hold the license application without action (HWA) if necessary, and issue a license, if approved, to the applicant no sooner than the effective date of the final rule transitioning the items to the CCL.

(2) Following the effective date of a final rule moving items from the USML to the CCL, exporters, reexporters, and transferors of such items may return DDTC licenses in accordance with § 123.22 of the ITAR or terminate Technical Assistance Agreements, Manufacturing License Agreements, or Warehouse and Distribution Agreements in accordance with § 124.6 of the ITAR and thereafter export, reexport, or transfer (in-country) such items under applicable provisions of the EAR, including any applicable license requirements. No transfer (in-country) may be made of an item exported under a DDTC authorization containing provisos or other limitations without a license issued by BIS unless (i) the transfer (in-country) is authorized by an EAR license exception and the terms and conditions of the License Exception have been satisfied, or (ii) no license would otherwise be required under the EAR to export or reexport the item to the new end user.

(c) *Prior commodity jurisdiction determinations*. If the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was not listed in a then existing "018" series ECCN, then the item is per se not within the scope of a "600 series" ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (i.e., the item was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDTC in an amendment to the CCL or to the USML, respectively.

(d) *Voluntary Self-Disclosure.* Parties to transactions involving transitioning items are cautioned to monitor closely their compliance with the EAR and the ITAR. Should a possible or actual violation of the EAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Self-Disclosure to the Office of Export Enforcement, in accordance with § 764.5 of the EAR. Permission from the

Office of Exporter Services, in accordance with § 764.5(f) of the EAR, to engage in further activities in connection with that item may also be necessary. Should a possible or actual violation of the ITAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Disclosure to DDTC, in accordance with § 127.12 of the ITAR. For possible or actual violations of both the EAR and ITAR, the person or persons involved are strongly encouraged to submit disclosures to both BIS and DDTC, indicating to each agency that they also have made a disclosure to the other agency.

PART 738 - [AMENDED]

16. The authority citation for 15 CFR 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); 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; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 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; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

17. Section 738.2 is amended by:

a. Revising paragraph (c);

b. In the introductory text of paragraph (d)(1), adding paragraphs "5:" and "6:" after paragraph "3:" and before paragraph "9:";

c. Adding paragraph (d)(1)(iv); and

d. Adding to paragraph (d)(2)(ii) a sentence immediately following the fifth sentence.

The revision and additions read as follows:

§ 738.2 Commerce Control List (CCL) structure.

*****

(c) *Order of review.* The CCL includes a Supplement No. 4 to part 774 – Commerce Control List Order of Review. This supplement establishes the steps (i.e., the order of review) that should be followed in classifying items that are "subject to the EAR."

(d) * * *

(1) * * *

5: Items warranting national security or foreign policy controls at the determination of the Department of Commerce.

6: "600 series" controls items because they are items on the Wassenaar Arrangement Munitions List (WAML) or formerly on the U.S. Munitions List (USML).

*****

(iv) Last two characters in a "600 series" ECCN. The last two characters of each "600 series" ECCN generally track the Wassenaar Arrangement Munitions List (WAML) categories for the types of items at issue. The WAML ML21 ("software") and ML22 ("technology") are, however, included in D ("software") and E ("technology") CCL product groups to remain consistent with the structure of the CCL.

(2) * * *

(ii) * * * In some "600 series" ECCNs, the STA license exception paragraph or a note to the License Exceptions section contains additional information on the availability of License Exception STA for that ECCN.

*****

PART 740 -- [AMENDED]

18. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; 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 15, 2012, 77 FR 49699 (August 16, 2012).

19. Section 740.1 is amended by adding a sentence to end of paragraph (a) to read as follows:

§ 740.1 Introduction.

* * * * *

(a) *Scope.* * * * Any license exception authorizing reexports also authorizes in-country transfers, provided the terms and conditions for reexports under that license exception are met.

* * * * *

20. Section 740.2 is amended by adding paragraphs (a)(12), (13), (15), and (16), and a note to paragraph (a) to read as follows:

§ 740.2 Restrictions on all license exceptions.

(a) * * *

(12) The item is described in a "600 series" ECCN and is destined to, shipped from, or was manufactured in a destination listed in Country Group D:5 (see Supplement No.1 to part 740 of the EAR), except that such items are eligible for License Exception GOV (§ 740.11(b)(2) of the EAR) unless otherwise restricted by that paragraph.

(13) “600 series” items that are controlled for missile technology (MT) reasons may not be exported, reexported, or transferred (in-country) under License Exception STA (§ 740.20 of the EAR). Items controlled under ECCNs 9D610.b, 9D619.b, 9E610.b, or 9E619.b or .c are not eligible for license exceptions except for License Exception GOV (§ 740.11(b)(2) of the EAR). The only license exceptions under which other “600 series” items may be exported to destinations not identified in Country Group D:5 (see Supplement No.1 to part 740 of the EAR) are the following:

(i) License Exception LVS (§ 740.3 of the EAR);

(ii) License Exception TMP (§ 740.9 of the EAR);

(iii) License Exception RPL (§ 740.10 of the EAR);

(iv) License Exception TSU (§ 740.13(a) or (b) of the EAR);

(v) License Exception GOV (§ 740.11(b) or (c) of the EAR); and

(vi) License Exception STA under § 740.20(c)(1) of the EAR if the “600 series” item at the time of export, reexport, or transfer (in-country):

(A) Is destined to one of the countries listed in Country Group A:5 or the United States;

(B) Is for the *ultimate* end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government, *or* the “development,” “production,” operation, installation,

maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States for *ultimate* end use by any such government agencies, the United States Government, or a person in the United States;

(C) Is transferred in compliance with the conditions on the use of License Exception STA contained in § 740.20(b)(2) of the EAR; and

(D) Is not precluded in the relevant ECCN from being exported under License Exception STA or until after the review and clearance requirements in § 740.20(g) of the EAR for ECCN 9A610.a end items have been satisfied.

*****

(15) If they are sold under a contract that includes $14,000,000 or more of "600 Series Major Defense Equipment" (as defined in § 772.1), exports of "600 series" items to a country not listed in Country Group A:5 (see Supplement No. 1 to Part 740 of the EAR), are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR).

(16) If they are sold under a contract that includes $25,000,000 or more of "600 Series Major Defense Equipment" (as defined in § 772.1), exports of "600 series" items to a country listed in Country Group A:5 (see Supplement No. 1 to Part 740 of the EAR), are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR).

Note to paragraph (a): Items subject to the exclusive export control jurisdiction of another agency of the U.S. Government may not be authorized by a license exception or any

other authorization under the EAR. If your item is subject to the exclusive jurisdiction of another agency of the U.S. Government, you must determine your export licensing requirements pursuant to the other agency's regulations. See § 734.3(b) and Supplement No. 3 to part 730 of the EAR for other U.S. Government departments and agencies with export control responsibilities.

* * * * *

21. Section 740.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

* * * * *

(a) *Temporary exports, reexports, and transfers (in-country).* License Exception TMP authorizes exports, reexports, and transfers (in-country) of items for temporary use abroad (including use in or above international waters) subject to the conditions specified in this paragraph (a). No item may be exported, reexported, or transferred (in-country) under this paragraph (a) if an order to acquire the item, such as a purchase order, has been received before shipment; with prior knowledge that the item will stay abroad beyond the terms of this License Exception; or when the item is for subsequent lease or rental abroad. The references to various countries and country groups in these TMP-specific provisions do not limit or amend the prohibitions in § 740.2 of the EAR on the use of license exceptions generally, such as for exports of "600 series" items to destinations in Country Group D:5.

(1) *Tools of trade.* Exports, reexports, or transfers (in-country) of commodities and software as tools of trade for use by the exporter or employees of the exporter may be made only to destinations other than Country Group E:1; for Sudan, see paragraph (a)(2) of this section. The tools of trade must remain under the "effective control" of the exporter or the exporter's

employee. Eligible items are usual and reasonable kinds and quantities of tools of trade for use in a lawful enterprise or undertaking of the exporter. Tools of trade include, but are not limited to, commodities and software as is necessary to commission or service items, provided that the commodity or software is appropriate for this purpose and that all items to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been lawfully exported, reexported, or transferred. Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. Software used as a tool of trade must be protected against unauthorized access. Examples of security precautions to help prevent unauthorized access include the following:

(i) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for activities that involve the transmission and use of the software authorized under this license exception;

(ii) Use of password systems on electronic devices that store the software authorized under this license exception; and

(iii) Use of personal firewalls on electronic devices that store the software authorized under this license exception.

(2) *Sudan: Tools of Trade.* (i) *Permissible users.* A non-governmental organization or an individual staff member, employee or contractor of such organization traveling to Sudan at the direction or with the knowledge of such organization may export, reexport, or transfer (in-country) under this paragraph (a)(2).

(ii) *Authorized purposes.* Any tools of trade exported, reexported, or transferred (in-country) under this paragraph must be used to support activities to implement the Doha

Document for Peace in Darfur; to provide humanitarian or development assistance in Sudan, to support activities to relieve human suffering in Sudan, or to support the actions in Sudan for humanitarian or development purposes; by an organization authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521 in support of its OFAC-authorized activities; or to support the activities to relieve human suffering in Sudan in areas that are exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412.

(iii) *Method of export and maintenance of control.* The tools of trade must accompany (either hand carried or as checked baggage) a traveler who is a permissible user of this provision or be shipped or transmitted to such user by a method reasonably calculated to assure delivery to the permissible user of this provision. The permissible user of this provision must maintain "effective control" of the tools of trade while in Sudan.

(iv) *Eligible items.* The only tools of trade that may be exported, reexported or transferred (in-country) to Sudan under this paragraph (a)(2) are:

(A) Commodities controlled under ECCNs 4A994.b and "software" controlled under ECCNs 4D994 or 5D992 to be used on such commodities. Software must either be loaded onto the commodities prior to export, reexport, or transfer (in-country) or be exported, reexported, or transferred (in-country) solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on the commodities while in Sudan;

(B) Telecommunications equipment controlled under ECCN 5A991 and "software" controlled under ECCN 5D992 to be used in the operation of such equipment. Software must be loaded onto such equipment prior to export or be exported or reexported solely for servicing or

in-kind replacement of legally exported or reexported software. All such software must remain loaded on such equipment while in Sudan;

(C) Global positioning systems (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(D) Commodities that are controlled under ECCN 5A992, including commodities that are installed with, or contained in, commodities in paragraphs (a)(2)(iv)(A) and (B) of this section and that remain installed with or contained in such commodities while in Sudan.

(3) *Tools of trade: temporary exports, reexports, and transfers (in-country) of technology by U.S. persons.* (i) This paragraph authorizes exports, reexports, and transfers (in-country) of usual and reasonable kinds and quantities of technology for use in a lawful enterprise or undertaking of a U.S. person to destinations other than Country Group E:1. Only U.S. persons or their employees traveling or on temporary assignment abroad may export, reexport, transfer (in-country) or receive technology under the provisions of this paragraph (a)(3).

(A) Because this paragraph (a)(3) does not authorize any new release of technology, employees traveling or on temporary assignment abroad who are not U.S. persons may only receive under TMP such technology abroad that they are already eligible to receive through a current license, a license exception other than TMP, or because no license is required;

(B) A U.S. employer of individuals who are not U.S. persons must demonstrate and document for recordkeeping purposes the reason that the technology is needed by such employees in their temporary business activities abroad on behalf of the U.S. person employer, prior to using this paragraph (a)(3). This documentation must be created and maintained in accordance with the recordkeeping requirements of part 762 of the EAR; *and*

(C) The U.S. person must retain supervision over the technology that has been authorized for export, reexport, or transfer (in-country) under these or other provisions.

(ii) The exporting, reexporting, or transferring party and the recipient of the technology must take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used overseas. Examples of security precautions to help prevent unauthorized access include the following:

(A) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for e-mail and other business activities that involve the transmission and use of the technology authorized under this license exception;

(B) Use of password systems on electronic devices that will store the technology authorized under this license exception; and

(C) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(iii) Technology authorized under these provisions may not be used for foreign production purposes or for technical assistance unless authorized by BIS.

(iv) Encryption technology controlled by ECCN 5E002 is ineligible for this license exception.

(4) *Kits consisting of replacement parts or components.* Kits consisting of replacement parts or components may be exported, reexported, or transferred (in-country) to all destinations except Country Group E:1 (see Supplement No. 1 to part 740 of the EAR), provided that:

(i) The parts and components would qualify for shipment under paragraph (a)(4)(iii) of this section if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts and components in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts and components returned (see Parts, Components, Accessories and Attachments in § 740.10(a) of this part).

(5) *Exhibition and demonstration.* This paragraph (a)(5) authorizes exports, reexports, and transfers (in-country) of commodities and software for exhibition or demonstration in all destinations except Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains "effective control" over the commodities and software while they are abroad. The commodities and software may not be used when abroad for more than the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site for longer than 120 days after installation and debugging, unless authorized by BIS. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BIS approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains "effective control" over their disposition. The export documentation for this type of transaction must show the exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(6) *Inspection and calibration.* Commodities to be inspected, tested, calibrated, or repaired abroad may be exported, reexported, and transferred (in-country) under this paragraph (a)(6) to all destinations except Country Group E:1.

(7) *Containers.* Containers for which another license exception is not available and that are necessary for shipment of commodities may be exported, reexported, and transferred (in-country) under this paragraph (a)(7). However, this paragraph does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a license exception or a license.

(8) *Assembly in Mexico.* Commodities may be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora) under this paragraph (a)(8), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(9) *News media.* (i) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may be temporarily exported or reexported for accredited news media personnel (i.e., persons with credentials from a news-gathering or reporting firm) to Cuba, North Korea, Sudan, or Syria (see Supplement No. 1 to part 740) if the commodities:

(A) Are retained under "effective control" of the exporting news-gathering firm in the country of destination;

(B) Remain in the physical possession of the news media personnel in the country of destination. The term physical possession for purposes of this paragraph (a)(9) means maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this paragraph (a)(9) from the United States, the exporter must email a copy of the packing list or similar identification of the exported commodities, to

bis.compliance@bis.doc.gov specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may check returns to assure that the provisions of this paragraph (a)(9) are being used properly.

(iii) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported, reexported, or transferred (in-country) under paragraph (a)(1), *tools of trade*, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(1), *tools of trade*, and (a)(9), *news media*, of this section do not preclude independent accredited contract personnel, who are under control of news-gathering firms while on assignment, from using these provisions, provided that the news gathering firm designates an employee of the contract firm to be responsible for the equipment.

(10) *Temporary exports to a U.S. person's foreign subsidiary, affiliate, or facility abroad.* Components, parts, tools, accessories, or test equipment exported by a U.S. person to a subsidiary, affiliate, or facility owned or controlled by the U.S. person, if the components, parts, tools, accessories, or test equipment are to be used to manufacture, assemble, test, produce, or modify items, provided that such components, parts, tools, accessories or test equipment are not transferred (in-country) or reexported from such subsidiary, affiliate, or facility, alone or incorporated into another item, without prior authorization by BIS.

(11) [Reserved].

(12) *U.S. persons.* For purposes of this § 740.9, a U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the

United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is authorized to do business in the United States).

(13) *Destinations.* Destination restrictions apply to temporary exports, reexports, or transfers (in-country) to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country specified in any authorizing paragraph of this section, or any national thereof.

(14) *Return or disposal of items.* All items exported, reexported, or transferred (in-country) under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, reexport, or transfer to the United States or other country from which the items were so transferred. Items not returned shall be disposed of or retained in one of the following ways:

(i) *Permanent export, reexport, or transfer (in-country).* An exporter or reexporter who wants to sell or otherwise dispose of the items abroad, except as permitted by this or other applicable provision of the EAR, must apply for a license in accordance with §§ 748.1, 748.4 and 748.6 of the EAR. (Part 748 of the EAR contains for more information about license applications.) The application must be supported by any documents that would be required in support of an application for export license for shipment of the same items directly from the United States to the proposed destination.

(ii) *Use of a license.* An outstanding license may also be used to dispose of items covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same items to the same new ultimate consignee or end-user.

(iii) *Authorization to retain item abroad beyond one year.* An exporter, reexporter or transferor who wants to retain an item at the temporary location beyond one year must apply for a license in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS at least 90 days prior to the expiration of the one-year period. The application must include the name and address of the exporter, the date the items were exported, a brief product description, and the justification for the extension. If BIS approves the extension, the applicant will receive authorization for an extension not to exceed four years from the date of initial export, reexport, or transfer. Any request for retaining the items abroad for a period exceeding four years must be made in accordance with the requirements of paragraph (a)(14)(i) of this section.

(b) *Exports of items temporarily in the United States.* (1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of this paragraph (b)(1) authorize export of items moving in transit through the United States under a Transportation and Exportation (T.&E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs and Border Protection Office.

(i) Items controlled for national security (NS) reasons, nuclear proliferation (NP) reasons, or chemical and biological weapons (CB) reasons may not be exported to Country Group D:1, D:2, or D:3 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:1 under this section.

(iii) The following may *not* be exported from the United States under this paragraph (b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BIS-645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The authorization to export in paragraph (b)(1) shall apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin, notwithstanding any other provision of this paragraph (b)(1).

(2) *Items imported for marketing, or for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for marketing, or for display at an exhibition or trade fair *and* were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:1 (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, D:2, or D:3 (see Supplement No. 1 to part 740) of items controlled for national security (NS) reasons, nuclear nonproliferation (NP) reasons, or chemical and biological weapons (CB) reasons, respectively.

(3) *Return of foreign-origin items.* A foreign-origin item may be returned under this license exception to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States, except that no foreign-origin items may be returned to Cuba.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs and Border Protection, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR parts 500-599).

