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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, 770, 772 and 774

[Docket No. 110824536-1499-01]

RIN 0694-AF36

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).

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

ACTION: Proposed rule.

SUMMARY:

This proposed rule describes how articles the President determines no longer warrant control under Category VIII (aircraft and related items) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 9A610, 9B610, 9C610, 9D610, and 9E610. In addition, this proposed rule would control military aircraft and related items now controlled under ECCNs

9A018, 9D018 and 9E018 under new ECCNs 9A610, 9D610 and 9E610. This proposed rule also addresses license exception availability for items controlled by the five new ECCNs that would be created.

This is the second in a planned series of proposed rules describing how various types of articles the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant USML control, would be controlled on the CCL and by the EAR. This proposed rule is being published in conjunction with a proposed rule of the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category VIII.

In addition, this proposed rule would modify aspects of the Bureau of Industry Security's (BIS) July 15, 2011 proposed rule by adding cross references to ECCNs 9A018, 9D018 and 9E018; by adding provisions relating to License Exception Strategic Trade Authorization (STA) eligibility to clarify that its scope extends to the United States Government, to any person in the United States, and to the "development" or "production" of items; and by including a general policy of denial for 600 series items for destinations that are subject to a United States arms embargo under the regional stability reasons for control.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2011-0033

- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AF36 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AF36.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration’s ongoing Export Control Reform Initiative, BIS published a proposed rule (76 FR 41958) (“the July 15 proposed rule”) that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. § 2778(f)), would no longer warrant control on the United States Munitions List (USML) instead would be controlled on the Commerce Control List (CCL). With that proposed rule, BIS also described its proposal for how military vehicles and related articles in USML Category VII that no longer warrant control under the USML would be controlled on the CCL.

Following the structure of the July 15 proposed rule, this proposed rule describes BIS's proposal for how a second group of items -- various military aircraft and related articles that are controlled by USML Category VIII -- would be controlled on the CCL. The proposed changes described in this proposed rule and the State Department's proposed amendment to Category VIII of the USML are based on a review of Category VIII by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category VIII that are either (i) inherently military and otherwise warrant control on the USML or (ii) if it is a type common to civil aircraft applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States. If an article satisfied one or both of those criteria, the article remained on the USML. If an article did not satisfy either standard but was nonetheless a type of article that is, as a result of differences in form and fit, "specially designed" for military applications, then it was identified in the new ECCNs proposed in this notice. The licensing policies and other EAR-specific controls for such items also described in this notice would enhance national security by (i) allowing for greater interoperability with our NATO and other allies while still maintaining and expanding robust controls and, in some cases, prohibitions on exports or reexports to other countries and for proscribed end users and end uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting

exports and reexports of more significant items to destinations, end uses, and end users of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “describe the nature of any controls to be imposed on that item under any other provision of law.” 22 U.S.C. § 2778(f)(1). This proposed rule describes how certain military aircraft and related articles in USML Category VIII would be controlled by the EAR and its CCL if the President determines that the articles no longer warrant control on the USML.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that would be moved from the USML to the CCL, or that are items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that are already controlled elsewhere on the CCL. The proposed rule referred to this series as the “600 series” because the third character in each of the new ECCNs would be a “6.” The first two characters of the 600 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

BIS will publish additional *Federal Register* notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Modifications to Provisions in the July 15 Proposed Rule

In addition to the proposals mentioned above, this proposed rule would make the following modifications to the July 15 proposed rule.

- Additions to proposed paragraph (a)(13) in § 740.2;
- Changes to the proposed Note to paragraph (c)(1) in § 740.20;
- Changes to ECCNs 9A018, 9D018 and 9E018;
- Addition of new Category 9 600 series ECCNs to § 742.6(a)(1); and
- Changes in eligible users for 600 Series under License Exception STA in § 740.2(a)(13).

A complete discussion of these modifications is described in the section “Scope of this Proposed Rule.” BIS will consider comments on the original proposals only for the specific paragraph, note, and ECCNs referenced above, and only in the context of the proposed rule’s modifications to them.

Scope of this Proposed Rule

This proposed rule would create five new 600 series ECCNs in CCL Category 9 -- 9A610, 9B610, 9C610, 9D610, and 9E610 -- that would control articles the President determines no longer warrant control under USML Category VIII. Consistent with the regulatory construct identified in the July 15 proposed rule, this rule also would move items currently classified under ECCNs 9A018, 9D018, and 9E018 to the new ECCNs. As part of the proposed changes, these three 018 ECCNs would cross-reference the new classifications in the 600 series. As noted in the July 15 proposed rule, moving items from 018 ECCNs to the appropriate 600 series ECCNs would consolidate WAML and formerly USML items into one series of ECCNs.

The rule would also create a new Supplement No. 4 to part 740 that would prohibit the use of License Exceptions STA or GOV to export or reexport, except to U.S. government agencies or personnel, ECCN 9D610 software and ECCN 9E610 technology (other than “build-to-print technology”) for the production of specific types of parts and components classified under ECCN 9A610.x.

License Exception STA under § 740.20(c)(1) generally would be available for eligible end items (as described in § 740.20(g) of the July 15 proposed rule) and all other 600 series items if, at the time of export, reexport or transfer (in-country) the item is destined (i) for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, and search and rescue agencies of a government in one of the § 740.20(c)(1) countries (the “STA-36”) or of the United States Government; or (ii) for the “production” or “development” of an item for ultimate end use by any of those foreign government agencies in any of the thirty-six

§ 740.20(c)(1) countries, by the United States Government, or by any person in the United States. This condition means that exports and reexports to non-governmental end users in one of the STA-36 countries under STA would be permissible so long as the item at issue would ultimately be provided to, or for the production or development of an item to be provided to and for end use by, any of the foregoing agencies of a government of a STA-36 country, the United States Government, or any person in the United States. This eligibility under License Exception STA is proposed because the U.S. Government recognizes that there would be a significant volume of desirable trade between and among private companies in the STA-36 countries regarding “600 series” end items that would ultimately be for use by one of the foregoing government agencies of an STA-36 country, the United States Government, and manufacturers in the United States. This proposal protects U.S. export control interests while at the same time facilitating permissible exports, reexports, and transfers (in-country) with the governments of the STA-36 countries and the United States. BIS particularly welcomes comments on the types of government agencies that would be eligible to ultimately receive items through this license exception. If, for example, there are types of agencies or persons that have been omitted from this list but that commenters believe should be included, commenters should provide BIS with this information, including specific examples of such agencies or persons.

The proposed changes are discussed in more detail below.

New Category 9 600 Series ECCNs

Certain military aircraft and related articles the President determines no longer warrant control in USML Category VIII would be controlled under proposed new ECCNs 9A610, 9B610, 9C610,

9D610, and 9E610. These new ECCNs follow the 600 series construct identified in the July 15 proposed rule.

Paragraphs .a through .k of ECCN 9A610 would consist of “end items,” as that term was defined in the July 15 proposed rule, and some types of related parts, components, accessories, attachments, equipment, and systems. Paragraphs .b, .c, .d, and .e would be reserved to make paragraphs .f through .i align with paragraphs on the WAML covering similar items. Paragraphs .l, .m, and .n would control Unmanned Aerial Vehicle (UAV)-related items that are not identified on the USML or the WAML, but which are identified on the Missile Technology Control Regime (MTCR) Equipment, Software and Technology Annex and which are proposed to be subject to the MT Column 1 reason for control. Paragraphs .o through .w would be reserved for possible future use. Paragraph .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 paragraphs .a through .k or a defense article in USML Category VIII. Paragraph .y would consist of 25 specific types of commodities that, if specially designed for a commodity subject to control in this 9A610 or a defense article in USML Category VIII, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y would be controlled for antiterrorism (AT Column 1) reasons, which imposes a license requirement for five countries and, in accordance with the July 15 proposed rule, if destined for a military end use to the People’s Republic of China, as described in § 744.21.

This proposed rule does not add aircraft gas turbine engines to the proposed new ECCN 9A610. Instead, the Administration plans to issue a proposed rule later that would describe the U.S. Government's controls on gas turbine engines and related items for military aircraft, ships, and vehicles, which is currently anticipated to be new ECCN 9A619. Although this numbering deviates slightly from the WAML numbering approach, BIS believes that it would be more efficient to list all 600 series controls for gas turbine engines and related items in one ECCN. The anticipated new ECCN will correspond to a new USML Category XIX that the State Department would propose creating to control USML-controlled gas turbine engines and related articles. When BIS publishes the proposed rule to address gas turbine engines and related items for military aircraft, missiles, ships, and vehicles, cross references to the proposed new ECCN would be added to the new ECCNs proposed by this rule.

ECCN 9B610.a would consist of test, inspection, and production equipment specially designed for the development or production of aircraft and related commodities and articles controlled by ECCN 9A610 or USML Category VIII. ECCN 9B610.b would consist of environmental test facilities designed or modified for military aircraft and related commodities. These new ECCN paragraphs would also implement WAML Category 18, which applies to production equipment and components for items on the WAML generally, with respect to production equipment for military aircraft, and environmental test facilities for such aircraft and related commodities.

ECCN 9B610.c would implement a Missile Technology Control Regime control on production facilities specially designed for certain types of Unmanned Aerial Vehicles or drones.

ECCN 9C610 would consist of 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. USML subcategory XIII(f) would continue to control structural materials “specifically designed, developed, configured, modified, or adapted for defense articles,” such as aircraft controlled by USML subcategory VIII(a). The State Department plans to publish a proposed revision to XIII(f) that would make it a more positive list of the structural materials that are controlled by USML XIII(f). When that occurs, BIS will publish a corresponding proposed revision to ECCN 9C610 so that it controls such items specially designed for ECCN 9A610 items and USML Category VIII items that are not positively listed in any revised USML XIII(f).

ECCN 9D610 would consist of software specially designed for commodities in 9A610, 9B610, or 9C610. ECCN 9D610 would also contain a “Note to License Exceptions Section” referring readers to the proposed Supplement No. 4 to part 740, which would limit the use of License Exceptions GOV and STA for ECCN 9D610 software for the production or development of 15 types of parts and components.

ECCN 9E610 would consist of technology that is required commodities in 9A610, 9B610, 9C610, or software 9D610. ECCN 9E610 would also contain a “Note to License Exceptions Section” referring to proposed Supplement No. 4 to part 740, discussed below, which would limit the use of License Exceptions GOV and STA for ECCN 9E610 technology (other than “build-to-print technology”) for the production of 15 types of ECCN 9A610.x parts and components.

ECCNs 9A610, 9B610, 9C610, 9D610, and 9E610 would each have a special paragraph designated “.y.99” to cover items that would otherwise fall within the scope of one of the ECCNs because, for example, they were “specially designed” for a military use, but which (i) had been previously determined by the Department of State to be subject to the EAR and (ii) were not listed on the CCL. Items in these .y.99 paragraphs would be subject to antiterrorism controls.

Items currently classified under ECCN 9A018 paragraphs .a, .c, .d, .e and .f would be moved to ECCN 9A610. In conjunction with the establishment of the new ECCN 9X610 entries and consistent with the July 15 proposed rule’s statement that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule would amend ECCNs 9A018, 9D018, and 9E018 to be solely cross references to the new 600 series ECCNs that cover the items currently in those 018 ECCNs. ECCN 9A018 would refer to ECCN 9A610 for aircraft related commodities (i.e., for items currently classified under ECCN 9A018 paragraphs .a, .c, .d, .e, and .f). Similarly, for all items other than those applying to ground vehicles, ECCN 9D018 would refer to ECCN 9D610 for software, and ECCN 9E018 would refer to ECCN 9E610 for technology.

This proposed rule would remove § 770.2(i) “Interpretation 9 Civil aircraft and Civil aircraft equipment (including parts, accessories, attachments, components and related training equipment).” That section explains the licensing authorities of the Departments of State and Commerce with respect to aircraft and related items. It would no longer be needed given the text of proposed ECCN 9A610.

In the July 15 proposed rule, BIS proposed moving items classified under ECCN 9A018.b (certain ground vehicles) to newly proposed ECCN 0A606.b.4. With that rule, BIS identified a

corresponding proposed amendment to ECCN 9A018 that cross-referenced ECCN 0A606.b.4 for former ECCN 9A018.b items. This rule proposes to further amend ECCN 9A018, maintaining the proposed reference to ECCN 0A606.b.4 for items currently classified under ECCN 9A018.b and cross-referencing ECCN 9A610 for all other items currently classified under ECCN 9A018 (i.e., items classified under ECCN 9A018.a, .c, .d, .e and .f).

The July 15 proposed rule indicated that software and technology applying to ground vehicle-related commodities, currently classified under ECCNs 9D018 and 9E018, would be classified under newly proposed ECCNs 0D606 and 0E606. However, the July 15 proposed rule did not propose cross-referencing language to be included in ECCNs 9D018 and 9E018. As noted above, BIS is now proposing amendments to ECCNs 9D018 and 9E018 to cross-reference ECCNs 9D610 and 9E610, for software and technology applying to those classified under ECCN 9A018 paragraphs .a, .c, .d, .e and .f. In conjunction with this proposal, BIS is also proposing amendments to ECCNs 9D018 and 9E018 that reference ECCNs 0D606 and 0E606 for software and technology applying to those items classified under ECCN 9A018.b.