NOTE 1 to paragraph (b): A commodity withdrawn from a bonded warehouse in the United States under a 'withdrawal for export' customs entry is considered as 'moving in transit'. It is not considered as 'moving in transit' if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

NOTE 2 to paragraph (b): Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.

NOTE 3 to paragraph (b): A shipment originating in Canada or Mexico that incidentally transits the United States en route to a delivery point in the same country does not require a license.

* * * * *

22. Section 740.10 is revised to read as follows:

§ 740.10 License Exception Servicing and replacement of parts and equipment (RPL)

License Exception RPL authorizes exports and reexports associated with one-for-one replacement of parts, components, accessories, and attachments. License Exception RPL also authorizes exports and reexports of certain items currently "subject to the EAR" to or for, or to replace, a defense article described in an export or reexport authorization issued under the authority of the Arms Export Control Act. It does not, however, authorize the export or reexport of defense articles subject to the ITAR, i.e., described on the United States Munitions List (22 CFR 121.1).

(a) *Parts, Components, Accessories, and Attachments.* (1) *Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts, components, accessories, and attachments for previously exported equipment or other end items.

(2) *One-for-one replacement of parts, components, accessories, or attachments.* (i) The terms *replacement parts, components, accessories, or attachments* as used in this section mean parts, components, accessories, or attachments needed for the immediate repair of equipment or other end items, including replacement of defective or worn parts or components. (These terms include 'subassemblies,' but do not include test instruments or operating supplies. The term '*subassembly'* means a number of parts or components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of 'subassemblies.') Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment or other end item upon which they are installed, are not deemed to be replacement parts, components, accessories, or attachments. For kits consisting of replacement parts or components,

consult § 740.9(a)(4) of this part.

(ii) Parts, components, accessories, and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments, respectively, contained in commodities that were: lawfully exported from the United States; lawfully reexported; or made in a foreign country incorporating authorized U.S.-origin parts, components, accessories, or attachments. "600 series" parts, components, accessories and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments that were: lawfully exported from the United States, or lawfully reexported. (For exports or reexports to the installed base in Libya, see § 764.7 of the EAR.) The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts, components, accessories, and attachments may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the existence of appropriate authority for the original transaction.

(iii) The parts, components, accessories, or attachments to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacements, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions to License Exception RPL.* (i) No replacement parts, components, accessories, or attachments may be exported to repair a commodity exported under a license or other authorization if that license or other authorization included a condition that any subsequent replacements may be exported only under a license.

(ii) No parts, components, accessories, or attachments may be exported to be held abroad as spares for future use. Replacements may be exported to replace spares that were authorized to accompany the export of equipment or other end items as those spares are used in the repair of

the equipment or other end item. This allows maintenance of the stock of spares at a consistent level as the parts, components, accessories, or attachments are used.

(iii) No parts, components, accessories, or attachments may be exported to any destination, except the countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End Use Restrictions in § 744.2(a)), if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an "aircraft" (as defined in § 772.1 of the EAR) or is controlled for national security (NS) reasons.

(v) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) if the commodity to be repaired is explosives detection equipment classified under ECCN 2A983 or related software classified under ECCN 2D983.

(vi) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) if the commodity to be repaired is concealed object detection equipment classified under ECCN 2A984 or related software classified under ECCN 2D984.

(vii) The conditions described in this paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments do not apply to reexports to a foreign country of parts, components accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the license exceptions in this part or the exceptions in § 734.4 of the EAR (*De minimis* U.S. content).

(viii) Parts, components, accessories, and attachments classified in "600 Series" ECCNs may not be exported or reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to this part).

(4) *Reexports.* (i) Parts, components, accessories, and attachments exported from the United States may be reexported to a new country of destination, provided that the conditions established in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts, components, accessories, or attachments shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be lawfully used, and that either before or promptly after reexport of the replacement parts, components, accessories, or attachments, the replaced commodities and software are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to this part) that shipped the replacement parts.

(ii) The conditions described in paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments (excluding "600 series" ECCNs) do not apply to reexports to a foreign country of parts, components, accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or

the foreign-origin product is not subject to the EAR pursuant to § 734.4.

(b) *Servicing and replacement*. (1) *Scope.* The provisions of this paragraph (b) authorize the export and reexport to any destination, except for "600 series" items to destinations identified in Country Group D:5 (see Supplement No. 1 to this part) or otherwise prohibited under the EAR, of commodities and software that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition*. "Servicing" as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics (e.g., the accuracy, capability, performance, or productivity) of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts, components, accessories, or attachments necessary to its repair and may be accompanied by any spare parts, components, tools, accessories, attachments or other items sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the People's Republic of China (PRC)*. Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People's Republic of China (PRC)) (see Supplement No. 1 to this part) that are sent to the United States or a foreign party for servicing may be returned to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end use and the end user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) *Terrorist supporting countries*. No repaired commodity or software may be exported or reexported to countries in Country Group E:1 (see Supplement No. 1 to this part).

(3) Replacements for defective or unacceptable U.S.-origin equipment.

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software is "subject to the EAR" (see § 734.2(a) of the EAR).

(B) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BIS or an authorization, e.g., a license or exemption, issued under the authority of the Arms Export Control Act.

(C) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(D) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally authorized, e.g., under a license, license exception or an exemption, for export or reexport.

(E) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part), or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(F) Commodities or software "subject to the EAR" and classified in "600 Series" ECCNs may not be exported or reexported to a destination identified in Country Group D:5 (see Supplement No. 1 to this part).

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1 (see Supplement No. 1 to this part):

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The

destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used. See § 764.7 of the EAR for exports or reexports to the installed base in Libya.

(c) *Special recordkeeping requirements: ECCNs 2A983, 2A984, 2D983 and 2D984, and "600 Series" ECCNs.* (1) In addition to the other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair, replace, or service previously lawfully exported or reexported items classified under ECCNs 2A983, 2A984, 2D983 and 2D984 or a "600 Series" ECCN. The following information must be maintained for each such export or reexport transaction:

(i) A description of the item replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of item replaced;

(iv) Location of the item replaced, repaired or serviced;

(v) The name and address of those who received the items for replacement, repair, or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. Records that must be included in the

annual or semi-annual reports of exports and reexports of "600 Series" items under the authority of License Exception RPL are described in § 743.4 and § 762.2(b)(4), (b)(47) and (b)(48).

23. Section 740.11 is revised to read as follows:

§ 740.11 Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel; agencies of cooperating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

(a) *International Safeguards.* (1) *Scope.* The International Atomic Energy Agency (IAEA) is an international organization that establishes and administers safeguards, including Additional Protocols, designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes. European Atomic Energy Community **(**Euratom) is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes. This paragraph (a) authorizes exports and reexports of commodities or software to the IAEA and Euratom, and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria or its field offices in Toronto, Ontario, Canada or in Tokyo, Japan for official international safeguards use.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use.

(iii) Commodities or software consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities or software and returns the commodities or software to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by persons under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in § 744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may be disposed of by destruction or by reexport or transfer in accordance with the EAR.

(2) *Restrictions.* (i) Items on the Sensitive List (see Supplement No. 6 to part 774 of the EAR) may not be exported, reexported, or transferred (in-country) under this paragraph (a), *except* to the countries listed in Country Group A:5 (See Supplement No.1 to part 740 of the EAR).

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774 of the EAR) may not be exported, reexported, or transferred (in-country) under this paragraph (a).

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may not be exported, reexported, or transferred (in-country) under this paragraph (a). See § 740.17 of the EAR (License Exception ENC) for possible alternative license exception authorization.

(iv) Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1(see Supplement No. 1 to this part) may not physically or computationally access computers that have been enhanced by "electronic assemblies," which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b.

(v) "600 series" items may not be exported or reexported under this paragraph (a), *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part).

(b) *United States Government.* (1) *Scope.* The provisions of this paragraph (b) authorize exports, reexports, and transfers (in-country) to personnel and agencies of the U.S. Government and certain exports by the Department of Defense. "Agency of the U.S. Government" includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-governmental national or international agencies, except as provided in paragraph (b)(2)(i) of this section for U.S. representatives to these organizations.

(2) *Eligibility.* (i) *Items for personal use by personnel and agencies of the U.S. Government*. This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and household employees. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) *Exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government*. This paragraph authorizes exports, reexports, and transfers of items when made by or consigned to a department or agency of the U.S. Government solely for its official use or for carrying out any U.S. Government program with foreign governments or international organizations that is authorized by law and subject to control by the President by other means. This paragraph does not authorize a department or agency of the U.S. Government to make any export, reexport, or transfer that is otherwise prohibited by other administrative provisions or by statute. Contractor support personnel of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. 'Contractor support personnel' for the purpose of this provision means those persons who provide administrative, managerial, scientific or technical support under contract to a U.S. Government department or agency (e.g., contractor employees of Federally Funded Research Facilities or Systems Engineering and Technical Assistance contractors). This authorization is not available when a department or agency of the U.S. Government acts as a transmittal agent on behalf of a non-U.S. Government person, either as a convenience or in satisfaction of security requirements.

(iii) *Exports, reexports, and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government*.

(A) This paragraph authorizes exports, reexports, and transfers (in-country) of items solely for use by a department or agency of the U.S. Government, when:

(*1*) The items are destined to a U.S. person; and

(*2*) The item is exported, reexported, or transferred (in-country) pursuant to a contract between the exporter and a department or agency of the U.S. Government;

(B) This paragraph authorizes exports, reexports, and transfers (in-country) of items to implement or support any U.S. Government cooperative program, project, agreement, or arrangement with a foreign government or international organization or agency that is authorized by law and subject to control by the President by other means, when:

(*1*) The agreement is in force and in effect, or the arrangement is in operation;

(*2*) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, agreement, or arrangement, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country) (including any restrictions on the foreign release of technology);

(*3*) The exporter, reexporter, or transferor has a contract with a department or agency of the U.S. Government for the provision of the items in furtherance of the agreement, or arrangement; and

(*4*) The items being exported, reexported, or transferred (in-country) are not controlled for Chemical Weapons Convention (CW) or proliferation of chemical and biological weapons (CB) reasons;

(C) This paragraph authorizes the temporary export, reexport, or transfer (in-country) of an item in support of any foreign assistance or sales program authorized by law and subject to the control of the President by other means, when:

(*1*) The item is provided pursuant to a contract between the exporter, reexporter, or transferor and a department or agency of the U.S. Government; and

(*2*) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country) (including any restrictions on the foreign release of technology);

(D) This paragraph authorizes the export, reexport, or transfer of commodities or software at the direction of the U.S. Department of Defense for an end use in support of an Acquisition and Cross Servicing Agreement (ACSA), when:

(*1*) The ACSA is between the U.S. Government and a foreign government or an international organization and is in force and in effect;

(*2*) The exporter, reexporter, or transferor has a contract with the department or agency of the U.S. government in furtherance of the ACSA; and

(*3*) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the ACSA, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end-users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country);

(E) This paragraph authorizes the export, reexport, or transfer (in-country) of Government Furnished Equipment (GFE) made by a U.S. Government contractor, when:

(*1*) The GFE will not be provided to any foreign person;

(*2*) The export, reexport, or transfer (in-country) is pursuant to a contract with a department or agency of the U.S. Government; and

(*3*) Shipment documents must include the following statement: "Property of [insert U.S. Government department, agency, or service]. Property may not enter the trade of the country to which it is shipped. Authorized under License Exception GOV. U.S. Government point of contact: [insert name and telephone number]."

(F) *Electronic Export Information*. Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for any export made pursuant to paragraph (b)(iii) of this section. The EEI must identify License Exception GOV as the authority for the export and indicate that the applicant has received the relevant documentation from the contracting U.S. Government department, agency, or service. The Internal Transaction Number assigned by AES must be properly annotated on shipping documents (bill of lading, airway bill, other transportation documents, or commercial invoice).

(G) The exporter, reexporter, or transferor must obtain an authorization, if required, before any item previously exported, reexported, or transferred (in-country) under this paragraph is resold, transferred, reexported, transshipped, or disposed of to an end user for any end use, or to any destination other than as authorized by this paragraph (*e.g.*, property disposal of surplus items outside of the United States), unless:

(*1*) The transfer is pursuant to a grant, sale, lease, loan, or cooperative project under the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended; or

(*2*) The item has been destroyed or rendered useless beyond the possibility of restoration.

(iv) *Items exported at the direction of the U.S. Department of Defense.* This paragraph authorizes items to be exported, reexported, or transferred (in-country) pursuant to an official written request or directive from the U.S. Department of Defense.

(v) This paragraph authorizes items sold, leased, or loaned by the U.S. Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961 when the items are delivered to representatives of such a country or organization in the United States and exported, reexported, or transferred on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service.

(vi) This paragraph authorizes transfer of technology in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for such technology and the technology is not "development" or "production" technology for "600 series" items.

(c) *Cooperating Governments.* (1) *Scope.* The provisions of this paragraph (c) authorize exports reexports, and transfers (in-country) of the items listed in paragraph (c)(2) of this section to agencies of cooperating governments. "Agency of a cooperating government" includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to this part) and the national governments of Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland and Taiwan.

(2) *Eligibility.* **(**i) *Items for official use within national territory by agencies of cooperating governments.* This license exception is available for all items consigned to and for the official use of any 'agency of a cooperating government' within the territory of any cooperating government, except items excluded by paragraph (c)(3) of this section.

(ii) *Diplomatic and consular missions of a cooperating government*. This license exception is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to this part), except items excluded by paragraph (c)(3) of this section.

(3) *Exclusions.* The following items may not be exported, reexported, or transferred (in-country) under this paragraph (c):

(i) Items on the Sensitive List (see Supplement No. 6 to part 774 of the EAR), *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part);

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774 of the EAR);

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 (see § 740.17 of the EAR for License Exception ENC);

(iv) Regional stability items controlled under ECCNs 6A002.a.1.c, 6E001 "technology" according to the General Technology Note for the "development" of equipment in 6A002.a.1.c, and 6E002 "technology" according to the General Technology Note for the "production" of equipment in 6A002.a.1.c.;

(v) "600 series" items, *except* to the countries listed in Country Group A:5 (see Supplement No. 1 to this part);

(vi) Items controlled for nuclear nonproliferation (NP) reasons;

(vii) Items listed as not eligible for License Exception STA in § 740.20(b)(2)(ii) of the EAR.

(d) *International inspections under the Chemical Weapons Convention (CWC or Convention).*

(1) The Organization for the Prohibition of Chemical Weapons (OPCW) is an international organization that establishes and administers an inspection and verification regime under the Convention designed to ensure that certain chemicals and related facilities are not diverted from

peaceful purposes to non-peaceful purposes. This paragraph (d) authorizes exports and reexports to the OPCW and exports and reexports by the OPCW for official international inspection and verification use under the terms of the Convention as follows:

(i) Commodities and software consigned to the OPCW at its headquarters in The Hague for official international OPCW use for the monitoring and inspection functions set forth in the Convention, and technology relating to the maintenance, repair, and operation of such commodities and software. The OPCW must maintain "effective control" of such commodities, software and technology.

(ii) Controlled technology relating to the training of the OPCW inspectorate.

(iii) Controlled technology relating to a CWC inspection site, including technology released as a result of:

(A) Visual inspection of U.S.-origin equipment or facilities by foreign nationals of the inspection team;

(B) Oral communication of controlled technology to foreign nationals of the inspection team in the U.S. or abroad; and

(C) The application to situations abroad of personal knowledge or technical experience acquired in the U.S.

(2) *Exclusions.* The following items may not be exported or reexported under the provisions of this paragraph (d):

(i) Inspection samples collected in the U.S. pursuant to the Convention;

(ii) Commodities and software that are no longer in OPCW official use. Such items must be transferred in accordance with the EAR.

(iii) "600 series" items, *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part).

(3) *Confidentiality.* The application of the provisions of this paragraph (d) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and transfer of U.S. goods and services.

(4) *Restrictions.* Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1 (see Supplement No. 1 to this part) may not physically or computationally access computers that have been enhanced by "electronic assemblies," which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b.

(e) *International Space Station (ISS).* (1) *Scope.* The ISS is a research facility in a low-Earth orbit approximately 190 miles (350 km) above the surface of the Earth. The ISS is a joint project among the space agencies of the United States, Russia, Japan, Canada, Europe and Italy. This paragraph (e) authorizes exports and reexports required on short notice of certain commodities subject to the EAR that are classified under ECCN 9A004 to launch sites for supply missions to the ISS.

(2) *Eligible commodities.* Any commodity subject to the EAR that is classified under ECCN 9A004 and that is required for use on the ISS on short notice.

NOTE 1 to paragraph (e)(2): This license exception is not available for the export or reexport of "parts," "components," "accessories," and "attachments" to overseas manufacturers for the purpose of incorporation into other items destined for the ISS.

NOTE 2 to paragraph (e)(2): For purposes of this paragraph (e), 'short notice' means the exporter is required to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. 'Hatch-closure (final stowage)' means the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. That notification must be kept in accordance with paragraph (e)(8) of this section and the Recordkeeping requirements in part 762 of the EAR.

(3) *Eligible destinations.* Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

(4) *Requirement for commodities to be launched on an eligible space launch vehicle (SLV).* Only commodities that will be delivered to the ISS using United States, Russian, ESA (French), or Japanese space launch vehicles (SLVs) are eligible under this authorization. Commodities to be delivered to the ISS using SLVs from any other countries are excluded from this authorization.

(5) *Authorizations.* (i) *Authorization to retain commodity at or near launch site for up to six months*. If there are unexpected delays in a launch schedule for reasons such as mechanical failures in a launch vehicle or weather, commodities exported or reexported under this paragraph (e) may be retained at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned to the exporter or

reexporter, or be the subject of an individually validated license request submitted to BIS to authorize further disposition of the commodities.