License Exception Restrictions

Certain software and technology related to parts and components covered by .x items paragraphs of 600 series ECCNs warrant more restrictive license exception applicability than other software and technology currently on the CCL. This rule proposes creating a new Supplement No. 4 to Part 740 (600 Series Items Subject to Limits Regarding License Exceptions GOV and STA) that would identify 600 series items that may not be exported, reexported, or transferred (in-country) pursuant to License Exceptions STA (§ 740.20 of the EAR) or GOV (§ 740.11 of the EAR). The

supplement would be structured to list by CCL category the items for which license exception applicability is limited.

New Supplement No. 4 to part 740 would list 15 types of parts and components that would be classified under new ECCN 9A610.x and would state that License Exception STA (§ 740.20 of the EAR) may not be used to export, reexport, or transfer (in-country) any software classified under ECCN 9D610 or technology classified under ECCN 9E610 – other than “build-to-print technology” – for the production or development of any types of the listed ECCN 9A610.x parts and components. Further, the supplement would state that License Exception GOV, other than the paragraphs that authorize shipments to U.S. government agencies for official use or U.S. government personnel for personal use or official use (§ 740.11(b)(2)(i) and (ii) of the EAR), is not available for the export or reexport of software and technology (other than “build-to-print technology”) for the production or development of the ECCN 9A610.x parts and components listed in the supplement.

A new note to § 740.20(c)(1) would be added, and § 740.2(a)(13) would be clarified regarding the License Exception STA eligibility of end items and all other 600 series items. In the July 15 proposed rule, the export of a 600 series item is eligible for License Exception STA if, at the time of export, reexport or transfer (in-country), the item is destined for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government in one of the STA-36 countries. This proposed rule would make 600 series items eligible for License Exception STA for such uses and also when exported, reexported, or transferred for the production or development of an item for ultimate end use by a STA-36 country government agency, by the United States Government, or by a person in the United States. In addition this proposed rule would replace the phrase

“customs and border protection” with the phrase “customs” because BIS believes that the latter more accurately describes the practice of most governments. This clarification would make no change to the STA restrictions in §740.20(b)(2), including the restriction that prohibits use of STA for missile technology (MT) controlled items.

Other changes

A new definition for “build-to-print technology” would be added to § 772.1. This definition is needed to add precision to that term as used in new Supplement No. 4 to part 740.

This rule proposes amending License Exception GOV (§ 740.11) by adding references to the new proposed Supplement No. 4 to Part 740 supplement’s prohibitions in paragraphs (a)(5), (b)(2)(iii)(A), (b)(2)(iv)(A), and (c)(2)(iv), as well as in a note to (d)(1). Similarly, this rule proposes to amend License Exception STA (§ 740.20) by adding a reference to the proposed prohibitions in paragraph (b)(3).

Corresponding Amendments

As discussed in further detail below, the July 15 proposed rule stated that one reason for control for items classified in the 600 series is Regional Stability Column 1. Items classified under proposed ECCN 9A610, other than ECCN 9A610.y items, as well as related technology and software classified under ECCNs 9D610 and 9E610, would be controlled for this reason, among others. Correspondingly, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 9A610, 9B610, 9C610 (except paragraphs .y of those ECCNs), and to related software and technology classified under ECCNs 9D610 and 9E610. This proposed rule would also amend the RS Column 1 licensing policy to

impose a general policy of denial for “600 series” items if the destination is subject to a United States arms embargo and a general policy of denial for items specially designed or required for F-14 aircraft.

Relationship to the July 15 proposed rule.

As referenced above, the purpose of the July 15 proposed rule was to set up the framework for creating ECCNs that would cover articles that the President determines no longer warrant coverage on the USML, but for which export control under the EAR is appropriate. To facilitate that goal, the July 15 proposed rule contained definitions and concepts that were meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011.

To the extent that this rule’s proposals affect any provision in July 15 proposed rule or the July 15 proposed rule’s provisions affect this proposed rule, BIS will consider comments on those provisions so long as they are in the context of the changes proposed in this rule. For example, BIS will consider comments on how the movement of Category VIII items from the USML to the CCL affects a definition, restriction, or provision that was contained in the July 15 proposed rule. BIS will also consider comments on the impact of a definition of a term in the July 15 proposed rule when that term is used in this proposed rule. BIS will not consider comments of a general nature regarding the July 15 proposed rule that are submitted in response to this rulemaking.

BIS believes that the following aspects of the July 15 proposed rule are among those that could affect this proposed rule:

- *De minimis* provisions in § 734.4;
- Definitions of terms in § 772.1;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Requirement to request authorization to use License Exception STA for end items in 600 series ECCNs and procedures for submitting such requests in §§ 740.2, 740.20, 748.8 and Supp. No. 2 to part 748;
- Licensing policy in § 742.4(b)(1)(ii); and
- Addition of 600 series items to Supplement No. 2 to Part 744 – List of Items Subject to the Military End-Use Requirement of § 744.21.

BIS believes that the following aspects of this proposed rule are among those that could affect the provisions of the July 15 proposed rule:

Addition of U.S. arms embargo policy regarding 600 series items set forth in § 742.4(b)(1)(ii) (national security) of the July 15 proposed rule to § 742.6(b)(1) (regional stability) of this proposed rule;

- Addition of denial policy regarding 600 series items for F-14 aircraft set forth in § 742.6(b)(1) of this proposed rule.

Positive, Tiered, and Aligned Control Lists

In December 2010, the Departments of Commerce and State published Advanced Notices of Proposed Rulemaking that described the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that they eventually can be combined into a single control list (See "Commerce Control List: Revising Descriptions of Items and Foreign Availability," 75 FR 76664 (Dec. 9, 2010) and "Revision to the United States Munitions List," 75 FR 76935 (Dec. 10, 2010)). This remains one of the Administration's ultimate Export Control Reform objectives. In order to reach more quickly the national security objectives described above, the Administration has decided, as an interim step, to propose revisions to both the USML and the CCL to make them more objective, but to delay its plan to tier the export control regime until a later date. The most significant aspect of the more positive proposed USML categories is that they would not contain controls on all generic "parts," "components," "accessories," and "attachments" that were in any way "specifically designed or modified" for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, they would contain a positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. All other parts, components, accessories, and attachments "specially designed" for a defense article would become subject to the new 600 series controls on the CCL as described in the July 15 proposed rule. The Administration will also propose revisions to the jurisdictional status of certain militarily less significant end items that do not warrant USML control, but the primary impact would be with respect to current

USML controls on parts, components, accessories, and attachments that no longer warrant USML control.

Based, in part, on a review of the comments received in response to the December 2010 notices, the Administration also has determined that fundamentally altering the structure of the USML by tiering and aligning it on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML is revised and becomes final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. The only way to alleviate this impact would be to delay implementation until all categories are complete or to proceed with building positive lists now and returning to structural changes once complete. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed on a category-by-category basis with the approach described in this proposed rule.