(ii) *Authorization to retain commodity abroad at launch country beyond six months*. If, after the commodity is exported or reexported under this authorization, a delay occurs in the launch schedule that would exceed the 6-month deadline in paragraph (e)(5)(i) of this section, the exporter or reexporter or the person in control of the commodities in the launch country may request a one-time 6-month extension by submitting written notification to BIS requesting a 6-month extension and noting the reason for the delay. If the requestor is not contacted by BIS within 30 days from the date of the postmark of the written notification and if the notification meets the requirements of this subparagraph, the request is deemed granted. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter or reexporter, the name and address of the person who has control of the commodity, the date the commodities were exported or reexported, a brief product description, and the justification for the extension. To retain a commodity abroad beyond the 6-month extension period, the exporter, reexporter or person in control of the commodity must request authorization by submitting a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 6-month extension period.

(iii) *Items not delivered to the ISS because of a failed launch*. If the commodities exported or reexported under this paragraph (e) of this section are not delivered to the ISS because a failed launch causes the destruction of the commodity prior to its being delivered, exporters and reexporters must make note of the destruction of the commodities in accordance with the recordkeeping requirements under paragraph (e)(8)(ii) of this section and part 762 of the EAR.

(6) *Reexports to an alternate launch country.* If a mechanical or weather related issue causes a change from the scheduled launch country to another foreign country after a commodity was exported or reexported, then that commodity may be subsequently reexported to the new scheduled launch country, provided all of the terms and conditions of paragraph (e) of this section are met, along with any other applicable EAR provisions. In such instances, the 6-month time limitation described in paragraph (e)(5)(i) of this section would start over again at the time of the subsequent reexport transaction. Note that if the subsequent reexport may be made under the designation No License Required (NLR) or pursuant to an authorization under the EAR, a reexporter does not need to rely on the provisions contained in this paragraph (e).

(7) *Eligible recipients***.** Only persons involved in the launch of commodities to the ISS may receive and have access to commodities exported or reexported pursuant to this paragraph (e), except that:

(i) No commodities may be exported, reexported, or transferred (in-country) under paragraph (e) to any national of an E:1 country (see Supplement No. 1 to this part), and

(ii) No person may receive commodities authorized under paragraph (e) of this section who is subject to an end-user or end-use control described in part 744 of the EAR, including the entity list in Supplement No. 4 to part 744.

(8) *Recordkeeping requirements.* Exporters and reexporters must maintain records regarding exports or reexports made using this paragraph (e) of this section as well as any other applicable recordkeeping requirements under part 762 of the EAR.

(i) Exporters and reexporters must retain a record of the initial written notification they received requesting these commodities be supplied on short notice for a supply mission to the ISS,

including the date the exporter or reexporter received complete documentation (i.e., the day on which the 45-day clock begins).

(ii) Exporters and reexporters must maintain records of the date of any exports or reexports made using this paragraph (e) and the date on which the commodities were launched into space for delivery to the ISS. If the commodities are not delivered to the ISS because of a failed launch whereby the item is destroyed prior to being delivered to the ISS, this must be noted for recordkeeping purposes.

(iii) The return or destruction of defective or worn out parts or components is not required. However, if defective or worn out parts or components originally exported or reexported pursuant to this paragraph (e) are returned from the ISS, then those parts and components may be either: returned to the original country of export or reexport; destroyed; or reexported or transferred (in-country) to a destination that has been designated by NASA for conducting a review and analysis of the defective or worn part or component. Documentation for this activity must be kept for recordkeeping purposes. No commodities that are subject to the EAR may be returned, under the provisions of this paragraph, to a country listed in Country Group E:1 (see Supplement No. 1 to this part) or to any person if that person is subject to an end-user or end-use control described in part 744 of the EAR. For purposes of paragraph (e) of this section, a 'defective or worn out' part or component is a part or component that no longer performs its intended function.

24. Section 740.13 is amended by adding a sentence to the end of paragraph (a)(1), redesignating paragraph (f) as paragraph (h), and by adding new paragraphs (f) and (g) to read as follows:

§ 740.13 Technology and Software -- Unrestricted (TSU).

(a) * * * This paragraph (a) authorizes training, provided the training is limited to the operation, maintenance and repair technology identified in this paragraph.

* * * * *

(f) *Release of technology and source code in the U.S. by U.S. universities to their bona fide and full time regular employees*. (1) *Scope.* This paragraph authorizes the release in the United States of "technology" and source code that is subject to the EAR by U.S. universities to foreign nationals who are their bona fide and full time regular employees.

(2) *Eligible foreign nationals (i.e., bona fide and full time regular employees of U.S. universities).* This exception is only available if:

(i) The employee's permanent residence throughout the period of employment is in the U.S.;

(ii) The employee is not a national of a destination listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR); and

(iii) The university informs the individual in writing that the "technology" or source code may not be transferred to other foreign nationals without prior U.S. Government authorization. The obligation not to transfer technology extends beyond the tenure of employment at the university.

(3) *Regular employee.* A regular employee means:

(i) An individual permanently and directly employed by the university; or

(ii) An individual in a long-term contractual relationship with the university where the individual works at the university's facilities; works under the university's direction and control; works full time and exclusively for the university; executes nondisclosure certifications for the university; and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing

agency would not have access to any controlled technology (other than where specifically authorized by a license or where a license exception is available).

(4) *Exclusions*. (i) No "technology" or source code may be released to a foreign national who is subject to a part 744 end-use or end-user control or where the release would otherwise be inconsistent with part 744; and

(ii) No "technology" controlled for "EI" (encryption) reasons or "technology" or source code controlled for "MT" (Missile Technology) reasons may be released under this paragraph (f).

(g) *Copies of technology previously authorized for export to same recipient.* This paragraph authorizes the export, reexport, or transfer (in-country) of copies of technology previously authorized for export, reexport, or transfer (in-country) to the same recipient. This paragraph also authorizes the export, reexport, or transfer (in-country) of revised copies of such technology provided the following three conditions are met:

(1) The item that the technology pertains to is the identical item;

(2) The revisions to the technology are solely editorial and do not add to the content of technology previously exported, reexported, or transferred (in-country) or authorized for export, reexport, or transfer (in-country) to the same recipient; and

(3) The exporter, reexporter, or transferor has no reason to believe the same recipient has used the technology in violation of the original authorization.

* * * * *

25. Section 740.20 is amended by:

a. Revising paragraph (a);

b. Removing the phrase "destinations indicated in paragraph (c)(1) of this section" and adding in its place "destinations indicated in Country Group A:5 (See Supplement No.1 to this part)" in paragraph (b)(2)(vi);

c. Adding paragraph (b)(3);

d. Revising paragraphs (c)(1) and (2);

e. Adding three sentences immediately following the first sentence of paragraph (d)(2);

f. Removing the word "and" that follows the semicolon at the end of paragraph (d)(2)(v);

g. Adding paragraphs (d)(2)(vi), (d)(2)(vii)) and (g); and

h. Removing the phrase "country listed in paragraph (c)(1) or (c)(2) of this section" and adding in its place "country listed in Country Group A:5 or A:6 (See Supplement No.1 to this part)" in paragraph (d)(4).

The revisions and additions read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

(a) *Introduction*. This section authorizes exports, reexports, and transfers (in-country), including releases within a single country of software source code and technology to foreign nationals, in lieu of a license that would otherwise be required pursuant to part 742 of the EAR.

(b) * * *

(3) *Limitations on the Use of STA that are Specific to "600 series" Items*. (i) License Exception STA may not be used for any "600 series" items identified in the relevant ECCN as not being eligible for STA.

(ii) License Exception STA may be used to export, reexport, and transfer (in-country) "600 series" items to persons, whether non-governmental or governmental, if they are in and, for natural persons, nationals of a country listed in Country Group A:5 (See Supplement No.1 to part 740 of the EAR) or the United States and if:

(A) The *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5, or the United States Government;

(B) For the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States that will *ultimately* be used by any such government agencies, the United States Government, or a person in the United States; or

(C) The United States Government has issued a license that authorizes the use of License Exception STA, the license is in effect, and the consignee provides a copy of such authorization to the exporter.

(iii) License Exception STA may not be used to export, reexport, or transfer (in-country) end items described in ECCN 9A610.a until after BIS has approved their export under STA under the procedures set out in § 740.20(g).

(iv) License Exception STA may not be used to export, reexport, or transfer (in-country) "600 series" items if they are "600 Series Major Defense Equipment" and the value of such items in the contract requiring their export exceeds $25,000,000.

(c) *Authorizing paragraphs* —(1) *Multiple reasons for control.* Exports, reexports, and transfers (in-country) in which the only applicable reason(s) for control is (are) national security (NS);

chemical or biological weapons (CB); nuclear nonproliferation (NP); regional stability (RS); crime control (CC), and/or significant items (SI) are authorized for destinations in or nationals of Country Group A:5 (See Supplement No.1 to part 740 of the EAR).

Note to paragraph (c)(1). License Exception STA under § 740.20(c)(1) may be used to authorize the export, reexport, or transfer (in-country) of "600 series" items only if the purchaser, intermediate consignee, ultimate consignee, and end user have previously been approved on a license issued by BIS or the Directorate of Defense Trade Controls (DDTC), U.S. Department of State.

(2) *Controls of lesser sensitivity.* Exports, reexports and transfers (in-country) in which the only applicable reason for control is national security (NS) and the item being exported, reexported or transferred (in-country) is not designated in the STA paragraph in the License Exception section of the ECCN that lists the item are authorized for destinations in or nationals of Country Group A:6 (See Supplement No.1 to this part).

* * * * *

(d) * * *

(1) * * *

(2) *Prior consignee statement.* * * * Paragraphs (d)(2)(i) through (v) of this section are required for all transactions. In addition, paragraph (d)(2)(vi) is required for all transactions in "600 series" items and paragraph (vii) of this section is required for transactions in "600 series" items if the consignee is not the government of a country listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR).

* * * * *

(vi) Understands that License Exception STA may be used to export, reexport, and transfer (in-country) "600 series" items to persons, whether non-governmental or governmental, only if they are in and, for natural persons, nationals of a country listed in Country Group A:5 (See Supplement No.1 to part 740 of the EAR) or the United States and if:

(A) The *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government;

(B) For the "development," "production," operation installation, maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States that will *ultimately* be used by any such government agencies, the United States Government, or a person in the United States; or

(C) A United States Government license authorizes the use of License Exception STA, the license is in effect, and is attached to the consignee statement.

(vii) Agrees to permit a U.S. Government end-use check with respect to the items.

* * * * *

(g) *License Exception STA eligibility requests for "600 series" end items*. (1) *Applicability.* Any person may request License Exception STA eligibility for aircraft described in ECCN 9A610.a.

(2) *Required information and manner of requests.* Requests for License Exception STA eligibility must be made via the BIS Simplified Network Application Process –Redesign (SNAP-R) system unless BIS authorizes submission via the paper BIS-748-P Multipurpose Application form. For situations in which BIS 748-P submissions may be authorized, see § 748.1(d)(1). For required information specific to License Exception STA eligibility requests, see Supplement No

1 to part 748, Blocks 5 and 6 and Supplement No. 2 to part 748, paragraph (w). In SNAP-R the work type for these applications is "Export."

(3) *Timeline for USG review*. The Departments of Commerce, Defense and State will review License Exception STA eligibility requests in accordance with the timelines set forth in Executive Order 12981 and § 750.4. If the License Exception STA request is approved, the process outlined in paragraph (g)(5)(i) of this section is followed.

(4) *Review criteria*. The Departments of Commerce, Defense and State will determine whether the "end item" is eligible for this license exception based on an assessment of whether it provides a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. If the "end item" does not provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies, the Departments will determine that License Exception STA is available unless an overarching foreign policy rationale for restricting STA availability can be articulated. Consensus among the Departments is required in order for an "end item" to be eligible for License Exception STA. Such determinations are made by the departments' representatives to the Advisory Committee on Export Policy (ACEP), or their designees.

(5) *Disposition of License Exception STA eligibility requests*. (i) *Approvals*. If the request for STA eligibility is approved, the applicant will receive notification from BIS authorizing the use of the additional License Exception STA for the specific end items requested. This will be in the form of a notice generated by SNAP-R to the applicant. Applicants who receive an approval notification may share it with companies affiliated with them, such as a branch or distributor, and may also take steps to make it public (e.g., on their website) if the applicants so wish. In addition, BIS will add a description of the approved end item in the relevant ECCN and in an

online table posted on the BIS website, which removes the restriction on the use of License Exception STA for the end item identified in the approved request. BIS will publish, as needed, a final rule adding this license exception eligibility to the EAR for that ECCN entry or end item.

(ii) Denials. If the STA eligibility request is not approved, the applicant will receive written notification from BIS. This will be in the form of a notice generated by SNAP-R to the applicant. Applicants may re-submit STA eligibility requests at any time.

26. Supplement No. 1 to part 740, Country Group A is amended by:

a. Adding two columns A:5 and A:6 to the right of column A:4; and

b. Adding rows for: Albania, Israel, Singapore, and Taiwan, in alphabetic order, to read as follows:

		[A:5]	**[A:6]**
Albania	*******		X
Argentina		X	
Australia		X	
Austria[1]		X	
Belarus			
Belgium		X	
Brazil			
Bulgaria		X	
Canada		X	
Croatia		X	

Cyprus		
Czech Republic	X	
Denmark	X	
Estonia	X	
Finland[1]	X	
France	X	
Germany	X	
Greece	X	
Hong Kong[1]		X
Hungary	X	
Iceland	X	
India		X
Ireland[1]	X	
Israel		X
Italy	X	
Japan	X	
Kazakhstan		
Korea, South[1]	X	
Latvia	X	
Lithuania	X	
Luxembourg	X	
Malta		X
Netherlands	X	
New Zealand[1]	X	

Norway		X	
Poland		X	
Portugal		X	
Romania		X	
Russia			
Singapore			X
Slovakia		X	
Slovenia		X	
South Africa			X
Spain		X	
Sweden[1]		X	
Switzerland[1]		X	
Taiwan			X
Turkey		X	
Ukraine			
United Kingdom		X	
United States			

[1] Cooperating Countries.

27. Supplement No. 1 to part 740, Country Group D is amended by:

a. Adding column D:5 to the right of column D:4; and

b. Adding rows, in alphabetical order, for: Congo (Democratic Republic of), Cote d'Ivoire, Cyprus, Eritrea, Fiji, Haiti, Liberia, Somalia, Sri Lanka, Sudan, Venezuela, and Zimbabwe, to read as follows:

Country	*******	[D:5] U.S. Arms Embargoed Countries [1]
Afghanistan		X
Armenia		
Azerbaijan		
Bahrain		
Belarus		X
Burma		X
Cambodia		
China (PRC)		X
Congo, Democratic Republic of		X
Cote d'Ivoire		X
Cuba		X
Cyprus		X
Egypt		
Eritrea		X
Fiji		X
Georgia		
Haiti		X
Iran		X
Iraq		X
Israel		
Jordan		
Kazakhstan		

Korea, North	X
Kuwait	
Kyrgyzstan	
Laos	
Lebanon	X
Liberia	X
Libya	X
Macau	
Moldova	
Mongolia	
Oman	
Pakistan	
Qatar	
Russia	
Saudi Arabia	
Somalia	X
Sri Lanka	X
Sudan	X
Syria	X
Taiwan	
Tajikistan	
Turkmenistan	
Ukraine	
United Arab Emirates	

Uzbekistan		
Venezuela		X
Vietnam		X
Yemen		
Zimbabwe		X

[1] *Note to Country Group D:5:* Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the Federal Register. The list of arms embargoed destinations in this paragraph is drawn from 22 CFR § 126.1 and State Department Federal Register notices related to arms embargoes (compiled at http://www.pmddtc.state.gov/embargoed_countries/index.html) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this paragraph and the countries identified by the State Department as subject to a U.S. arms embargo (in the Federal Register), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

PART 742 -- [AMENDED]

28. 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.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of

August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

29. Section 742.4 is amended by revising paragraph (b)(1), to read as follows:

§ 742.4 National security.

*****

(b) *Licensing policy.* (1)(i) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1.

(ii) When destined to a country listed in Country Group D:5 in Supplement No. 1 to Part 740 of the EAR, however, items classified under "600 series" ECCNs will also be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR).

*****

30. Section 742.6 is amended by:

a. Revising paragraph (a)(1);

b. Removing the phrase "9A018.a and .b, 9D018 (only software for the "use" of commodities in ECCN 9A018.a and .b), and 9E018 (only technology for the "development", "production", or "use" of commodities in 9A018.a and .b)" and adding in its place "9A018.b, 9D018 (only software for the "use" of commodities in ECCN 9A018.b), and 9E018 (only technology for the "development", "production", or "use" of commodities in 9A018.b)" at the end of paragraph (a)(4)(i); and

c. Revising paragraph (b)(1).

The revisions read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 license requirements in general.* A license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include RS Column 1 in the Country Chart column of the "License Requirements" section. Transactions described in paragraphs (a)(2) or (3) of this section are subject to the RS Column 1 license requirements set forth in those paragraphs rather than the license requirements set forth in this paragraph (a)(1).

* * * * *

(b) *Licensing policy.* (1) Applications for exports and reexports of "600 series" items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. Other applications for exports and reexports described in paragraph (a)(1), (2), (6) or (7) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States. Applications for reexports of items described in paragraph (a)(3) of this section will be reviewed applying the policies for similar commodities that are subject to the ITAR. Applications for export or reexport of items classified under any "600 series" ECCN requiring a license in accordance with paragraph (a)(1) of this section will also be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR) if destined to a country set forth in Country Group D:5 in

Supplement No. 1 to part 740 of the EAR. Applications for export or reexport of "parts," "components," "accessories," "attachments," "software," or "technology" "specially designed" or otherwise required for the F-14 aircraft will generally be denied.

PART 743 -- SPECIAL REPORTING AND NOTIFICATION

31. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

32. The heading for part 743 is revised to read as set forth above.

33. Section 743.1 is amended by adding two sentences at the end of paragraph (a) introductory text and by revising paragraph (c) to read as follows:

§ 743.1 Wassenaar Arrangement.

(a) *** This section is limited to the Wassenaar Arrangement reporting requirements for items listed on the Wassenaar Arrangement's Dual-Use list. For reporting requirements for conventional arms listed on the Wassenaar Arrangement Munitions List that are subject to the EAR (i.e., "600 series" ECCNs), see § 743.4 of this part for Wassenaar Arrangement and United Nations reporting requirements.

* * * * *

(c) *Items for which reports are required.* You must submit reports to BIS under the provisions of this section only for exports of items on the Sensitive List (see Supplement No. 6 to part 774 of the EAR).

* * * * *

34. Add § 743.4 to read as follows:

§ 743.4 Conventional arms reporting.

(a) *Scope.* This section outlines special reporting requirements for exports of certain items listed on the Wassenaar Arrangement Munitions List and the UN Register of Conventional Arms. Participating States of the Wassenaar Arrangement exchange information every six months on deliveries to non-participating states of conventional arms set forth in the *Wassenaar Arrangement's Basic Documents* under Part II Guideline and Procedures, including the Initial Elements, Appendix 3: Specific Information Exchange on Arms Content by Category (at www.wassenaar.org), derived from the categories of the UN Register of Conventional Arms (at www.un.org/disarmament/convarms/Register/). Similar, although not identical, information is also reported by the U.S. Government to the United Nations on an annual basis. The reported information should include the quantity and the name of the recipient state and, except in the category of missiles and missile launchers, details of model and type. Such reports must be submitted to BIS semi-annually in accordance with the provisions of paragraph (f) of this section for items identified in paragraph (c)(1) and annually for items identified in paragraph (c)(2), and records of all exports subject to the reporting requirements of this section must be kept in accordance with part 762 of the EAR. This section does not require reports for reexports or transfers (in-country).

Note to paragraph (a): For purposes of § 743.4, the term "you" has the same meaning as the term "exporter", as defined in part 772 of the EAR.

(b) *Requirements.* You must submit one electronic copy of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) Exports authorized under License Exceptions LVS, TMP, RPL, STA, or GOV (see part 740 of the EAR);

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR); and

(3) Exports authorized under the Validated End User authorization (see § 748.15 of the EAR).

(c) *Items for which reports are required* --. (1) *Wassenaar Arrangement reporting*. You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [Reserved]

(ii) [Reserved]

(2) *United Nations reporting*. You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [Reserved]

(ii) [Reserved]

(d) *Country Exceptions for Wassenaar Arrangement reporting.* You must report each export subject to the provisions of this section, except for exports to Wassenaar member countries, identified in Supplement No. 1 to part 743 for reports required under paragraph (c)(1) of this section.

(e) *Information that must be included in each report.* (1) Each report submitted to BIS for items other than those identified in paragraph (e)(2) of this section must include the following information for each export during the time periods specified in paragraph (f) of this section:

(i) Export Control Classification Number and paragraph reference as identified on the Commerce Control List;

(ii) Number of units in the shipment; and

Note to paragraph (e)(1)(ii): For exports of technology for which reports are required under § 743.1(c) of this section, the number of units in the shipment should be reported as one (1) for the initial export of the technology to a single ultimate consignee. Additional exports of the technology must be reported only when the type or scope of technology changes or exports are made to other ultimate consignees.

(iii) Country of ultimate destination.

(f) *Frequency and timing of reports* -- (1) *Semi-annual reports for items identified in paragraph (c)(1) of this section*. You must submit reports subject to the provisions of this section semiannually. The reports must be labeled with the exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph

(e) of this section. The reports shall cover exports made during six-month time periods from January 1 through June 30 and July 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than 180 days after the effective date of the rule that revises paragraph (c)(1) of this section to add the ECCN for the item being reported . Thereafter, reports are due according to the provisions of paragraphs (f)(2) and (f)(3) of this section.

(ii) Reports for the reporting period ending June 30 must be submitted to and received by BIS no later than August 1.

(iii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(2) *Annual reports for items identified in paragraph (c)(2) of this section*. You must submit reports subject to the provisions of this section annually. The reports must be labeled with the exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during twelve month time periods from January 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than 180 days after the effective date of the rule that revises paragraph (c)(1) of this section to add the ECCN for the item being reported.. Thereafter, reports are due according to the provisions of paragraph (f)(2) of this section.

(ii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(g) *Submission of reports*. Information should be submitted in the form of a spreadsheet and emailed to WAreports@BIS.DOC.GOV or UNreports@BIS.DOC.GOV.

(h) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of National Security and Technology Transfer Controls, Tel. (202) 482-0092, Fax: (202) 482-4094.

35. Section 743.5 is added to read as follows:

§ 743.5 Prior notifications to Congress of Exports of "600 Series Major Defense Equipment."

(a) *General requirement.* Applications to export items on the Commerce Control List that are "600 Series Major Defense Equipment" will be notified to Congress as provided in this section before licenses for such items are issued.

(1) Exports of "600 Series Major Defense Equipment" to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR) do not require such notification.

(2) Exports of "600 Series Major Defense Equipment" that have been or will be described in a notification filed by the U.S. State Department under the Arms Export Control Act do not require such notification by BIS.

(b) BIS will notify Congress prior to issuing a license authorizing the export of items to a country *outside* the countries listed in Country Group A:5 (see Supplement No.1 to part 740 of the EAR) that are sold under a contract that includes $14,000,000 or more of "600 Series Major Defense Equipment."

(c) BIS will notify Congress prior to issuing a license authorizing the export of items to a country listed in Country Group A:5 (see Supplement No.1 to part 740 of the EAR) that are sold under a contract that includes $25,000,000 or more of "600 Series Major Defense Equipment."

(d) In addition to information required on the application, the exporter must include a copy of the signed contract (including a statement of the value of the "600 Series Major Defense Equipment" items to be exported under the contract) for any proposed export described in paragraphs (b) or (c) of this section.

(e) *Address.* Munitions Control Division at bis.compliance@bis.doc.gov.

PART 744 -- [AMENDED]

36. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *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. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; 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 January 19, 2012, 77 FR 3067 (January 20, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September 12, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

37. Section 744.17 is amended by revising the section heading and paragraph (d) to

read as follows:

§ 744.17 Restrictions on certain exports and reexports of general purpose microprocessors for 'military end uses' and to 'military end users.'

*****

(d) *Military end use.* In this section, the phrase 'military end use' means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement website at *http://www.wassenaar.org*); commodities classified under ECCNs ending in "A018" or under "600 series" ECCNs; or any commodity that is designed for the "use," "development," "production," or deployment of military items described on the USML, the Wassenaar Arrangement Munitions List or classified under ECCNs ending in "A018" or under "600 series" ECCNs. Supplement No. 1 of this part lists examples of 'military end use.'

*****

38. Section 744.21 is amended by redesignating paragraphs (a), (a)(1) and (a)(2) as paragraphs (a)(1), (a)(1)(i) and (a)(1)(ii), by adding a new paragraph (a)(2), and by revising paragraph (f) to read as follows:

§ 744.21 Restrictions on Certain 'Military End Uses' in the People's Republic of China (PRC).

(a)(1) * * *

(2) *General prohibition.* In addition to the license requirements for "600 series" items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer any "600 series" item, including .y items described in a "600 series" ECCN, to the PRC without a license.

*****

(f) In this section, 'military end use' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); incorporation into items classified under ECCNs ending in "A018" or under "600 series" ECCNs; or for the "use," "development," or "production" of military items described on the USML or the Wassenaar Arrangement Munitions List, or items classified under ECCNs ending in "A018" or under "600 series" ECCNs. ***

*****

PART 746 - [AMENDED]

39. The authority citation for part 746 continues 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; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR 2004 Comp., p. 168; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007-7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699

(August 16, 2012).

40. Section 746.1 is amended by revising paragraph (b)(4) to read as follows:

§ 746.1 Introduction.

*****

(b) ***

(4) You may not use any License Exception, other than License Exception GOV, for items for personal or official use by personnel and agencies of the U.S. Government or agencies of cooperating governments as set forth in § 740.11(b) of the EAR, to export or reexport items with a UN reason for control to countries listed in paragraph (b)(2) of this section. This paragraph does not apply to Iraq, which is governed by § 746.3(c) of this part; North Korea, which is governed by § 746.4(c) of this part; or Iran, which is governed by § 746.7(c) of this part.

41. Section 746.3 is amended by revising paragraph (b)(2) to read as follows:

§ 746.3 Iraq.

******

(b) ***

(2) License applications for the export or reexport to Iraq or transfer within Iraq of machine tools controlled for national security (NS) or nuclear nonproliferation (NP) reasons, as well as for any items controlled for crime control (CC) or United Nations (UN) reasons (including items classified under ECCN 0A986) or ECCNs that end in the number "018" or items classified under "600 series" ECCNs, that would make a material contribution to the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction, ballistic missiles or arms and related materiel will be subject to a general policy of denial.

Exports of "600 series" items to the Government of Iraq will be reviewed under the policies set forth for such items in §§ 742.4(b) and 742.6(b) of the EAR.

******

PART 748 - [AMENDED]

42. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 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 15, 2012, 77 FR 49699 (August 16, 2012).

43. In § 748.1, paragraph (d) introductory text is amended by revising the first sentence to read as follows:

§ 748.1 General Provisions

* * * * *

(d) *Electronic Filing Required.* All export and reexport license applications (other than Special Comprehensive License or Special Iraq Reconstruction License applications), encryption registrations, License Exception AGR notifications, requests to authorize use of License Exception STA for "600 series" end items (which are currently submitted as export license applications) and classification requests and their accompanying documents must be filed via BIS's Simplified Network Application Processing system (SNAP–R), unless BIS authorizes submission via the paper forms BIS 748–P (Multipurpose Application Form), BIS–748P–A (Item Appendix) and BIS–748P–B, (End-User Appendix). * * *

* * * * *

44. Section 748.3 is amended by adding paragraph (e) to read as follows:

§ 748.3 Classification requests, advisory opinions, and encryption registrations.

*****

(e) *Classification requests to confirm that a "part," "component," "accessory," "attachment," or "software" is not "specially designed."* (1) *Scope*. If you have a "part," "component," "accessory," "attachment," or "software" that is "specially designed" on the basis of paragraph (a)(1) or (2) of the "specially designed" definition in § 772.1 of the EAR, you may submit a request in accordance with the procedures in § 748.1 to confirm that the item is not "specially designed" provided you meet the following criteria:

(i) The "part," "component," "accessory," "attachment," or "software" does not meet the criteria of exclusion paragraph (b)(3) of the "specially designed" definition, but would meet the criteria if the minor changes in form or fit were determined to be insignificant by the U.S. Government.

(ii) The performance capabilities of the "part," "component," "accessory," "attachment," or "software" are the same as those of a "part," "component," "accessory," "attachment," or "software" that would meet the criteria of exclusion paragraph (b)(3) of the definition of "specially designed" in § 772.1 of the EAR.

(2) *Information to be provided*. Applicants wishing to submit a CCATS requesting confirmation that a "part," "component," "accessory," "attachment," or "software" is not "specially designed" must submit classification requests in accordance with the procedures in § 748.1 and general provisions regarding submitting classification requests in § 748.3(b). In addition, applicants must submit additional information identified in this paragraph (e)(2).

(i) The classification request must indicate in Block 24 or in a separate PDF attachment included with the CCATS submission that the "part," "component," "accessory," "attachment" or "software" would meet the criteria in paragraph (e)(1)(i) and (ii) of this section;

(ii) A detailed explanation must be provided regarding all changes in form and fit; *and*

(iii) A rationale must be provided that explains why such changes in form and fit should be treated as minor or insignificant in terms of their role in the performance capabilities of the enumerated item.

(3) *U.S. Government Review*. Commodity classification requests submitted pursuant to § 748.3(e) are reviewed by the Departments of Commerce, State and Defense. A consensus determination is required to confirm that a "part," "component," "accessory," "attachment," or "software" is not "specially designed" on the basis of this paragraph. The interagency review process will ensure U.S. national security and foreign policy interests are evaluated prior to any confirmation pursuant to § 748.3(e). The interagency review will consider on a case-by-case basis whether a particular "part," "component," "accessory," "attachment," or "software" is "specially designed" taking into account all the following:

(i) The insignificance of the changes in form and fit;

(ii) The overall role of the "part," "component," "accessory," "attachment," or "software" in the performance capabilities of the enumerated item that it is used in or with;

(iii) How substantively common it is to the other "part," "component," "accessory," "attachment," or "software" that would meet the paragraph (b)(3) criteria;

(iv) Whether such a confirmation would be consistent with U.S. Government multilateral export control regime commitments; *and*

(v) Any other criteria that may be relevant in determining whether the "part," "component," "accessory," "attachment," or "software" is "specially designed," including an evaluation of how such a confirmation may affect U.S. national security and foreign policy interests.

(4) *CCATS response*. The BIS response to the CCATS request will reflect the interagency consensus determination and the response will be made in accordance with the procedures in §§ 748.1 and 748.3(b). In addition, the BIS response will indicate one of the following:

(i) The "part," "component," "accessory," "attachment," or "software" is not "specially designed" on the basis of being within the scope of paragraph (b)(3) because the changes in form and fit have been determined by the U.S. Government to be minor or insignificant. In such cases, the new classification, which may be EAR99 or in another ECCN entry that does not use "specially designed," will be provided as part of the BIS response;"

(ii) The request under § 748.3(e) has been denied and the "part," "component," "accessory," "attachment," or "software" continues to be classified under a "specially designed" 'catch-all' (see the definition of "specially designed" in §772.1 of the EAR). The response will also include a determination regarding where the "specially designed" "part," "component," "accessory," "attachment," or "software" is classified on the CCL; or

(iii) Returned without action (RWA) because insufficient information was provided or information was not provided in a timely fashion. These requests will be reviewed closely, and they will likely require additional follow up questions of applicants, so responding to such requests in a timely fashion will be an important part of the process to ensure such requests are considered by the U.S. Government.

Note to paragraph (e): Although these requests for confirmation that an item is not "specially

designed" are also reviewed by the Departments of State and Defense, similar to § 748.3(b)(3), the public is reminded that neither the BIS classification nor the CCATS number may be relied upon or cited as evidence that the U.S. Government has determined that the "parts," "components," "accessories," "attachments" and "software" described in the commodity classification determination or a release made from "specially designed" pursuant to § 748.3(e) are subject to the EAR (see § 734.3 of the EAR).

45. Section 748.8 is amended by adding paragraphs (w) and (x) to read as follows:

§ 748.8 Unique application and submission requirements.

*****

(w) License Exception STA eligibility requests for "600 series" end items.

(x) License application for "600 series" item that is equivalent to a transaction previously approved under an ITAR license or other approval.

46. Supplement No. 1 to part 748 (BIS-748P, BIS-748P-A: Item Appendix, and BIS-748P-B: End-User Appendix; Multipurpose Application Instructions) is amended by:

a. Adding a sentence to the end of Block 5;

b. Adding a sentence to the end of Block 6; and

c. Adding five sentences to the end of Block 24, to read as follows:

SUPPLEMENT NO. 1 TO PART 748 - ITEM APPENDIX, AND BIS-748P-B: END-USER APPENDIX; MULTIPURPOSE APPLICATION INSTRUCTIONS

*****

Block 5: *****

If you are submitting a License Exception STA eligibility request pursuant to § 740.20(g), mark the box labeled "Export" with an (X) and then proceed to Block 6 of this supplement for instructions specific to such requests.

Block 6: *****

Mark the "Other" box with an (X) and insert the phrase "STA request" for the description of the support document to submit a request for License Exception STA eligibility pursuant to § 740.20(g). (See Supplement No. 2 to part 748 under paragraph (w) for unique application and submission requirements for License Exception STA eligibility requests described under this Block 6.)

*****

Block24: Additional Information

This Block should be completed if your application includes a "600 series" item that is equivalent to a transaction previously approved under an ITAR license or other approval. Enter the previous State license number or other approval identifier in Block 24 of the BIS license application. If more than one previous State license number or other approval identifier is applicable, then enter the most recent one. Only those license applications where the particulars of the EAR license application are equivalent as previously authorized under the ITAR license or other approval in regard to the description of the item (including the item's function, performance capabilities, form and fit), purchaser, ultimate consignee and end users on the license will receive full consideration under this paragraph, which may result in a quicker processing time. The classification of the

"600 series" item in question will no longer be the same because the item would no longer be "subject to the ITAR," but all other aspects of the description of the item must be the same in order to be reviewed under this expedited process under paragraph (x)of Supplement No. 2 to part 748 of the EAR.4.)