Finally, in order to prevent any aircraft-related commodity specially designed for a military use that is not described in the proposed revisions to the USML from inadvertently dropping out of the U.S. Government's export controls, the rule proposes to use the catch-all phrase "specially designed," as defined in the July 15 proposed rule, in the new ECCNs to control commodities not otherwise identified on the revised USML or elsewhere in the ECCN. The primary examples of

this approach are ECCN 9A610.a, which controls any aircraft “specially designed” for a military use not identified on the USML or elsewhere on the CCL, and ECCN 9A610.x, which controls any part, component, accessory, or attachment “specially designed” for a military aircraft and not otherwise identified on the USML or elsewhere in the CCL. This approach is also part of a core objective of the Export Control Reform Initiative, which is to create a bright jurisdictional line between the USML and the CCL. As evidenced by the proposed revisions to USML Category VIII published by the State Department concurrently with this proposed rule, the Administration is following through on its commitment that the USML not contain generic, catch-all controls on every “part,” “component,” “accessory,” or “attachment” that is in any way specifically designed, modified, adapted, or configured, regardless of its military significance, for a defense article. The proposed USML revision is a substantially more positive list than the current list. Thus, to the extent an item is “specially designed” for a military use, it is subject to a 600 series ECCN in the EAR unless specifically identified on the ITAR’s USML.

Effects of this proposed rule

BIS believes that the principal effect of this rule will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the United States Munitions List. This greater flexibility will be in the form of: application of the EAR’s *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions RPL and STA; elimination of the requirements for manufacturing agreements and technical assistance agreements in connection with exports of technology; and a reduction in or elimination of

exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail below.

De minimis.

Section 734.3 of the EAR provides, *inter alia*, that under certain conditions items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a “*de minimis*” percentage of controlled U.S. origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule’s amendments at § 734.4 of the EAR are adopted, the new ECCNs 9A610, 9B610, 9C610, 9D610 and 9E610 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule because they would be “600 series” ECCNs. Foreign-made items incorporating items in the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level. The AECA does not permit the ITAR to have a *de minimis* treatment for these USML-listed items, regardless of the significance or insignificance of the item. Foreign-made items incorporating *any* items that currently are classified under ECCN 9A018 would be subject to the EAR if those foreign made items contain more than 10 percent U.S. origin controlled content, regardless of the destination and regardless of the proportion of the U.S. origin controlled content accounted for by the former ECCN 9A018 items.

Use of license exceptions.

The July 15 proposed rule would impose certain limits for 600 series items moving from existing 018 controls on the CCL. BIS believes that even with the July 15 proposed restrictions on the use of license exceptions and the additional restrictions identified in this proposed rule, restrictions on items currently on the USML would be reduced, particularly with respect to

exports to NATO members and multiple-regime member countries, if those items were moved from the USML to proposed ECCN 9A610. BIS also believes that, in practice, the movement of items from ECCN 9A018 to ECCN 9A610 would have little effect on license exception availability for those items because existing restrictions or the terms of the license exceptions themselves already preclude most transactions that would be precluded by the July 15 proposed amendments to § 740.2 of the EAR. However, BIS is aware of two situations (the use of License Exceptions GOV and STA) in which movement of items in ECCN 9A018 to ECCN 9A610 could, in practice, impose greater limits on use of license exceptions than currently is the case.

First, the July 15 proposed rule would limit use of License Exception GOV for 600 series commodities to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in §740.20(c)(1). Currently, commodities classified under ECCN 9A018 may be exported under any provision of License Exception GOV to any destination authorized by that provision if all of the conditions of that provision are met and nothing else in the EAR precludes such shipment.

Second, the July 15 proposed rule would limit use of License Exception STA for “end items” in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility, filed in conjunction with a license application, has been approved and would require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users. Neither restriction currently applies to use of License Exception STA for commodities classified under ECCN 9A018. In addition, the July 15 proposed rule would limit shipment of 600 series items under License Exception STA to

destinations listed in § 740.20(c)(1). Currently, commodities classified under ECCN 9A018.c, .d, .e, and .f (which would be moved to ECCN 9A610 under this proposed rule) and related software and technology (currently classified under ECCNs 9D018 and 9E018, and proposed to move to new ECCNs 9D610 and 9E610) may be shipped under License Exception STA to destinations listed in § 740.20(c)(1) or (c)(2).

Making U.S. Export Controls More Consistent with the Wassenaar Arrangement Munitions List

The Administration has stated since the beginning of the Export Control Reform Initiative that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. For example, the proposed ECCN 9A610 tracks, to the extent possible, the numbering structure and text of WAML category 10 pertaining to military aircraft not subject to the ITAR. It also implements in 9A610.x the controls in WAML category 16 for forgings, castings, and other unfinished products; in 9B610.a and .b the controls in WAML category 18 for production equipment; in 9D610 the applicable controls in WAML category 21 for software; and in 9E610 the applicable controls in WAML category 22 for technology.

Clarifying the Relationship between U.S. Export Controls and the Missile Technology Control Regime (MTCR) Equipment, Software and Technology Annex.

This proposed rule would identify the specific paragraphs in proposed ECCNs 9A610, 9B610, 9D610, and 9E610 that list items that are also on the MTCR Equipment, Software and Technology Annex and apply the MT Column 1 reason for control to those paragraphs. This action would impose the missile technology based license requirements and licensing policy of

§ 742.5 of the EAR to those items. Those items are currently subject to the ITAR, which does not specify the multilateral regime on which a license requirement is based. Listing these items on the CCL with the reason for control stated will correlate the underlying MTCR control with export license requirements and licensing policy.

Other effects.

Pursuant to the framework identified in the July 15 proposed rule, commodities classified under ECCN 9A610 (other than ECCN 9A610.l, .m, .n, and .y), along with related test, inspection and production equipment, materials, software and technology classified under ECCNs 9B610, 9C610, 9D610 and 9E610 (other than ECCNs 9B610.c. and 9X610.y) would be subject to the licensing policies set forth in § 742.4(b)(1) (national security, column 1). Commodities classified under ECCN 9A610.l, .m and .n, along with related test, inspection and production equipment, software and technology classified under ECCNs 9B610.c, 9D610 and 9E610 would be subject to the licensing policy set forth in § 742.5(b) (missile technology) because they are listed on the Missile Technology Control Regime Equipment, Software and Technology Annex. They would not be subject to national security controls because they are not identified on the WAML. All commodities in ECCN 9A610 (other than 9A610.y which is subject to an antiterrorism reason for control only and the prohibitions in Part 744) along with related test, inspection and production equipment, materials, software and technology classified under ECCNs 9B610, 9C610, 9D610 and 9E610 (other than 9X610.y) would be subject to the licensing policies set forth in § 742.6(a)(1) (regional stability, column 1).

The July 15 proposed rule would change § 742.4 to set forth a general policy of denial for 600 series items for destinations that are subject to a United States arms embargo, which would apply

to all items controlled for national security reasons under this proposed rule. This proposed rule adds that general policy of denial to § 742.6(b)(1) (regional stability column 1). This addition is needed so that the general denial policy for 600 series items would apply to items in proposed ECCNs 9A610, 9B610, 9D610 and 9E610 that are subject to the missile technology and regional stability reasons for control but not to the national security reason for control. This rule also adds a general policy of denial to § 742.6(b)(1) for items specially designed or required for F-14 aircraft because Iran is the only country that has such aircraft in its active inventory.

Jurisdictional and Classification Status of Items Subject to Previous Commodity Jurisdiction Determinations

The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not. (See 22 CFR §§ 120.3 and 120.4). Under this proposed rule, items the State Department determined to be not subject to the ITAR and that are now not described on the CCL would be subject to the AT-only controls of the “.y99” paragraph of the applicable ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 9A610.x would control any part, component, accessory, or attachment not specifically identified in the USML or elsewhere in the ECCN if it was “specially designed” for a military aircraft. If a particular part, component, accessory, or attachment was, as defined, “specially designed” for a military aircraft and was at the time of a CJ determination not identified on the CCL, it would be controlled under 9A610.y.99. If it was identified or, as a matter of law or the result of a subsequent commodity classification (“CCATS”) determination by Commerce, controlled by another legacy ECCN, such as 9A991.d, 7A994, or 9A003, that

ECCN would continue to apply to the item. This general approach will, pending public comment, be repeated in subsequent proposed rules pertaining to other categories of items.

If, however, the State Department had made a CJ determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new CJ determination would not be required unless there was doubt about the application of the new USML category to the item. (See 22 CFR § 120.4). Thus, unless there were doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past CJ determinations that, under the previous version of the USML, the item was ITAR controlled.

Finally, if the State Department had made a CJ determination that a particular item was subject to the jurisdiction of the ITAR and that item remains in the revised USML, the item would remain subject to the jurisdiction of the ITAR.

Section-by-section description of the proposed changes.

- Section 738.2(d)(2)(ii) – Adds a reference to STA paragraphs in some 600 series ECCNs that clarify STA eligibility regarding those ECCNs.
- Section 740.2 – Republishes proposed new paragraph (a)(13) from the July 15 proposed rule with changes to make License Exception STA eligible for exports, reexports, and in-country transfers of items that would be used in the production of items for governments of countries listed in 740.20(c)(1), or for the United States Government or any person in the United States.

- Section 740.11 – Amends License Exception GOV to add references to Supplement No. 4 to part 740 and partially restates the prohibition on using provisions of License Exception GOV to export or reexport certain technology and software listed in that supplement, other than exports and reexports to personnel and agencies of the U.S. Government.
- Section 740.20 – Amends License Exception STA to refer to Supp. No. 4 to part 740 and partially restate the prohibition on using license exception STA to export, reexport or transfer (in-country) certain technology and software listed in that supplement. Republishing a “Note to paragraph (c)(1)” from the July 15 proposed rule with additional text to make License Exception STA eligible for exports, reexports and in-country transfers of items that would be for or used for the production or development of items for governments of countries listed in 740.20(c)(1), or for the United States Government or any person in the United States.
- Supplement No. 4 to part 740 – Prohibits using License Exception STA or provisions of License Exception GOV other than those authorizing exports and reexports to personnel and agencies of the U.S. Government to export, reexport or transfer software and technology (other than “build-to-print technology”) for the development or production of specified ECCN 9A610.x items.
- Section 742.6 – ECCNs 9A610, 9B610, 9C610, 9D610 and 9E610 are added to § 742.6(a)(1) to impose a RS Column 1 license requirement and licensing policy. Section 742.6(b)(1) would be amended to apply a general denial policy for applications to export or reexport “600 series” to destinations that are subject to a United States arms

embargo and to export items specially designed for or required for F-14 aircraft to any destination.

- Section 770.2 – Removes paragraph (i) – Interpretation 9: Civil aircraft and civil aircraft equipment.
- Section 772.1 – Adds a definition of “build-to-print technology.”
- Supplement No. 1 to part 774 – Adds ECCNs 9A610, 9B610, 9C610, 9D610 and 9E610. Replaces existing text of ECCNs 9A018, 9D018 and 9E018 with cross-references to ECCNs 0A606, 0D606 and 0E606 for items related to ground vehicles that have been moved to those ECCNs and with references to new ECCNs 9A610, 9D610 and 9E610 for all other items (i.e., items related to aircraft) that have been moved to those ECCNs.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted either in those comments or their transmittal e-mails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

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 proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694-0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694-0137).

As stated in the proposed rule published at 76 FR 41958 (July 15, 2011), BIS believes that the combined effect of all rules to be published adding items to 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 by approximately 16,000 annually resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694-0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 proposed rule, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to 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 23,858 hours (20,450 transactions @ 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. This proposed rule addresses controls on military aircraft and related parts, components, production equipment, materials, software, and technology. The largest impact of the proposed rule would be with respect to exporters of parts and components because, under the proposed rule, most U.S. and foreign military aircraft currently in service would continue to be subject to the ITAR. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports to integrators for U.S government equipment and most exports of routine maintenance parts and components for our NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and

compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 9E610 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, i.e., Manufacturing License Agreements and Technical Assistance Agreements.

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 Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities.

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control

Classification Numbers (ECCNs) known as the “600 series” ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. This rule focuses on Category VIII articles, which are aircraft and related parts, components, production equipment, software, and technology. Most operational military aircraft currently in active inventory would remain on the USML. However, parts and components, which are more likely to be produced by small businesses than are complete military aircraft, would in many cases become subject to the EAR. In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles review by that department.

Changing the jurisdictional status of Category VIII items would reduce the burden on small entities (and other entities as well) through:

- elimination of some license requirements,
- greater availability of license exceptions,
- simpler license application procedures, and
- reduced (or eliminated) registration fees.

In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item, discouraging foreign buyers from incorporating such U.S. content. The availability of *de*

minimis treatment under the EAR may reduce the incentive for foreign manufacturers to avoid purchasing U.S.-origin parts and components

Twenty-five types of parts and components, identified in ECCN 9A610.y, would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance. These parts and components, which under the ITAR require a license to nearly all destinations, would, under the EAR, require a license to only five destinations and, if destined for a military end use, the People's Republic of China.