*****

47. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by adding paragraphs (w) and (x) to read as follows:

SUPPLEMENT NO. 2 TO PART 748 – UNIQUE APPLICATION AND SUBMISSION REQUIREMENTS

*****

(w) *License Exception STA eligibility requests for "600 series" end items.* To request a License Exception STA eligibility requests for "600 series" end items pursuant to § 740.20(g), you must mark an (X) in the "Export" box in Block 5 (Type of Application) block. You must mark an (X) in the "Other" box and insert the phrase "STA request" " in Block 6 (Documents submitted with application) block. You must include the specific "600 Series" ECCN in Block 22. In addition to the ECCN, you will need to provide sufficient information for the U.S. Government to make a determination as to STA eligibility. This will require you to submit more than merely a description of the end item. In particular, you will need to provide supporting information for why you believe that the end item does not, for example, provide a critical military or intelligence advantage to the United States or is available in countries that are not regime partners or close allies. You will also need to provide information regarding whether and, if so, how the end item is controlled by the export control laws and regulations of close allies and

regime partners, if known. If you are not able to provide some of the information described above, the U.S. Government will still evaluate the request, including using resources and information that may only be available to the U.S. Government. However, when submitting such requests you are encouraged to provide as much information as you can based on the criteria noted above to assist the U.S. Government in evaluating these License Exception STA eligibility requests. In addition, you should provide BIS with the text you would propose BIS use in describing the end item in the appropriate "600 series" ECCN and the online table referenced in § 740.20(g)(5)(i) in anticipation that the request may be approved pursuant to § 740.20(g). You may submit additional information that you believe is relevant to the U.S. Government in reviewing the License Exception STA eligibility request as part of that support document or as an additional separate support document attachment to the license application.

(x) *License application for a "600 series" item that is equivalent to a transaction previously approved under an ITAR license or other license authority.* To request that the U.S. Government review of a license application for a "600 series" item also take into consideration a previously approved ITAR license or other approval, applicants must also include the State license number or other approval identifier in Block 24 of the BIS license application (See the instructions in Supplement No. 1 to part 748 under Block 24).

Note to paragraph (x): License applications submitted under paragraph (x) will still be reviewed in accordance with license review procedures and timelines identified in part 750, including §§ 750.3 and 750.4. Applicants are advised that including a previously approved State license or other approval may have no effect on the license review process since each application is reviewed on its own merits at the time of submission. However, in some cases, previous licensing history may result in license applications being reviewed more quickly.

PART 750 -- [AMENDED]

48. The authority citation for part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 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. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

49. Section 750.4 is amended by adding paragraph (b)(7) to read as follows:

§ 750.4 Procedures for processing license applications.

* * * * *

(b) * * *

(7) *Congressional Notification.* Congressional notification, including any consultations prior to notification, prior to the issuance of an authorization to export when notification is required by § 743.5 of the EAR.

50. Section 750.7 is amended by adding paragraph (c)(1)(ix) and revising paragraphs (g) introductory text and (g)(1) introductory text to read as follows:

§ 750.7 Issuance of licenses.

(c) * * *

(1) * * *

(ix) Direct exports, reexports, or transfers (in-country) to and among approved end users on a license, provided those end users are listed by name and location on such license *and* the license does not contain any conditions specific to the ultimate consignee that cannot be complied with by the end user, such as a reporting requirement that must be made by the ultimate consignee. Reexports and transfers (in-country) among approved end users may be further limited by license conditions.

* * * * *

(g) *License validity period.* Licenses involving the export or reexport of items will generally have a four-year validity period, unless a different validity period has been requested and specifically approved by BIS or is otherwise specified on the license at the time that it is issued. Exceptions from the four-year validity period include license applications for items controlled for short supply reasons, which will be limited to a 12-month validity period and license applications reviewed and approved as an "emergency" (see § 748.4(h) of the EAR). Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. The expiration date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first business day following the expiration date.

(1) *Extended validity period.* BIS will consider granting a validity period exceeding 4 years on a case-by-case basis when extenuating circumstances warrant such an extension. Requests for such extensions may be made at the time of application or after the license has been issued and it is still valid. BIS will not approve changes regarding other aspects of the license, such as the parties to the transaction and the countries of ultimate destination. An extended validity period will generally be granted where, for example, the transaction is related to a multi-year project;

when the period corresponds to the duration of a manufacturing license agreement, technical assistance agreement, warehouse and distribution agreement, or license issued under the International Traffic in Arms Regulations; when production lead time will not permit an export or reexport during the original validity period of the license; when an unforeseen emergency prevents shipment within the 4-year validity of the license; or for other similar circumstances.

* * * * *

PART 756 - [AMENDED]

51. The authority citation for part 756 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

52. Section 756.1 is amended by adding paragraph (a)(4) to read as follows:

§ 756.1 Introduction.

(a) ***

(4) A decision on whether License Exception STA is available for "600 series" "end items" pursuant to § 740.20(g).

*****

PART 758 -- [AMENDED]

53. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

54. Section 758.1 is amended by revising the section heading, redesignating paragraphs (b)(3) through (5) as paragraphs (b)(5) through (7), and by adding new paragraphs (b)(3) and (4) to read as follows:

§ 758.1 The Automated Export System (AES) record.

* * * * *

(b) * * *

(3) For all exports of "600 series" items enumerated in paragraphs .a through .x of a "600 series" ECCN regardless of value or destination, including exports to Canada;

(4) For all exports under License Exception Strategic Trade Authorization (STA);

* * * * *

55. Section 758.2 is amended by adding paragraph (c)(4) to read as follows:

§ 758.2 Automated Export System (AES).

* * * * *

(c) * * *

(4) Exports are made under License Exception Strategic Trade Authorization (STA); are made under Authorization Validated End User (VEU); or are of "600 series" items.

56. Section 758.5 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 758.5 Conformity of documents and unloading of items.

(a) *Purpose.* The purpose of this section is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the items are unloaded in a country other than that of the ultimate consignee or end user as stated on the export license.

(b) *Conformity of documents.* When a license is issued by BIS, the information entered on related export control documents (*e.g.*, the AES record, bill of lading or air waybill) must be consistent with the license.

(c) Issuance of the bill of lading or air waybill. (1) *Ports in the country of the ultimate consignee or end user.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to any foreign port located outside the country of an intermediate consignee, ultimate consignee, or end user named on the BIS license and in the AES record.

(2) *Optional ports of unloading.* (i) *Licensed items*. No person may issue a bill of lading or air waybill that provides for delivery of licensed items to optional ports of unloading unless all the optional ports are within the country of ultimate destination or are included on the BIS license and in the AES record.

(ii) *Unlicensed items*. For shipments of items that do not require a license, the exporter may designate optional ports of unloading in AES record and on other export control documents, so long as the optional ports are in countries to which the items could also have been exported without a license.

(d) *Delivery of items.* No person may deliver items to any country other than the country of an intermediate consignee, ultimate consignee, or end user named on the BIS license and AES record without prior written authorization from BIS, except for reasons beyond the control of the carrier (such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances or insurrection).

* * * * *

57. Section 758.6 is revised to read as follows:

§ 758.6 Destination control statement and other information furnished to consignees.

(a) *General requirement.* The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, the DCS must state: "These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited."

(b) *Additional requirement for "600 series" items.* In addition to the DCS as required in paragraph (a) of this section, the ECCN for each "600 Series" item being exported must be printed on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad.

PART 762 -- [AMENDED]

58. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

59. Section 762.2 is amended by:

a. Revising paragraphs (b)(5), (7), (10), and (13);

b. Removing the "and" at the end of the paragraph (b)(48);

c. Removing the period at the end of paragraph (b)(49) and adding a semi-colon in its place; and

d. Adding paragraphs (b)(50) and (51).

The revisions and additions read as follows:

§ 762.2 Records to be retained.

*****

(b) ***

(5) § 740.9(a)(3)(i)(B), Tools of trade: temporary exports, reexports, and transfers (in country) of technology by U.S. persons (TMP);

*****

(7) § 740.11(b)(2)(iii) and (iv), Exports, reexports and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government and Items exported at the direction of the U.S. Department of Defense (GOV);

*****

(10) § 740.20(g), Responses to License Exception STA eligibility requests for "600 series" end items (STA);

*****

(13) § 743.4(c)(1) and (c)(2), Conventional arms reporting;

*****

(50) § 772.2, "Specially designed" definition, note to paragraphs (b)(4), (b)(5), and (b)(6); and

(51) § 740.20, note to paragraph (c)(1), License Exception STA prior approval on a BIS or DDTC license (STA).

PART 764 -- [AMENDED]

60. The authority citation for part 764 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

Supplement No. 1 to part 764 [Amended]

61. Supplement No. 1 to part 764 is amended by removing the penultimate paragraph.

PART 770 - [AMENDED]

62. The authority citation for part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 770.2 [Amended]

63. Section 770.2 is amended by removing and reserving paragraphs (i) and (j).

PART 772 - [AMENDED]

64. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

65. Section 772.1 is amended by:

a. Revising the definitions of "dual use," "military commodity," and "specially designed;" and

b. Adding, in alphabetical order, the following twelve definitions for the terms "600 series," "600 Series Major Defense Equipment" or "MDE," "accessories," "attachments," "build-to-print technology," "component," "end item," "equipment," "facilities," "material," "part," and "system".

The revisions and additions read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

*****

600 series. ECCNs in the "xY6zz" format on the Commerce Control List (CCL) that control items on the CCL that were previously controlled on the U.S. Munitions List or that are covered by the Wassenaar Arrangement Munitions List (WAML). The "6" indicates the entry is a munitions entry on the CCL. The "x" represents the CCL category and "Y" the CCL product group. The "600 series" constitutes the munitions ECCNs within the larger CCL.

600 Series Major Defense Equipment or *MDE*. Any item listed in ECCN 9A610.a, 9A619.a,

9A619.b or 9A619.c, having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000.

Note to "600 Series Major Defense Equipment": For the most current list of MDE, see Appendix 1, (Nonrecurring Cost Recoupment Charges for Major Defense Equipment) to DoD 5105.38-M, "Security Assistance Management Manual (SAMM)," dated 04/30/2012, available online at http://www.dsca.osd.mil/samm/ESAMM/Appendix01.htm .

Accessories. These are associated items for any "component," "end item," or "system," and which are not necessary for their operation, but which enhance their usefulness or effectiveness. For example, for a riding lawnmower, "accessories" and "attachments" will include the bag to capture the cut grass, and a canopy to protect the operator from the sun and rain. For purposes of this definition, "accessories" and "attachments" are the same.

*****

Attachments. These are associated items for any "component," "end item," or "system," and which are not necessary for their operation, but which enhance their usefulness or effectiveness. For example, for a riding lawnmower, "accessories" and "attachments" will include the bag to capture the cut grass, and a canopy to protect the operator from the sun and rain. For purposes of this definition, "attachments" and "accessories" are the same.

*****

Build-to-Print technology. (1) This is "production" "technology" that is sufficient for an inherently capable end user to produce or repair a commodity from engineering drawings without:

(i) Revealing "development" "technology," such as design methodology, engineering analysis, detailed process or manufacturing know-how;

(ii) Revealing the production engineering or process improvement aspect of the "technology;" or

(iii) Requiring assistance from the provider of the technology to produce or repair the commodity.

(2) Acceptance, test, or inspection criteria pertaining to the commodity at issue is included within the scope of "build-to-print technology" only if it is the minimum necessary to verify that the commodity is acceptable.

*****

Component. This is an item that is useful only when used in conjunction with an "end item." "Components" are also commonly referred to as assemblies. For purposes of this definition an assembly and a "component" are the same. There are two types of "components": "major components" and "minor components." A "major component" includes any assembled element which forms a portion of an "end item" without which the "end item" is inoperable. For example, for an automobile, "components" will include the engine, transmission, and battery. If you do not have all those items, the automobile will not function, or function as effectively. A "minor component" includes any assembled element of a "major component." "Components" consist of "parts." References in the CCL to "components" include both "major components" and "minor components."

*****

Dual use. Items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items and certain munitions items listed on the Wassenaar Arrangement Munitions List (WAML) or

the Missile Technology Control Regime Annex are also subject to the EAR (see § 734.2(a) of the EAR).

*****

End item. This is an assembled commodity ready for its intended use. Only ammunition, fuel or other energy source is required to place it in an operating state. Examples of end items include ships, aircraft, computers, firearms, and milling machines.

*****

Equipment. This is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a specialized function of an end item or system.

*****

Facilities. This means a building or outdoor area in which people use an item that is built, installed, produced, or developed for a particular purpose.

*****

Material. This is any list-specified crude or processed matter that is not clearly identifiable as any of the types of items defined in § 772.1 under the defined terms, "end item," "component," "accessories," "attachments," "part," "software," "system, "equipment," or "facilities." The exclusion from the definition of material for clearly identifiable items defined in § 772.1, such as for "parts" and "components," does not apply to the following ECCNs: 1C233, 1C234, 1C235, 1C236, 1C237, 1C239, 1C350, 1C395, 1C991, 1C992, and 1C995.

*****

Military commodity. As used in § 734.4(a)(5), Supplement No. 1 to part 738 (footnote No. 3), §§ 740.2(a)(11), 740.16(a)(2), 740.16(b)(2), 742.6(a)(3), 744.9(a)(2), 744.9(b), ECCN 0A919 and (*Related Controls*) in "600 series" ECCNs, "military commodity" or "military commodities"

means an article, material, or supply that is described on the U.S. Munitions List (22 CFR Part 121) or on the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, but does not include software, technology and any item listed in any ECCN for which the last three numerals are 018 or any item in the "600 series."

*****

Part. This is any single unassembled element of a "component," "accessory," or "attachment" which is not normally subject to disassembly without the destruction or the impairment of design use. Examples include threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire.

*****

Specially designed. When applying this definition, follow this sequential analysis set forth below. (For additional guidance on the order of review of "specially designed," including how the review of the term relates to the larger CCL, see Supplement No. 4 to Part 774 of the EAR – Commerce Control List Order of Review.)

(a) Except for items described in (b), an "item" is "specially designed" if it:

(1) As a result of "development" has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; *or*

(2) Is a "part," "component," "accessory," "attachment," or "software" for use in or with a commodity or defense article 'enumerated' or

otherwise described on the CCL or the USML.

(b) A "part," "component," "accessory," "attachment," or "software" that would be *controlled* by paragraph (a) is not "specially designed" if it:

(1) Has been identified to be in an ECCN paragraph that does not contain "specially designed" as a control parameter or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e);

(2) Is, regardless of 'form' or 'fit,' a fastener (*e.g.*, screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, solder,;

(3) Has the same function, performance capabilities, and the same or 'equivalent' form and fit, as a commodity or software used in or with an item that:

(i) Is or was in "production" (*i.e.*, not in "development"); *and*

(ii) Is either not 'enumerated' on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(4) Was or is being developed with "knowledge" that it would be for use in or with commodities or software (i) described in an ECCN *and* (ii) also commodities or software either not 'enumerated' on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(5) Was or is being developed as a general purpose commodity or

software, i.e., with no "knowledge" for use in or with a particular commodity (e.g., an F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool); *or*

(6) Was or is being developed with "knowledge" that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software.

Note 1: 'Enumerated' refers to any item (i) on either the USML or CCL not controlled in a 'catch-all' paragraph and (ii) when on the CCL, controlled by an ECCN for more than Anti-Terrorism (AT) reasons only. An example of an 'enumerated' ECCN is 2A226, which controls valves with the following three characteristics: a "nominal size" of 5 mm or greater; having a bellows seal; *and* wholly made of or lined with aluminum, aluminum alloy, nickel, or nickel alloy containing more than 60% nickel by weight. The CCL also contains notes excluding from control "parts" and "components" "specially designed" for uncontrolled items. Such uncontrolled items are merely 'described' and are not 'enumerated.' Note 2 to ECCN 1A002 is an example of items excluded from control based on being "specially designed" for a 'described' item. Commodities or software in an ECCN controlled only for AT reasons are other examples of items 'described' on the CCL. ECCN 2B996, which controls dimensional inspection or measuring systems or equipment not controlled by 2B006, is an example of a commodity 'described' in an ECCN controlled only for AT reasons.

Note 2: A 'catch-all' paragraph is one that does not refer to specific types of "parts," "components," "accessories," or "attachments" but rather controls non-specific "parts,"

"components," "accessories," or "attachments" because they were "specially designed" for an enumerated item. For example, ECCN paragraph 9A610.x is a catch-all, because it controls "parts," "components," "accessories," and "attachments" "specially designed" for military aircraft, but does not identify specific types of "parts," "components," "accessories," or "attachments" within its control. Another example of a 'catch-all' is the heading of 7A102, which controls "specially designed" components for the gyros enumerated in 7A102, but does not identify the specific types of "components" within its control.

Note to paragraph (a)(1): Items that as a result of "development" have properties peculiarly responsible for achieving or exceeding the performance levels, 'functions' or characteristics in a relevant ECCN paragraph may have properties shared by different products. For example, ECCN 1A007 controls equipment and devices, specially designed to initiate charges and devices containing energetic materials, by electrical means. An example of equipment not meeting the peculiarly responsible standard under paragraph (a)(1) is a garage door opener, that as a result of "development" has properties that enable the garage door opener to send an encoded signal to another piece of equipment to perform an action (i.e., the opening of a garage door). The garage door opener is not "specially designed" for purposes of 1A007 because although the garage door opener could be used to send a signal by electrical means to charges or devices containing energetic materials, the garage door opener does not have properties peculiarly responsible for a achieving or exceeding the performance levels, 'functions' or characteristics in 1A007. For example, the garage door opener is designed to only perform at a limited range and the level of encoding is not as advanced as the encoding

usually required in equipment and devices used to initiate charges and devices containing energetic materials, by electrical means. Conversely, another piece of equipment that, as a result of "development," has the properties (e.g., sending a signal at a longer range, having signals with advanced encoding to prevent interference, and having signals that are specific to detonating blasting caps) needed for equipment used to initiate charges and devices containing energetic materials, would be peculiarly responsible because the equipment has a direct and proximate causal relationship that is central or special for achieving or exceeding the performance levels, 'functions' or characteristics identified in 1A007.