Many exports and reexports of the Category VIII articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than \$1,500, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the United States government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports in which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category VIII article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval and is more likely to have to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at

\$2,500 per year, increase to \$2,750 for organizations applying for one to ten licenses per year and further increases to \$2,750 plus \$250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items listed on the CCL. Once the Category VIII items that are the subject to this rulemaking are moved from the USML to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated.

De minimis treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S content in that foreign made product. Foreign-made products that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeded 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. BIS is still considering comments made in response to the July 15 rule pertaining to these proposed new *de minimis* levels and as noted above, will consider *de*

de minimis related comments to this proposed rule provided they are in the context of this proposed rule. However, BIS believes that increased burden imposed by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Parts 738, 770 and 772

Exports

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 742

Exports, Terrorism

15 CFR Part 774

Exports, Reporting and recordkeeping requirements

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

(15 CFR parts 730 – 774) are proposed to be amended as follows:

15 CFR PART 738 – [AMENDED]

1. The authority citations paragraph for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 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 12, 2011, 76 FR 50661 (August 16, 2011).

2. Section 738.2(d)(2)(ii) is amended by adding a sentence immediately following the fifth sentence that reads as follows:

§ 738.2 Commerce Control List (CCL) structure.

* * * * *

(d) * * *

(2) * * *

(ii) * * * 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.

15 CFR PART 740 -- [AMENDED]

3. The authority citations paragraph 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 12, 2011, 76 FR 50661 (August 16, 2011).

4 Section 740.2 is amended by adding a paragraph (a)(13) to read as follows:

§ 740.2 Restriction on all license exceptions.

(a) * * *

(13) Items classified under the “600 series” are not eligible for any license exception, except as described in paragraph (a)(13)(i), (ii), or (iii) of this section. For MT-controlled items, including “600 series” ECCNs, see the restrictions on all license exceptions in paragraph (a)(5) of this section. Under the restriction in paragraph (a)(5), no such “600 series” ECCNs are eligible for

license exceptions. You may not use a license exception to authorize a MT-controlled item in the “600 series.”

(i) “600 series” “end items” may only be authorized by the following license exceptions:

- (A) License Exception LVS (§ 740.3);
- (B) License Exception TMP (§ 740.9);
- (C) License Exception RPL (§ 740.10);
- (D) License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV paragraph (b)(2)(iii) is only available for countries listed in § 740.20(c)(1); or
- (E) License Exception STA under § 740.20(c)(1), provided License

Exception STA has been identified by BIS in writing or published as an eligible license exception for the particular “600 series” “end item” in response to a License Exception STA eligibility request in accordance with § 740.20(g) of the EAR and the ultimate end use for the end item is by a government in one of the countries listed in § 740.20(c)(1) or by the United States Government, or is for the “development” or “production” of an item for use by one of those governments or a person in the United States. Except for MT-controlled items, exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) so long as the item at issue at the time of export, reexport, or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries or by the United States Government, or is

for the “development” or “production” of an item for use by one of those agencies of those governments or a person in the United States.

(ii) “600 series” “parts,” “components,” “accessories” and “attachments,” or any item classified in a “600 series” product group B or C ECCN may only be authorized by the following license exceptions:

(A) License Exception LVS (§ 740.3);

(B) License Exception TMP (§ 740.9);

(C) License Exception RPL (§ 740.10);

(D) License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV paragraph (b)(2)(iii) is only available for countries listed in § 740.20(c)(1) ; or

(E) License Exception STA under § 740.20(c)(1), provided the ultimate end use for the “parts,” “components,” “accessories and attachments” or for any item classified in a “600 series” product group B or C ECCN is by a government in one of the countries listed in § 740.20(c)(1) or by the United States Government, or is for the “development” or “production” of an item for use by one of those governments or a person in the United States. Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) so long as the item at issue at the time of export, reexport, or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries or by the United States Government, or is for the “development” or “production” of an item for use by one of those agencies of those

governments or a person in the United States. This paragraph does not alter the limitations on the use of License Exception STA contained in § 740.20(b)(2).

(iii) “600 series” “software” and “technology” may only be authorized by the following license exceptions:

(A) License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV paragraph (b)(2)(iii) is only available for countries listed in § 740.20(c)(1);

(B) License Exception TSU (§ 740.13(a) or (b)); or

(C) License Exception STA (§ 740.20(c)(1)), provided the ultimate end use for the “software” or “technology” is by a government in one of the countries listed in § 740.20(c)(1) or by the United States Government, or is for the “development” or “production” of an item for use by one of those governments or a person in the United States. Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) so long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries or by the United States Government, or is for the “development” or “production” of an item for use by one of those agencies of those governments or a person in the United States. This paragraph does not alter the limitations on the use of License Exception STA contained in § 740.20(b)(2).

* * * * *

5. Section 740.11 is amended by:

a. adding a new paragraph (a)(5),

b. revising paragraph (b)(2)(iii)(A),

c. revising paragraph (b)(2)(iv)(A),

d. revising paragraphs (c)(2)(ii) and (c)(2)(iii) and adding a new paragraph (c)(2)(iv), and

e. adding a note to paragraph (d)(1), to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the international space station (GOV)

* * * * *

(a) * * *

(5) This paragraph (a) does not authorize exports or reexports of technology prohibited by Supplement No. 4 to this part.

(b) * * *

(2) * * *

(iii)(A) *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 described in paragraph (a) of Supplement No. 1 to this section and technology prohibited by Supplement No. 4 to this part.

* * *

(iv) (A) *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 part 740), except items described in paragraph (b) of Supplement No. 1 to this section and technology prohibited by Supplement No. 4 to this part.

* * *

(c) * * *

(2) * * *

(ii) Inspection samples collected in the U.S. pursuant to the Convention;

(iii) Commodities and software that are no longer in OPCW official use (such items must be disposed of in accordance with the EAR); and

(iv) Technology prohibited by Supplement No. 4 to this part.

* * *

(d) * * *

(1) * * *

Note to paragraph (d)(1). This paragraph (d) does not authorize any export or reexport prohibited by Supplement No. 4 to this part.

6. Section 740.20 is amended by adding a paragraph (b)(3) and a note to paragraph (c)(1) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(3) License Exception STA may not be used to export, reexport, or transfer (in-country) any technology prohibited by Supplement No. 4 to this part.

* * *

(c) * * *

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, provided the ultimate end use for such items is by, or for the “production” or “development” of an item to be used by, the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, and search and rescue agencies of one of the countries listed in § 740.20(c)(1) or the United States Government or a person in the United States. For “600 series” end items, see paragraph (g) of this section. This means that exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) so long as the item at issue at the time of export, reexport, or transfer (in-country) is ultimately

destined for either (i) end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries or the United States Government; or (ii) the “production” or “development” of an item for ultimate end use by such a government entity in one of the § 740.20(c)(1) countries or the United States Government or a person in the United States. This provision does not alter the limitations on the use of License Exception STA contained in § 740.20(b)(2).

* * * * *

7. Part 740 is amended by adding a Supplement No. 4 to read as follows:

Supplement No. 4 to Part 740 – 600 Series Items Subject to Limits Regarding License Exceptions GOV and STA

This supplement lists certain parts and components that are classified under the .x paragraphs of “600 series” ECCNs and imposes limitations on the use of License Exceptions GOV (§ 740.11 of the EAR) and STA (§ 740.20 of the EAR) with respect to exports, reexports, and transfers (in-country) of “development” and “production” software or technology related to those parts and components. The restrictions and the parts and components are listed by Commerce Control List category.

(a) *Restrictions applicable to Category 9.* License Exception STA may not be used to export, reexport, or transfer (in-country) ECCN 9D610 “software” or ECCN 9E610 “technology” (other than “build-to-print technology”) for the “development” or “production” of any of the types of “parts” or “components” listed below. In addition, License Exception GOV may not be used to

export or reexport ECCN 9D610 “software” or ECCN 9E610 “technology” (other than “build-to-print technology”) for the “development” or “production” of any of the types of “parts” or “components” listed below, except with respect to exports, reexports, and transfers (in-country) to U.S. government agencies and personnel identified in § 740.11(b)(2)(i) and (ii).

- (1) Static structural members;
- (2) Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;
- (3) Control surfaces, leading edges, trailing edges, and leading edge flap seals;
- (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;
- (5) Engine inlets and ducting;
- (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;
- (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;

- (8) Conformal fuel tanks and “parts” and “components” “specially designed” therefor;
- (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;
- (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;
- (11) Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;
- (12) Equipment “specially designed” for system prognostic and health management of aircraft;
- (13) Active Vibration Control Systems;
- (14) Fuel Cells “specially designed” for use in UAV or Lighter-than-Air-Vehicles; or
- (15) Self-sealing fuel bladders “specially designed” to pass a .50 caliber or larger gunfire test (MIL-DTL-5578, MIL-DTL-27422).

(b) RESERVED

15 CFR PART 742 – [AMENDED]

8. The authority citations paragraph 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 November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

9. Section 742.6 is amended by revising paragraph (a)(1) and by adding a sentence immediately following the first sentence of paragraph (b)(1) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except

0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only “software” for the “development” or “production” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only “software” for the “use” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only “software” for the “development,” “production,” or “use” of equipment classified under 6A002.e or 6A998.b); 6E001 (only “technology” for “development” of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only “technology” for “production” of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only “technology” for the “development,” “production,” or “use” of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11-00100-100/101 and QRS11-0050-443/569 Micromachined Angular Rate Sensors); 7D001 (only “software” for “development” or “production” of items in 7A001, 7A002, or 7A003); 7E001 (only “technology” for the “development” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only “technology” for the “production” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only “technology” for the “use” of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 9A610 (except 9A610.y); 9B610 (except 9B610.y); 9C610 (except 9C610.y); 9D610 (except “software” for the “development,” “production” operation or maintenance of commodities controlled by 9A610.y, 9B610.y, or 9C610.y) and 9E610 (except “technology” for the “development,” “production” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y).

* * *

(b) *Licensing policy.* (1) * * * Applications for export or reexport of items classified under any “600 series” ECCN listed in paragraph (a)(1) of this section will also be reviewed in accordance with U.S. arms embargo policies and generally will be denied if destined for a destination in set forth § 740.2(a)(12) 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.

* * *

* * * * *

15 CFR PART 770 – [AMENDED]

10. 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.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

Section 770.2 – [AMENDED]

113. Section 770.2 is amended by removing and reserving paragraph (i).

15 CFR PART 772 – [AMENDED]

12. The authority citation paragraph 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 12, 2011, 76 FR 50661 (August 16, 2011).

13. Section 772.1 is amended by adding in alphabetical order a definition for “build-to-print technology” to read as follows:

* * *

“Build-to-Print technology” 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 manufacturing or process 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. 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.

* * *

15 CFR PART 774 – [AMENDED]

14. 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 12, 2011, 76 FR 50661 (August 16, 2011).

15. In Supplement No. 1 to part 774, Category 9, revise Export Control Classification Number 9A018 to read as follows:

Supplement No. 1 to Part 774 – the Commerce Control List

* * * * *

9A018 Equipment on the Wassenaar Arrangement Munitions List.

No items currently are in this ECCN. See ECCN 0A606.b.4 for the ground transport vehicles and unarmed all-wheel drive vehicles that immediately prior to [Insert effective date of final rule that moves these vehicles] were classified under 9A018.b. See ECCN 9A610 for the aircraft, aircraft engines, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that immediately prior to [Insert effective date of final rule that moves these items] were classified under 9A018.a, .c, .d, .e, or .f.

16. In Supplement No. 1 to part 774, Category 9, add a new Export Control Classification Number 9A610 between Export Control Classification Numbers 9A120 and 9A980 to read as follows:

9A610 Military aircraft and related commodities

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart
NS applies to entire entry except 9A610.l, m, n, and y.	NS Column 1.
RS applies to entire entry except 9A610.y.	RS Column 1
MT applies to 9A610.l, .m, and .n.	MT Column 1.
AT applies to entire entry.	AT Column 1.

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 9A610. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any “end item” in 9A610, 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). See § 740.20(g) for the procedures to follow if you wish to request new STA

eligibility for “end items” under this ECCN 9A610 as part of an export, reexport, or transfer (in-country) license application. “End items” under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS website at www.bis.doc.gov.

Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 9A610.x without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: End items in number; parts, component, 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 foreign-made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

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, manufactured before

1956 and unmodified since manufacture. 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.

b. [Reserved].

c. [Reserved].

d. [Reserved].

e. [Reserved].

f. Pressure refuelers, pressure refueling “equipment,” “equipment” “specially designed” to facilitate operations in confined areas, and ground equipment “specially designed” for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

g. Military crash helmets and protective masks, pressurized breathing equipment and partial pressure suits for use in aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a,

anti-g suits, liquid oxygen converters “specially designed” for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, and catapults and cartridge actuated devices for emergency escape of personnel from aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a.

h. Canopies, harnesses, platforms, electronic release mechanisms “specially designed” for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, parachutes and paragliders “specially designed” or modified for military use, and “equipment” “designed” or modified for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Automatic piloting systems for parachuted loads; equipment “specially designed” for military use for controlled opening jumps at any height, including oxygen equipment.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, “specially designed” for use by a military.

k. 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).

l. Apparatus and devices designed or modified for the handling, control, activation or 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.

m. 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.

n. 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.

o. through w. [Reserved]

x. “Parts,” “components,” “accessories and attachments” that are “specially designed” for a commodity subject to control in paragraphs .a through .k of 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 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; and
- y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines.