Note 1 to paragraph (b)(3): Commodities in "production" that are subsequently subject to "development" activities, such as those that would result in enhancements or improvements only in the reliability or maintainability of the commodity (e.g., an increased mean time between failure (MTBF)), including those pertaining to quality improvements, cost reductions, or feature enhancements, remain in "production." However, any new models or versions of such commodities developed from such efforts that change the basic performance or capability of the commodity are in "development" until and unless they enter into "production."

Note 2 to paragraph (b)(3): With respect to a commodity, 'equivalent' means that its form has been modified solely for 'fit' purposes.

Note 3 to paragraph (b)(3): The 'form' of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. The 'fit' of a commodity is defined by its ability to physically interface or interconnect with or become an integral part of another

item. The 'function' of the item is the action or actions it is designed to perform. 'Performance capability' is the measure of a commodity's effectiveness to perform a designated function in a given environment (e.g., measured in terms of speed, durability, reliability, pressure, accuracy, efficiency). For software, 'form' means the design, logic flow, and algorithms. 'Fit' means the ability to interface or connect with an item subject to the EAR. The 'function' means the action or actions it performs directly to an item subject to the EAR or as a stand-alone application. 'Performance capability' means the measure of software's effectiveness to perform a designated function.

Note to paragraphs (b)(4), (b)(5) and (b)(6): For a commodity or software to be not "specially designed" on the basis of paragraphs (b)(4), (b)(5) *or* (b)(6), documents contemporaneous with its "development," in their totality, must establish the elements of paragraphs (b)(4), (b)(5) *or* (b)(6). Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts. Absent such documents, the "commodity" may not be excluded from being "specially designed" by paragraphs (b)(4), (b)(5) *or* (b)(6).

*****

System. This is a combination of "end items," "parts," "components," "accessories," "attachments," firmware, or "software" that are designed, modified or adapted to operate together to perform a specialized 'function.'

*****

PART 774 -- [AMENDED]

66. The authority citation paragraph for part 774 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); 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; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 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; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

67. In Supplement No. 1 to part 774 (the Commerce Control List) is amended by:

a. Removing the Product Group A heading, in all 10 categories of the CCL, "SYSTEMS, EQUIPMENT AND COMPONENTS" and adding in its place the Product Group A heading "END ITEMS," "EQUIPMENT," "ACCESSORIES," "ATTACHMENTS," "PARTS," "COMPONENTS," AND "SYSTEMS";

b. Adding quotes around the term "PRODUCTION EQUIPMENT" in the heading of Product Group B in all 10 categories of the CCL; and

c. Adding quotes around the Product Group C heading "MATERIALS" in all 10 categories of the CCL;

d. Adding quotes around the Product Group D heading "SOFTWARE" in all 10 categories of the CCL; and

e. Adding quotes around the Product Group E heading "TECHNOLOGY" in all 10 categories of the CCL.

68. Supplement No. 1 to part 774 is amended by removing the phrase "eight destinations listed in § 740.20(c)(2) of the EAR" wherever it is found and adding in its place

"destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR)".

69. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0 –, ECCN 0A919 is amended by revising the heading and the "Related Controls," "Related Definitions," and "Items" paragraphs to read as follows:

0A919 "Military commodities" located and produced outside the United States as follows (see list of items controlled).

*****

List of Items Controlled

Unit: * * *

Related Controls: (1) "Military commodities" are subject to the export licensing jurisdiction of the Department of State if they incorporate items that are subject to the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120 - 130). (2) "Military commodities" described in this paragraph are subject to the export licensing jurisdiction of the Department of State if such commodities are described on the U.S. Munitions List (22 CFR Part 121) and are in the United States. (3) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles that are subject to the ITAR; or the furnishing to foreign persons of any technical data controlled under 22 CFR 121.1 whether in the United States or abroad are under the licensing jurisdiction of the Department of State. (4) Brokering activities (as defined in 22 CFR 129) of "military

commodities" that are subject to the ITAR are under the licensing jurisdiction of the Department of State.

Related Definitions: "Military commodity" or "military commodities" means an article, material or supply that is described on the U.S. Munitions List (22 CFR Part 121) or on the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (i.e., the Wassenaar Arrangement Munitions List (WAML)), but does not include software, technology, any item listed in any ECCN for which the last three numerals are 018, or any item in the "600 series."

Items:

a. "Military commodities" produced and located outside the United States having all of the following characteristics:

a.1. Not subject to the International Traffic in Arms Regulations (22 CFR Parts 120-130); *and*

a.2. Having one or more of the following characteristics:

a.2.a. Incorporate one or more cameras controlled under ECCN 6A003.b.3, .b.4.b, or .b.4.c.

a.2.b. Incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content (see §734.4 of the EAR); *or*

a.2.c. Are direct products of U.S.-origin "600 series" technology (see § 736.2(b)(3) of the EAR).

b. [RESERVED]

70. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A018 is amended by:

a. Removing the phrase "9A018.a and b" and adding in its place "9A018.b" in the RS paragraph of the License Requirements section;

b. Revising the "Related Controls" and "Related Definitions" paragraph in the List of Items Controlled section, as set forth below; and

c. Revising the "Items" paragraph in the List of Items Controlled section by removing and reserving paragraph .a, and by removing paragraphs .c through .f.

9A018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The Department of State, Directorate of Defense Trade Controls has export licensing jurisdiction for: (a) all military ground vehicles and "components" therefor as described in 22 CFR 121, Category VII; and (b) vehicles that have been armed or armored with articles described in 22 CFR 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR 121, Category VII, see § 770.2(h) Interpretation 8: "Ground vehicles". (2) See ECCN 9A610 for the aircraft, refuelers, ground equipment, parachutes, harnesses, and instrument flight trainers, as well as "parts," "accessories," and "attachments" for the forgoing that, immediately prior to [INSERT DATE 180 DAYS AFTER PUBLICATION IN FEDERAL REGISTER], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. (3) See ECCN 9A619 for military trainer aircraft turbo prop engines and "parts" and "components" therefor that, immediately prior to [INSERT

DATE 180 DAYS AFTER PUBLICATION IN FEDERAL REGISTER PUBLICATION], were classified under ECCN 9A018.a.2 or .a.3.

Related Definitions: N/A

Items: a. [Reserved]

b. * * *

71. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9--Aerospace and Propulsion, ECCN 9D018 is amended by:

a. Removing the phrase "9A018.a and .b" and adding in its place "9A018.b" in the RS paragraph of the "License Requirements" section; and

b. Revising the "Related Controls" paragraph in the "List of Items Controlled" section, to read as follows:

9D018 "Software" for the "use" of equipment controlled by 9A018.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See ECCN 9D610 for "software" related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and "parts," "accessories," and "attachments" for the forgoing that, immediately prior to [INSERT DATE 180 DAYS AFTER PUBLICATION IN FEDERAL REGISTER], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. (2) See ECCN 9D619 for "software" related to military trainer aircraft turbo prop engines and "parts" and "components" therefor that, immediately prior to [INSERT DATE 180

DAYS AFTER PUBLICATION IN FEDERAL REGISTER], were classified under ECCN 9A018.a.2 or .a.3.

Related Definitions: * * *

Items: * * *

72. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9E018 is amended by:

a. Removing the phrase "9A018.a and .b" and adding in its place "9A018.b" in the RS paragraph of the License Requirements section; and

b. Revising the "Related Controls" paragraph, to read as follows:

9E018 "Technology" for the "development," "production," or "use" of equipment controlled by 9A018.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See ECCN 9E610 for "technology" related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and "parts," "accessories," and "attachments" for the forgoing that, immediately prior to [INSERT DATE 180 DAYS AFTER PUBLICATION IN FEDERAL REGISTER], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. (2) See ECCN 9E619 for "technology" related to military trainer aircraft turbo prop engines and "parts" and "components" therefor that, immediately prior to [INSERT DATE 180 DAYS AFTER PUBLICATION IN FEDERAL REGISTER], were classified under ECCN 9A018.a.2 or .a.3.

Related Definitions: * * *

Items: * * *

73. In Supplement No. 1 to part 774, Category 9, add new Export Control Classification Numbers 9A610 and 9A619 between Export Control Classification Numbers 9A120 and 9A980 to read as follows:

9A610 Military aircraft and related commodities.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	**Country chart**
NS applies to entire entry except 9A610.u, .v, .w, and .y	NS Column 1
RS applies to entire entry except 9A610.y	RS Column 1
MT applies to 9A610.u, .v, and .w	MT Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 9A610.y	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA:

(1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (i.e., "end item" military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for "600 series" end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.

List of Items Controlled

Unit: "End items" in number; "parts," "components," "accessories," and "attachments" in $ value

Related Controls: Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. See ECCN 0A919 for controls on foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.

Related Definitions: N/A

Items:

a. 'Military Aircraft' "specially designed" for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: For purposes of paragraph .a the term 'military aircraft' includes the following types of aircraft to the extent they were "specially designed" for a military use, and are not enumerated in USML paragraph VIII(a): trainer aircraft; cargo aircraft; utility fixed wing aircraft; military

helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft, and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are "unmodified" for the purposes of this paragraph .a.

Note 2: 9A610.a does not control ' military aircraft' that:

a. Were first manufactured before 1946;

b. Do not incorporate defense articles enumerated on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and

c. Do not incorporate weapons enumerated on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. [Reserved].

c. [Reserved].

d. [Reserved].

e. [Reserved].

f. 'Ground equipment' "specially designed" for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

Technical Note: 'Ground equipment' includes pressure refueling equipment and equipment designed to facilitate operations in confined areas.

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete canopies, harnesses, platforms, electronic release mechanisms “specially designed” for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and “equipment” “specially designed” for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, “specially designed” for use by a military.

k. through s. [Reserved]

t. Military aircraft instrument flight trainers that are not “specially designed” to simulate combat. (See USML Cat IX for controls on such trainers that are “specially designed” to simulate combat.)

u. Apparatus and devices "specially designed" for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified on the USML or the CCL.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A610.x are controlled by ECCN 9A610.x.

Note 2: "Parts," "components," "accessories," and "attachments" specified in USML subcategory VIII(f) or VIII(h) are subject to the controls of that paragraph. "Parts," "components," "accessories," and "attachments" specified in ECCN 9A610.y are subject to the controls of that paragraph.

y. Specific "parts," "components," "accessories," and "attachments" "specially designed" for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities "specially designed" for a military use, as follows:

y.1. Aircraft tires;

y.2. Analog cockpit gauges and indicators;

y.3. Audio selector panels;

y.4. Check valves for hydraulic and pneumatic systems;

y.5. Crew rest equipment;

y.6. Ejection seat mounted survival aids;

y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);

y.8. Filters and filter assemblies for hydraulic, oil and fuel systems;

y.9. Galleys;

y.10. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, nutplates, and brackets;

y.11. Lavatories;

y.12. Life rafts;

y.13. Magnetic compass, magnetic azimuth detector;

y.14. Medical litter provisions;

y.15. Mirrors, cockpit;

y.16. Passenger seats including palletized seats;

y.17. Potable water storage systems;

y.18. Public address (PA) systems;

y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);

y.20. Underwater beacons;

y.21. Urine collection bags/pads/cups/pumps;

y.22. Windshield washer and wiper systems;

y.23. Filtered and unfiltered cockpit panel knobs, indicators, switches, buttons, and dials;

y.24. Lead-acid and Nickel-Cadmium batteries;

y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;

y.26. Fire extinguishers;

y.27. Flame and smoke/CO_2 detectors; and

y.28. Map cases.

y.29. 'Military Aircraft' that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and do not incorporate weapons enumerated on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

9A619 Military gas turbine engines and related commodities.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	**Country chart**
NS applies to entire entry except 9A619.y	NS Column 1
RS applies to entire entry except 9A619.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 9A619.y	See § 746.1(b) for UN controls

License Exceptions

LVS: $1,500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9A619.

List of Items Controlled

Unit: "End items" in number; "parts," "components," "accessories," and "attachments" in $ value.

Related Controls: (1) Military gas turbine engines and related articles that are enumerated in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.

Related Definitions: N/A

Items:

a. "Military Gas Turbine Engines" "specially designed" for a military use that are not controlled in USML Category XIX(a), (b), (c), or (d).

Note: For purposes of ECCN 9A619.a, the term "military gas turbine engines" means gas turbine engines "specially designed" for "end items" enumerated in USML Category VIII or on the CCL under ECCN 9A610.

b. Digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) "specially designed" for gas turbine engines controlled in this ECCN 9A619.

c. If "specially designed" for gas turbine engines controlled in 9A619.a, hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles);

d. If "specially designed" for gas turbine engines controlled in 9A619.a, uncooled turbine blades, vanes, disks, and tip shrouds;

e. If "specially designed" for gas turbine engines controlled in 9A619.a, combustor cowls, diffusers, domes, and shells;

Note: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A619.c are controlled by ECCN 9A619.c.

f. Engine monitoring systems (i.e., those that conduct prognostics, diagnostics, and monitor health) "specially designed" for gas turbine engines and components controlled in this ECCN 9A619.

g. through w. [Reserved]

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled by this ECCN 9A619 (other than ECCN 9A619.c) or for a defense article enumerated in USML Category XIX and not specified elsewhere in the CCL or on the USML.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A619.x are controlled by ECCN 9A619.x.

Note 2: "Parts," "components," "accessories," and "attachments" specified in USML subcategory XIX(f) are subject to the controls of that paragraph. "Parts," "components," "accessories," and "attachments" specified in ECCN 9A619.y are subject to the controls of that paragraph.

y. Specific "parts," "components," "accessories," and "attachments" "specially designed" for a commodity subject to control in this ECCN 9A619 or for a defense article in USML Category XIX and not elsewhere specified on the USML or in the CCL, and other aircraft commodities, as follows:

y.1. Oil tank and reservoirs;

y.2. Oil lines and tubes;

y.3. Fuel lines and hoses;

y.4. Fuel and oil filters;

y.5. V-Band, cushion, “broomstick,” hinged, and loop clamps;

y.6. Shims;

y.7. Identification plates;

y.8. Air, fuel, and oil manifolds.

74. . In Supplement No. 1 to part 774, Category 9, add new ECCNs 9B610 and 9B619 between ECCNs 9B117 and 9B990 to read as follows:

9B610 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated in ECCN 9A610 or USML Category VIII.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	Country chart
NS applies to entire entry except 9B610.c	NS Column 1
RS applies to entire entry	RS Column 1
MT applies to 9B610.c	MT Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9B610.

List of Items Controlled

Unit: N/A

Related Controls: USML Category VIII(h)(i) controls parts, components, accessories, and attachments specially designed for various models of stealth and low-observable aircraft.

Related Definitions: N/A

Items:

a. Test, inspection, and production "equipment" "specially designed" for the "production," "development," repair, overhaul, or refurbishment of commodities enumerated in ECCN 9A610 (except 9A610.y) or USML Category VIII, and "parts," "components," "accessories," and "attachments" "specially designed" therefor.

b. Environmental test facilities "specially designed" for the certification, qualification, or testing of commodities enumerated in ECCN 9A610 (except for 9A610.y) or USML Category VIII and "parts," "components," "accessories," and "attachments" "specially designed" therefor.

c. "Production facilities" designed or modified for UAVs or drones that are (i) controlled by either USML paragraph VIII(a) or ECCN 9A610.a and (ii) capable of a range equal to or greater than 300 km.

9B619 Test, inspection, and production "equipment" and related commodities "specially designed" for the "development" or "production" of commodities enumerated in ECCN 9A619 or USML Category XIX.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	**Country chart**
NS applies to entire entry except 9B619.y	NS Column 1

RS applies to entire entry except 9B619.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 9B619.y	See § 746.1(b) for UN controls

License Exceptions

LVS: $1,500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9B619.

List of Items Controlled

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items:

a. Test, inspection, and production "equipment" "specially designed" for the "production," "development," repair, overhaul, or refurbishment of commodities enumerated in ECCN 9A619 (except for 9A619.y) or in USML Category XIX, and "parts," "components," "accessories," and "attachments" "specially designed" therefor.

b. Equipment, cells, or stands "specially designed" for testing, analysis and fault isolation of engines, "systems," "components," "parts," "accessories," and "attachments" specified in ECCN 9A619 on the CCL or in Category XIX on the USML.

c. through x. [Reserved]

y. Bearing pullers "specially designed" for the -"production" or "development" of commodities enumerated in ECCN 9A619 (except for 9A619.y) or USML Category XIX and "parts," "components," "accessories," and "attachments" "specially designed" therefor.

75. In Supplement No. 1 to part 774, Category 9, add new ECCNs 9C610 and 9C619 between ECCNs 9C110 and the product group header that reads "D. Software" to read as follows:

9C610 Materials "specially designed" for commodities controlled by 9A610 not elsewhere specified in the CCL or the USML.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	**Country chart**
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1

AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9C610.

List of Items Controlled

Unit: N/A

Related Controls: USML subcategory XIII(f) controls structural materials specifically designed, developed, configured, modified, or adapted for defense articles, such as USML subcategory VIII(a) aircraft. See ECCN 0A919 for foreign made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.

Related Definitions: N/A

Items:

a. Materials not elsewhere specified in the USML or the CCL and "specially designed" for commodities enumerated in ECCN 9A610 (except 9A610.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to controls of the applicable ECCN.

Note 2: Materials "specially designed" for both aircraft enumerated in USML Category VIII and aircraft enumerated in ECCN 9A610 are subject to the controls of this ECCN.

b. [Reserved].

9C619 Materials "specially designed" for commodities controlled by 9A619 not elsewhere specified in the CCL or on the USML.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	**Country chart**
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

LVS: $1,500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9C619.

List of Items Controlled

Unit: $ value

Related Controls: (1) See USML subcategory XIII(f) for controls on structural materials specifically designed, developed, configured, modified, or adapted for defense articles, such as USML Category XIX engines. (2) See ECCN 0A919 for foreign made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.