- y.26. to y.98. [RESERVED]

- y.99. Commodities that would otherwise be controlled elsewhere in this entry but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not otherwise identified elsewhere on the CCL.

17. In Supplement No. 1 to part 774, Category 9, add a new Export Control Classification Number 9B610 between Export Control Classification Numbers 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

Control(s)	Country chart
NS applies to entire entry except 9B610.c and 9B610.y.	NS Column 1.
RS applies to entire entry except 9B610.y.	RS Column 1.
MT applies to 9B610.c.	MT Column 1.

AT applies to entire entry.	AT Column 1.
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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. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 9A610.x without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: N/A

Related Controls:

Related Definitions: N/A

Items:

a. Test, inspection, and production “equipment” “specially designed” for the “production” or “development” 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 designed or modified 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” “specially designed” 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.

d. through x. [RESERVED]

y. Specific test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 9A610 (except for

9A610.y) or USML Category VIII and “parts,” “components,” “accessories and attachments” “specially designed” therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Commodities that would otherwise be controlled elsewhere in this entry but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not otherwise identified elsewhere on the CCL.

18. In Supplement No. 1 to part 774, Category 9, add a new Export Control Classification Number 9B610 between Export Control Classification Numbers 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

Control(s)	Country chart
NS applies to entire entry except 9C610.y.	NS Column 1.
RS applies to entire entry except 9C610.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

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 10% U.S.-origin “600 series” items.

Related Definitions: N/A

Items:

- a. Materials “specially designed” for commodities enumerated in ECCN 9A610 (except 9A610.y) not elsewhere specified in the USML or the CCL.

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 an aircraft enumerated in USML Category VIII and for an aircraft enumerated in ECCN 9A610 are subject to the controls of this ECCN.

b. to .x. [RESERVED]

- y. Specific materials “specially designed” for commodities enumerated in ECCN 9A610 (except for 9A610.y), as follows:

y.1. through y.98 [RESERVED]

y.99. Materials that would otherwise be controlled elsewhere in this entry but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not otherwise identified elsewhere on the CCL.

19. In Supplement No. 1, Category 9, revise Export Control Classification Number 9D018 to read as follows:

9D018 “Software” for the “use” of equipment controlled by 9A018.

No items currently are in this ECCN. See ECCN [Insert appropriate Category 0 ECCN] for “software” related to the ground transport vehicles and unarmed all-wheel drive vehicles that immediately prior to [Insert effective date of final rule that moves these vehicles] were classified under 9A018.b. See ECCN 9D610 for “software” related to the aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers, and parts and accessories and attachments for the forgoing that immediately prior to [Insert effective date of final rule that moves these items] were classified under 9A018.a, .c, .d, .e, or .f.

20. In Supplement No. 1, Category 9, add a new Export Control Classification Number 9D610 between Export Control Classification Numbers 9D105 and 9D990 to read as follows:

9D610 “Software” “specially designed” for the “development,” “production” operation installation, maintenance, repair, overhaul or refurbishing of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, or materials controlled by 9C610 as follows (See list of items controlled).

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart
NS applies to 9D610.a	NS Column 1.
RS applies to 9D610.a and .b.	RS Column 1.
MT applies to 9D610.c.	MT Column 1.

AT applies to entire entry.	AT Column 1.
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License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any “software” in 9D610.

Note to License Exceptions Section: Supplement No. 4 to part 740 precludes use of License Exceptions GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the U.S. government) and STA with respect to “development” and “production” “software” for specific types of “parts” and “components” controlled by ECCN 9A610.x. and identified in the supplement.

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). See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

Related Definitions: N/A

Items:

a. “Software” (other than software controlled in paragraph .y of this entry) “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 9A610 (except 9A610.l, .m, .n, or .y), ECCN 9B610 (except 9B610.c or .y), or ECCN 9C610 (except 9C610.y).

b. “Software” (other than software controlled in paragraph .y of this entry) “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 9A610.l, .m, or .n; or ECCN 9B610.c.

c. Software” (other than software controlled in paragraph .y of this entry) “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhauling or refurbishing of commodities controlled by ECCN 9A610.l, .m, or .n; or ECCN 9B610.c

d. to x. [RESERVED]

y. Specific “software” “specially designed” for the “production,” “development,” or operation or maintenance of commodities enumerated in ECCN 9A610, 9B610, or 9C610, as follows:

y.1. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities enumerated in ECCN 9A610.y, 9B610.y, or 9C610.y.

y.2 through y.98 [RESERVED]

y.99. Software that would otherwise be controlled elsewhere in this entry but that (i) has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

21. In Supplement No. 1, Category 9, revise Export Control Classification Number 9E018 to read as follows:

9E018 Technology for the “use” of equipment controlled by 9A018.

No items currently are in this ECCN. See ECCN 0E606 for technology related to the ground transport vehicles and unarmed all-wheel drive vehicles that immediately prior to [Insert effective date of final rule that moves these vehicles] were classified under 9A018.b. See ECCN 9E610 for technology related to the aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that immediately prior to [Insert effective date of final rule that moves these items] were classified under 9A018.a, .c, .d, .e, or .f.

22. In Supplement No. 1, Category 9, add a new Export Control Classification Number 9E610 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 as follows (See list of items controlled).

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart
NS applies to technology as described in paragraph .a of this entry for commodities and software that are controlled for NS reasons in ECCNs 9A610, 9B610, 9C610 or 9D610.	NS Column 1.
RS applies to technology as described in paragraph .a of this entry for commodities and software controlled for RS reasons in 9A610, 9B610, 9C610 or 9D610.	RS Column 1.

<p>MT applies to technology as described in paragraph .a of this entry for commodities and software controlled for MT reasons in ECCNs 9A610, 9B610 or 9D610.</p>	<p>MT Column 1.</p>
<p>AT applies to entire entry.</p>	<p>AT Column 1.</p>

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 9E610.

Note to License Exceptions Section: Supplement No. 4 to part 740 limits use of License Exceptions GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the US government) and STA with respect to “development” and “production”

“technology” for specific types of “parts” and “components” controlled by ECCN 9A610.x. and identified in the supplement other than “build-to-print technology.”

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). See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

Related Definitions: N/A

Items:

a. “Technology” (other than technology controlled by paragraph .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.

b. through x. [RESERVED]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, or overhaul of commodities enumerated in ECCN 9A610, 9B610, 9C610, or 9D610, as follows:

y.1. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair or overhaul of commodities enumerated in ECCN 9A610.y, 9B610.y, 9C610.y, or 9D610.y.

y.2. through y.98 [RESERVED]

y.99. “Technology” that would otherwise be controlled elsewhere in this entry but that (i) has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

Dated: October 28, 2011

Kevin J. Wolf

Assistant Secretary for Export Administration

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