Related Definitions: N/A

Items:

a. Materials not elsewhere specified in the CCL or on the USML and "specially designed" for commodities enumerated in ECCN 9A619 (except for 9A619.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to the controls of the applicable ECCN.

Note 2: Materials "specially designed" for both an engine enumerated in USML Category XIX and an engine enumerated in ECCN 9A619 are subject to the controls of this ECCN 9C619.

b. [Reserved].

76. In Supplement No. 1 to part 774, Category 9, add new ECCNs 9D610 and 9D619 between ECCNs 9D105 and 9D990 to read as follows:

9D610 Software "specially designed" for the "development," "production," operation, or maintenance of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, or materials controlled by 9C610.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	**Country chart**
NS applies to entire entry except 9D610.y	NS Column 1
RS applies to entire entry except 9D610.y	RS Column 1
MT applies to software "specially designed" for the operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled for MT reasons in 9A610 or 9B610	MT Column 1

AT applies to entire entry	AT Column 1
UN applies to entire entry except 9D610.y	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A

TSR: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9D610.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 9D610.

List of Items Controlled

Unit: $ value

Related Controls: Software directly related to articles enumerated in USML Category VIII is subject to the control of USML paragraph VIII(i).

Related Definitions: N/A

Items:

a. "Software" (other than software controlled in paragraphs .b or .y of this entry) "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 9A610, ECCN 9B610, or ECCN 9C610.

b. “Software” “specially designed” for the “development” or “production” of any of the following:

b.1. Static structural members;

b.2. Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;

b.3. Control surfaces, leading edges, trailing edges, and leading edge flap seals;

b.4. Leading edge flap actuation system commodities (i.e., power drive units, rotary geared actuators, torque tubes, asymmetry brakes, position sensors, and angle gearboxes) “specially designed” for fighter, attack, or bomber aircraft controlled in USML Category VIII;

b.5. Engine inlets and ducting;

b.6. Fatigue life monitoring systems “specially designed” to relate actual usage to the analytical or design spectrum and to compute amount of fatigue life “specially designed” for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.7. Landing gear, and “parts” and “components” “specially designed” therefor, “specially designed” for use in aircraft weighing more than 21,000 pounds controlled by either

USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.8. Conformal fuel tanks and "parts" and "components" "specially designed" therefor;

b.9. Electrical "equipment," "parts," and "components" "specially designed" for electro-magnetic interference (EMI) – i.e., conducted emissions, radiated emissions, conducted susceptibility and radiated susceptibility – protection of aircraft that conform to the requirements of MIL-STD-461;

b.10. HOTAS (Hand-on Throttle and Stick) controls, HOCAS (Hands on Collective and Stick), Active Inceptor Systems (i.e., a combination of Active Side Stick Control Assembly, Active Throttle Quadrant Assembly, and Inceptor Control Unit), rudder pedal assemblies for digital flight control systems, and parts and components "specially designed" therefor;

b.11. Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;

b.12. Equipment "specially designed" for system prognostic and health management of aircraft;

b.13. Active Vibration Control Systems; or

b.14. Self-sealing fuel bladders "specially designed" to pass a .50 caliber or larger gunfire test (MIL-DTL-5578, MIL-DTL-27422).

c. to x. [RESERVED]

y. Specific "software" "specially designed" for the "development," "production," operation, or maintenance of commodities enumerated in ECCN 9A610.y.

9D619 Software "specially designed" for the "development," "production," operation or maintenance of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, or materials controlled by 9C619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	**Country chart**
NS applies to entire entry except 9D619.y.	NS Column 1
RS applies to entire entry except 9D619.y	RS Column 1
AT applies to entire entry	AT Column 1

UN applies to entire entry except 9D619.y	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A

TSR: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9D619.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in ECCN 9D619.

List of Items Controlled

Unit: $ value

Related Controls: Software directly related to articles enumerated in USML Category XIX is subject to the control of USML paragraph XIX(g).

Related Definitions: N/A

Items:

a. "Software" (other than software controlled in paragraph .b of this entry) "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), or ECCN 9C619.

b. "Software" "specially designed" for the "development" or "production" of any of the following:

b.1. Front, turbine center, and exhaust frames;

b.2. Low pressure compressor (i.e., fan) “components” and “parts” as follows: nose cones, casings, blades, vanes, spools, shrouds, blisks, shafts and disks;

b.3. High pressure compressor “components” and “parts” as follows: casings, blades, vanes, spools, shrouds, blisks, shafts, disks, and impellers;

b.4. Combustor “components” and “parts” as follows: casings, fuel nozzles, swirlers, swirler cups, deswirlers, valve injectors, igniters, diffusers, liners, chambers, cowlings, domes and shells;

b.5. High pressure turbine “components” and “parts” as follows: casings, shafts, disks, blades, vanes, nozzles, and tip shrouds;

b.6. Low pressure turbine “components” and “parts” as follows: casings, shafts, disks, blades, vanes, nozzles, and tip shrouds;

b.7. Augmentor “components” and “parts” as follows: casings, flame holders, spray bars, pilot burners, augmentor fuel controls, flaps (external, convergent, and divergent), guide and syncronization rings, and flame detectors and sensors;

b.8. Mechanical “components” and “parts” as follows: fuel metering units and fuel pump metering units, valves (fuel throttle, main metering, oil flow management), heat exchangers (air/air, fuel/air, fuel/oil), debris monitoring (inlet and exhaust), seals (carbon, labyrinth, brush, balance piston, and “knife-edge”), permanent magnetic alternator and generator, eddy current sensors;

b.9. Torquemeter assembly (i.e., housing, shaft, reference shaft, and sleeve);

b.10. Digital engine control systems (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) “specially designed” for gas turbine engines controlled in this ECCN; or

b.11. Engine monitoring systems (i.e., prognostics, diagnostics, and health) “specially designed” for gas turbine engines and components controlled in this ECCN.

c. to x. [RESERVED]

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 9A619.y or 9B619.y.

77. In Supplement No. 1 to part 774, Category 9, add new Export Control Classification Numbers 9E610 and 9E619 between Export Control Classification Numbers 9E102 and 9E990 to read as follows:

9E610 Technology "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, materials controlled by 9C610, or software controlled by 9D610.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	**Country chart**
NS applies to entire entry except 9E610.y	NS Column 1
RS applies to entire entry except 9E610.y	RS Column 1
MT applies to "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled for MT reasons in 9A610, 9B610, or 9D610 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 9E610.y	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A

TSR: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E610.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 9E610.

List of Items Controlled

Unit: $ value

Related Controls: Technical data directly related to articles enumerated in USML Category VIII are subject to the control of USML paragraph VIII(i).

Related Definitions: N/A

Items:

a. "Technology" (other than technology controlled by paragraphs .b or .y of this entry) "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 9A610, 9B610, 9C610, or 9D610.

Note: "Build-to-print technology" "required" for the "production" of items described in paragraphs b.1 through b.15 of this entry is classified under 9E610.a.

b. “Technology” (other than “build-to-print technology”) “required” for the “development” or “production” of any of the following:

b.1. Static structural members;

b.2. Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;

b.3. Control surfaces, leading edges, trailing edges, and leading edge flap seals;

b.4. Leading edge flap actuation system commodities (i.e., power drive units, rotary geared actuators, torque tubes, asymmetry brakes, position sensors, and angle gearboxes) “specially designed” for fighter, attack, or bomber aircraft controlled in USML Category VIII;

b.5. Engine inlets and ducting;

b.6. Fatigue life monitoring systems “specially designed” to relate actual usage to the analytical or design spectrum and to compute amount of fatigue life “specially designed” for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.7. Landing gear, and “parts” and “components” “specially designed” therefor, “specially designed” for use in aircraft weighing more than 21,000 pounds controlled by either

USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.8. Conformal fuel tanks and "parts" and "components" "specially designed" therefor;

b.9. Electrical "equipment," "parts," and "components" "specially designed" for electro-magnetic interference (EMI) – i.e., conducted emissions, radiated emissions, conducted susceptibility and radiated susceptibility – protection of aircraft that conform to the requirements of MIL-STD-461;

b.10. HOTAS (Hand-on Throttle and Stick) controls, HOCAS (Hands on Collective and Stick), Active Inceptor Systems (i.e., a combination of Active Side Stick Control Assembly, Active Throttle Quadrant Assembly, and Inceptor Control Unit), rudder pedal assemblies for digital flight control systems, and parts and components "specially designed" therefor;

b.11. Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;

b.12. Equipment "specially designed" for system prognostic and health management of aircraft;

b.13. Active Vibration Control Systems; or

b.14. Self-sealing fuel bladders "specially designed" to pass a .50 caliber or larger gunfire test (MIL-DTL-5578, MIL-DTL-27422).

c. through x. [Reserved]

y. Specific "technology" "required" for the "production," "development," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A610.y or 9D610.y.

9E619 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	**Country chart**
NS applies to entire entry except 9E619.y	NS Column 1
RS applies to entire entry except 9E619.y	RS Column 1

AT applies to entire entry	AT Column 1
UN applies to entire entry except 9E619.y	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A

TSR: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E619.b. or .c. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in ECCN 9E619.

List of Items Controlled

Unit: $ value

Related Controls: (1) Technical data directly related to articles enumerated in USML Category XIX are subject to the control of USML Category XIX(g). (2) Technology described in ECCN 9E003 is controlled by that ECCN.

Related Definitions: N/A

Items:

a. "Technology" (other than "technology" controlled by paragraphs .b and .c of this entry) "required" for the "development," "production," operation, installation, maintenance, repair,

overhaul, or refurbishment of items controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), ECCN 9C619, or ECCN 9D619 (except 9D619.y).

Note: "Build-to-print technology" "required" for the "production" of items described in paragraphs b.1 through b.9 of this entry is classified under 9E619.a.

b. "Technology" (other than "build-to-print technology") "required" for the "development" or "production" of any of the following:

b.1. Front, turbine center, and exhaust frames;

b.2. Low pressure compressor (i.e., fan) "components" and "parts" as follows: nose cones and casings;

b.3. High pressure compressor "components" and "parts" as follows: casings;

b.4. Combustor "components" and "parts" as follows: casings, fuel nozzles, swirlers, swirler cups, deswirlers, valve injectors, and igniters;

b.5. High pressure turbine "components" and "parts" as follows: casings;

b.6. Low pressure turbine "components" and "parts" as follows: casings;

b.7. Augmentor “components” and “parts” as follows: casings, flame holders, spray bars, pilot burners, augmentor fuel controls, flaps (external, convergent, and divergent), guide and syncronization rings, and flame detectors and sensors;

b.8. Mechanical “components” and “parts” as follows: fuel metering units and fuel pump metering units, valves (fuel throttle, main metering, oil flow management), heat exchangers (air/air, fuel/air, fuel/oil), debris monitoring (inlet and exhaust), seals (carbon, labyrinth, brush, balance piston, and “knife-edge”), permanent magnetic alternator and generator, eddy current sensors; or

b.9. Torquemeter assembly (i.e., housing, shaft, reference shaft, and sleeve).

c. “Technology” “required” for the “development” or “production” of any of the following:

c.1. Low pressure compressor (i.e., fan) “components” and “parts” as follows: blades, vanes, spools, shrouds, blisks, shafts and disks;

c.2. High pressure compressor “components” and “parts” as follows: blades, vanes, spools, shrouds, blisks, shafts, disks, and impellers;

c.3. Combustor “components” and “parts” as follows: diffusers, liners, chambers, cowlings, domes and shells;

c.4. High pressure turbine “components” and “parts” as follows: shafts and disks, blades, vanes, nozzles, tip shrouds;

c.5. Low pressure turbine “components” and “parts” as follows: shafts and disks, blades, vanes, nozzles, tip shrouds;

c.6. Digital engine control systems (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) “specially designed” for gas turbine engines controlled in this ECCN; or

c.7. Engine monitoring systems (i.e., prognostics, diagnostics, and health) “specially designed” for gas turbine engines and components controlled in this ECCN.

d. through x. [Reserved]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 9A619.y or 9B619.y, or “software” controlled by ECCN 9D619.y.

78. Add Supplement No. 4 to Part 774, to read as follows:

SUPPLEMENT NO. 4 TO PART 774 - COMMERCE CONTROL LIST ORDER OF REVIEW

(a) As described in EAR § 734.3, the EAR govern only items “subject to the EAR,” e.g.,

items not subject to the exclusive jurisdiction of another agency. Thus, for example, if an item is described in the U.S. Munitions List (USML) (22 CFR Part 121) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), including one of its catch-all paragraphs, then the item is a "defense article" subject to the ITAR and there is no need to review the CCL with respect to whether it describes the item. See 22 CFR § 120.6 ("Defense article means any item or technical data designated in § 121.1 of the ITAR. The policy described in § 120.3 is applicable to designations of additional items"). If an item is not described on the USML and is otherwise "subject to the EAR," then work through each of the following steps to determine where the item is covered by the CCL or, if it is not covered by the CCL, and is therefore designated as EAR99.

(1) Step 1. To classify an item "subject to the EAR" against the CCL, review the general characteristics of the item. This will usually guide you to the appropriate category (0 through 9) on the CCL.

(2) Step 2. Once the potentially applicable CCL categories are identified, determine which product group within the CCL category or categories -- i.e., A, B, C, D, or E -- is applicable to the item.

(3) Step 3. The "600 series" describes military items that were once subject to the ITAR. Just as the ITAR effectively trumps the EAR, items described in a "600 series" ECCN trump other ECCNs on the CCL. Thus, the next step in conducting a classification analysis of an item "subject to the EAR" is to determine whether it is described in a "600 series" ECCN paragraph other than a "catch-all" paragraph such as a ".x" paragraph that controls unspecified "parts" and "components" "specially designed" for items in that ECCN or the corresponding USML paragraph. If so, the item is classified under that

"600 series" ECCN paragraph.

(4) Step 4. If the item is not described in a "600 series" ECCN, then determine whether the item is classified under a "600 series" catch-all paragraph, i.e., one that controls non-specific "parts," "components," "accessories," and "attachments" "specially designed" for items in that ECCN or the corresponding USML paragraph. Such items are generally in the ".x" paragraph of the "600 series" ECCNs.

(i) Step 4.a. Determine whether the item would meet the criteria of either paragraphs (a)(1) or (a)(2) of the "specially designed" definition in § 772.1 of the EAR. (These are informally known as the "catch" paragraphs.) If not applicable, then the item is not within the scope of the ECCN paragraph that contains a "specially designed" control parameter. Skip to Step 5.

(ii) Step 4.b. If the item meets the criteria of either paragraph (a)(1) or (a)(2) of the "specially designed" definition, then determine whether any of the provisions of paragraph (b) of the "specially designed" definition would apply. (These are informally known as the "release" provisions.) If so, then the item is not within the scope of the ECCN paragraph that contains a "specially designed" control parameter.

Note to paragraph (a)(4): The emphasis on the word "control" in Steps 4.a and 4.b is deliberate. Some ECCNs use "specially designed" as a de-control parameter. If an item would *not* be classified under a particular ECCN because it falls within the scope of either subparagraph (a)(1) or (a)(2) of the "specially designed" definition, then there is no need to analyze whether any element of paragraph (b) of the definition would apply to the item. One needs only review the "release" provisions in paragraph (b) of the "specially designed" definition if

paragraph (a) of the "specially designed" definition applies to the item in a "control" paragraph of an ECCN that uses the term "specially designed."

(5) Step 5. If an item is not classified by a "600 series" ECCN, then starting from the beginning of the product group analyze each ECCN to determine whether any other ECCN in that product group describes the item. If any ECCN uses the term "specially designed," see Steps 4a and 4b above in paragraphs (a)(4)(i) and (a)(4)(ii) respectively. If the item is described in one of these ECCNs, then the item is classified under that ECCN.

(6) Step 6. If the item is not described under any ECCN of any category of the CCL, then the item is designated as EAR99. EAR99 items may require a license if destined for a prohibited or restricted end user, end use or destination. See paragraphs (g) through (n) of § 732.3 "Steps Regarding the Ten General Prohibitions," or General Prohibitions Four through Ten of part 736 of the EAR for license requirements other than those imposed by the CCL.

(b) [Reserved].

79. Part 774 is amended by adding Supplement Nos. 6 and 7 to read as follows:

SUPPLEMENT NO. 6 TO PART 774 – SENSITIVE LIST

Note to Supplement No. 6: While the items on this list are identified by ECCN rather than by Wassenaar Arrangement numbering, the item descriptions are drawn directly from the Wassenaar Arrangement's Sensitive List. If text accompanies an ECCN below, then the Sensitive List is limited to a subset of items classified under the specific ECCN or has differing parameters.

(1) Category 1

(i) 1A002.

(ii) 1C001.

(iii) 1C007.c and .d.

(iv) 1C010.c and .d.

(v) 1C012.

(vi) 1D002 – "Software" for the "development" of organic "matrix", metal "matrix", or carbon "matrix" laminates or composites controlled under 1A002, 1C007.c, 1C007.d, 1C010.c or 1C010.d.

(vii) 1E001 – "Technology" according to the General Technology Note for the "development" or "production" of equipment and materials controlled under 1A002, 1C001, 1C007.c, 1C007.d, 1C010.c, 1C010.d, or 1C012.

(viii) 1E002.e and .f.

(2) Category 2

(i) 2D001 – "Software", other than that controlled by 2D002, specially designed for the "development" or "production" of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with "all compensations available" equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for "contouring control";

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) Positioning accuracy with "all compensations available" equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control";

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a positioning accuracy with "all compensations available" equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; or

(3) A positioning accuracy for jig boring machines, with "all compensations available", equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) "Numerically controlled" or manual machine tools controlled under 2B003.

(ii) 2E001 – "Technology" according to the General Technology Note for the "development" of "software" specified by 2D001 described in this Supplement or for the "development" of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with "all compensations available" equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for “contouring control”;

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) Positioning accuracy with “all compensations available” equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for “contouring control”;

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; or

(3) A positioning accuracy for jig boring machines, with “all compensations available”, equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) "Numerically controlled" or manual machine tools controlled under 2B003.

(iii) 2E002 – "Technology" according to the General Technology Note for the "production" of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with "all compensations available" equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for "contouring control";

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) Positioning accuracy with "all compensations available" equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control";

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a positioning accuracy with "all compensations available" equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; or

(3) A positioning accuracy for jig boring machines, with "all compensations available", equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) "Numerically controlled" or manual machine tools controlled under 2B003.

(3) Category 3

(i) 3A002.g.1.

(ii) 3D001 – "Software" specially designed for the "development" or "production" of equipment controlled under 3A002.g.1.

(iii) 3E001 – "Technology" according to the General Technology Note for the "development" or "production" of equipment controlled under 3A002.g.1.

(4) Category 4

(i) 4A001.a.2.

(ii) 4D001 – "Software" specially designed for the "development" or "production" of equipment controlled under ECCN 4A001.a.2 or for the "development" or "production" of "digital computers" having an 'Adjusted Peak Performance' ('APP') exceeding 0.5 Weighted TeraFLOPS (WT).

(iii) 4E001 – "Technology" according to the General Technology Note for the "development" or "production" of any of the following equipment or "software": equipment controlled under ECCN 4A001.a.2, "digital computers" having an 'Adjusted Peak Performance' ('APP') exceeding 0.5 Weighted TeraFLOPS (WT), or "software" controlled under the specific provisions of 4D001 described in this Supplement.

(5) Category 5 – Part 1

(i) 5A001.b.3, .b.5, and .h.

(ii) 5B001.a – Equipment and specially designed components or accessories therefor, specially designed for the "development" or "production" of equipment, functions or features controlled under 5A001.b.3, b.5, or .h.

(iii) 5D001.a – "Software" specially designed for the "development" or "production" of equipment, functions or features controlled under 5A001.b.3, b.5, or .h.

(iv) 5D001.b – "Software" specially designed or modified to support "technology" controlled by this Supplement's description of 5E001.a.

(v) 5E001.a – "Technology" according to the General Technology Note for the "development" or "production" of equipment, functions or features controlled under 5A001.b.3, b.5, or .h or "software" described in this Supplement's description of 5D001.a.

(6) Category 6

(i) 6A001.a.1.b – Systems or transmitting and receiving arrays, designed for object detection or location, having any of the following:

(A) A transmitting frequency below 5 kHz or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive;

(B) Sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

(C) Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

(D) Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

(E) Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

(F) Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

(1) Dynamic compensation for pressure; or

(2) Incorporating other than lead zirconate titanate as the transduction element;

(ii) 6A001.a.1.e.

(iii) 6A001.a.2.a.1, a.2.a.2, a.2.a.3, a.2.a.5, and a.2.a.6.

(iv) 6A001.a.2.b.

(v) 6A001.a.2.c – Processing equipment, specially designed for real time application with towed acoustic hydrophone arrays, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(vi) 6A001.a.2.d.

(vii) 6A001.a.2.e.

(viii) 6A001.a.2.f – Processing equipment, specially designed for real time application with bottom or bay cable systems, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(ix) 6A002.a.1.a, a.1.b, and a.1.c.

(x) 6A002.a.1.d.

(xi) 6A002.a.2.a – Image intensifier tubes having all of the following:

(A) A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

(B) Electron image amplification using any of the following:

(1) A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 12 μm or less; or

(2) An electron sensing device with a non-binned pixel pitch of 500 μm or less, specially designed or modified to achieve 'charge multiplication' other than by a microchannel plate; and

(C) Any of the following photocathodes:

(1) Multialkali photocathodes (e.g., S-20 and S-25) having a luminous sensitivity exceeding 700 μA/lm;

(2) GaAs or GaInAs photocathodes; *or*

(3) Other "III-V compound" semiconductor photocathodes having a maximum "radiant sensitivity" exceeding 10 mA/W.

(xii) 6A002.a.2.b.

(xiii) 6A002.a.3 – Subject to the following additional notes:

Note 1: 6A002.a.3 does not apply to the following “focal plane arrays” in this Supplement:

a. Platinum Silicide (PtSi) “focal plane arrays” having less than 10,000 elements;

b. Iridium Silicide (IrSi) “focal plane arrays”.

Note 2: 6A002.a.3 does not apply to the following “focal plane arrays” in this Supplement:

a. Indium Antimonide (InSb) or Lead Selenide (PbSe) “focal plane arrays” having less than 256 elements;

b. Indium Arsenide (InAs) “focal plane arrays”;

c. Lead Sulphide (PbS) “focal plane arrays”;

d. Indium Gallium Arsenide (InGaAs) “focal plane arrays”.

Note 3: 6A002.a.3 does not apply to Mercury Cadmium Telluride (HgCdTe) “focal plane arrays” as follows in this Supplement:

a. ‘Scanning Arrays’ having any of the following:

1. 30 elements or less; or

2. Incorporating time delay-and-integration within the element and having 2 elements or less;

b. ‘Staring Arrays’ having less than 256 elements.

Technical Notes:

a. ‘Scanning Arrays’ are defined as “focal plane arrays” designed for use with a scanning optical system that images a scene in a sequential manner to produce an image;

b. ‘Staring Arrays’ are defined as “focal plane arrays” designed for use with a non-scanning optical system that images a scene.

Note 6: 6A002.a.3 does not apply to the following “focal plane arrays” in this List:

a. Gallium Arsenide (GaAs) or Gallium Aluminum Arsenide (GaAlAs) quantum well “focal plane arrays” having less than 256 elements;

b. Microbolometer “focal plane arrays” having less than 8,000 elements.

Note 7: 6A002.a.3.g does not apply to the linear (1-dimensional) “focal plane arrays” specially designed or modified to achieve ‘charge multiplication’ having 4,096 elements or less.

Note 8: 6A002.a.3.g. does not apply to the non-linear (2-dimensional) “focal plane arrays” specially designed or modified to achieve ‘charge multiplication’ having a maximum linear dimension of 4,096 elements and a total of 250,000 elements or less.

(xiv) 6A002.b.

(xv) 6A002.c – ‘Direct view’ imaging equipment incorporating any of the following:

(A) Image intensifier tubes having the characteristics listed in this Supplement’s description of 6A002.a.2.a or 6A002.a.2.b;

(B) “Focal plane arrays” having the characteristics listed in this Supplement’s description of 6A002.a.3; or

(C) Solid-state detectors having the characteristics listed in 6A002.a.1.

(xvi) 6A003.b.3 – Imaging cameras incorporating image intensifier tubes having the characteristics listed in this Supplement’s description of 6A002.a.2.a or 6A002.a.2.b

Note: 6A003.b.3 does not apply to imaging cameras specially designed or modified for underwater use.

(xvii) 6A003.b.4 – Imaging cameras incorporating “focal plane arrays” having any of the following:

(A) Incorporating “focal plane arrays” specified by this Supplement’s description of 6A002.a.3.a to 6A002.a.3.e;

(B) Incorporating “focal plane arrays” specified by this Supplement’s description of 6A002.a.3.f; or

(C) Incorporating “focal plane arrays” specified by this Supplement’s description of 6A002.a.3.g.

Note 1: 'Imaging cameras' described in 6A003.b.4 include "focal plane arrays" combined with sufficient "signal processing" electronics, beyond the read out integrated circuit, to enable as a minimum the output of an analog or digital signal once power is supplied.

Note 2: 6A003.b.4.a does not control imaging cameras incorporating linear "focal plane arrays" with twelve 12 elements or fewer, not employing time-delay-and-integration within the element, and designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

Note 3: 6A003.b.4.b does not control imaging cameras having any of the following characteristics:

a. A maximum frame rate equal to or less than 9 Hz;

b. Having all of the following:

1. Having a minimum horizontal or vertical 'Instantaneous-Field -of-View (IFOV)' of at least 10 mrad/pixel (milliradians/pixel);

2. Incorporating a fixed focal-length lens that is not designed to be removed;

3. Not incorporating a 'direct view' display; and

Technical Note: 'Direct view' refers to an imaging camera operating in the infrared spectrum that presents a visual image to a human observer using a near-to-eye micro display incorporating any light-security mechanism.

4. Having any of the following:

a. No facility to obtain a viewable image of the detected field-of-view; or

b. The camera is designed for a single kind of application and designed not to be user modified; or

Technical Note:

'Instantaneous Field of View (IFOV)' specified in Note 3.b is the lesser figure of the 'Horizontal FOV' or the 'Vertical FOV'.

'Horizontal IFOV' = horizontal Field of View (FOV)/number of horizontal detector elements

'Vertical IFOV'= vertical Field of View (FOV)/number of vertical detector elements.

c. Where the camera is specially designed for installation into a civilian passenger land vehicle of less than 3 tonnes three tons (gross vehicle weight) and having all of the following:

1. Is operable only when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended; or

b. A specially designed, authorized maintenance test facility; and

2. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

Note: When necessary, details of the items will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 3.b.4 and Note 3.c in this Note to 6A003.b.4.b.

Note 4:6A003.b.4.c does not apply to 'imaging cameras' having any of the following characteristics:

a. Having all of the following:

1. Where the camera is specially designed for installation as an integrated component into indoor and wall-plug-operated systems or equipment, limited by design for a single kind of application, as follows:

a. Industrial process monitoring, quality control, or analysis of the properties of materials;

b. Laboratory equipment specially designed for scientific research;

c. Medical equipment;

d. Financial fraud detection equipment; and

2. Is only operable when installed in any of the following:

a. The system(s) or equipment for which it was intended; or

b. A specially designed, authorized maintenance facility; and

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the system(s) or equipment for which it was intended;

b. Where the camera is specially designed for installation into a civilian passenger land vehicle of less than 3 tonnes (gross vehicle weight), or passenger and vehicle ferries having a length overall (LOA) 65 m or greater, and having all of the following:

1. Is only operable when installed in any of the following:

a. The civilian passenger land vehicle or passenger and vehicle ferry for which it was intended; or

b. A specially designed, authorized maintenance test facility; and

2. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended;

c. Limited by design to have a maximum "radiant sensitivity" of 10 mA/W or less for wavelengths exceeding 760 nm, having all of the following:

1. Incorporating a response limiting mechanism designed not to be removed or modified; and

2. Incorporates an active mechanism that forces the camera not to function when the response limiting mechanism is removed; and

3. Not specially designed or modified for underwater use; or

d. Having all of the following:

1. Not incorporating a ‘direct view’ or electronic image display;

2. Has no facility to output a viewable image of the detected field of view;

3. The “focal plane array” is only operable when installed in the camera for which it was intended; and

4. The “focal plane array” incorporates an active mechanism that forces it to be permanently inoperable when removed from the camera for which it was intended.

Note: When necessary, details of the item will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 4 above.

Note 5: 6A003.b.4.c does not apply to imaging cameras specially designed or modified for underwater use.

(xviii) 6A003.b.5.

(xix) 6A004.c.

(xx) 6A004.d.

(xxi) 6A006.a.1.

(xxii) 6A006.a.2 – “Magnetometers” using optically pumped or nuclear precession (proton/Overhauser) “technology” having a ‘sensitivity’ lower (better) than 2 pT (rms) per square root Hz.

(xxiii) 6A006.c.1 – “Magnetic gradiometers” using multiple “magnetometers” specified by 6A006.a.1 or this Supplement’s description of 6A006.a.2.

(xxiv) 6A006.d – “Compensation systems” for the following:

(A) Magnetic sensors specified by 6A006.a.2 and using optically pumped or nuclear precession (proton/Overhauser) “technology” that will permit these sensors to realize a ‘sensitivity’ lower (better) than 2 pT rms per square root Hz.

(B) Underwater electric field sensors specified by 6A006.b.

(C) Magnetic gradiometers specified by 6A006.c. that will permit these sensors to realize a ‘sensitivity’ lower (better) than 3 pT/m rms per square root Hz.

(xxv) 6A006.e – Underwater electromagnetic receivers incorporating magnetometers specified by 6A006.a.1 or this Supplement’s description of 6A006.a.2.

(xxvi) 6A008.d, .h, and .k.

(xxvii) 6B008.

(xxviii) 6D001 – "Software" specially designed for the "development" or "production" of equipment specified by 6A004.c, 6A004.d, 6A008.d, 6A008.h, 6A008.k, or 6B008.

(xxix) 6D003.a.

(xxx) 6E001.

(xxxi) 6E002 – "Technology" according to the General Technology Note for the "production" of equipment specified by the 6A or 6B provisions described in this Supplement.

(7) Category 7

(i) 7D002.

(ii) 7D003.a.

(iii) 7D003.b.

(iv) 7D003.c.

(v) 7E001.

(vi) 7E002.

(8) Category 8

(i) 8A001.b to .d.

(ii) 8A002.b – Systems specially designed or modified for the automated control of the motion of submersible vehicles specified by 8A001.b through .d using navigation data having closed loop servo-controls and having any of the following:

(A) Enabling a vehicle to move within 10 m of a predetermined point in the water column;

(B) Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; or

(C) Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed.

(iii) 8A002.h and .j.

(iv) 8A002.o.3.

(v) 8A002.p.

(vi) 8D001 – "Software" specially designed for the "development" or "production" of equipment in 8A001.b to .d, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

(vii) 8D002.

(viii) 8E001 – "Technology" according to the General Technology Note for the "development" or "production" of equipment specified by 8A001.b to .d, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

(ix) 8E002.a.

(9) Category 9

(i) 9A011.

(ii) 9B001.b.

(iii) 9D001 – "Software" specially designed or modified for the "development" of equipment or "technology", specified by 9A011, 9B001.b. 9E003.a.1, 9E003.a.2 to a.5 or 9E003.a.8 or 9E003.h.

(iv) 9D002 – "Software" specially designed or modified for the "production" of equipment specified by 9A011 or 9B001.b.

(v) 9D004.a and .c.

(vi) 9E001.

(vii) 9E002.

(viii) 9E003.a.1.

(ix) 9E003.a.2 to a.5, a.8, .h.

SUPPLEMENT NO. 7 TO PART 774 – VERY SENSITIVE LIST

Note to Supplement No. 7: While the items on this list are identified by ECCN rather than by Wassenaar Arrangement numbering, the item descriptions are drawn directly from the Wassenaar Arrangement's Very Sensitive List, which is a subset of the Wassenaar

Arrangement's Sensitive List. If text accompanies an ECCN below, then the Very Sensitive List is limited to a subset of items classified under the specific ECCN or has differing parameters.

(1) Category 1

(i) 1A002.a.

(ii) 1C001.

(iii) 1C012.

(iv) 1E001 – "Technology" according to the General Technology Note for the "development" or "production" of equipment and materials specified by 1A002.a, 1C001, or 1C012.

(2) Category 5 – Part 1

(i) 5A001.b.5.

(ii) 5A001.h.

(iii) 5D001.a – "Software" specially designed for the "development" or "production" of equipment, functions or features specified by 5A001.b.5 or 5A001.h.

(iv) 5E001.a – “Technology” according to the General Technology Note for the “development” or “production” of equipment, functions, features or “software” specified by 5A001.b.5, 5A001.h, or 5D001.a.

(3) Category 6

(i) 6A001.a.1.b.1 – Systems or transmitting and receiving arrays, designed for object detection or location, having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) and an operating frequency in the band from 30 Hz to 2 kHz.

(ii) 6A001.a.2.a.1 to a.2.a.3, a.2.a.5, or a.2.a.6.

(iii) 6A001.a.2.b.

(iv) 6A001.a.2.c – Processing equipment, specially designed for real time application with towed acoustic hydrophone arrays, having “user accessible programmability” and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(v) 6A001.a.2.e.

(vi) 6A001.a.2.f – Processing equipment, specially designed for real time application with bottom or bay cable systems, having “user accessible programmability” and time or frequency

domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(vii) 6A002.a.1.c.

(viii) 6B008.

(ix) 6D001 – "Software" specially designed for the "development" or "production" of equipment specified by 6B008.

(x) 6D003.a.

(xi) 6E001 – "Technology" according to the General Technology Note for the "development" of equipment or "software" specified by the 6A, 6B, or 6D provisions described in this Supplement.

(xii) 6E002 – "Technology" according to the General Technology Note for the "production" of equipment specified by the 6A or 6B provisions described in this Supplement.

(4) Category 7

(i) 7D003.a.

(ii) 7D003.b.

(5) Category 8

(i) 8A001.b.

(ii) 8A001.d.

(iii) 8A002.o.3.b.

(iv) 8D001 – "Software" specially designed for the "development" or "production" of equipment specified by 8A001.b, 8A001.d, or 8A002.o.3.b.

(v) 8E001 – "Technology" according to the General Technology Note for the "development" or "production" of equipment specified by 8A001.b, 8A001.d, or 8A002.o.3.b.

(6) Category 9

(i) 9A011.

(ii) 9D001 – "Software" specially designed or modified for the "development" of equipment or "technology" specified by 9A011, 9E003.a.1, or 9E003.a.3.a.

(iii) 9D002 – "Software" specially designed or modified for the "production" of equipment specified by 9A011.

(iv) 9E001 – "Technology" according to the General Technology note for the "development" of equipment or "software" specified by 9A011 or this Supplement's description of 9D001 or 9D002.

(v) 9E002 – "Technology" according to the General Technology Note for the "production" of equipment specified by 9A011.

(vi) 9E003.a.1.

(vii) 9E003.a.3.a.

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