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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740, 742 and 774**

**[Docket No. 110825537-1539-02]**

**RIN 0694-AF38**

**Export and Reexport License Requirements for Certain Microwave and Millimeter Wave  
Electronic Components**

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

**ACTION:** Final Rule.

**SUMMARY:** This rule imposes a license requirement on exports and reexports to all destinations other than Canada of two types of microwave and millimeter wave electronic components. The two components are packaged high electron mobility transistors and packaged microwave “monolithic integrated circuits” power amplifiers that meet certain criteria with respect to frequency range, size and output power. BIS takes this step to control exports and reexports of these components, which have uses in military radar systems as well as in civilian radar and telecommunications systems. The U.S. Government also plans to propose adding these components to the Dual List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement Dual Use List) in 2012.

**DATES:** Effective date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Brian Baker, Director, Electronics and Materials Division, Office of National Security and Technology Transfer Controls, (202) 482-5534, [brian.baker@bis.doc.gov](mailto:brian.baker@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:** This rule imposes a license requirement on exports and reexports to all destinations other than Canada of two types of microwave and millimeter wave electronic components. The two components are packaged high electron mobility transistors (HEMT) and packaged microwave “monolithic integrated circuits” (MMIC) power amplifiers. The U.S. Government plans to propose adding these components to the Wassenaar Arrangement Dual-Use List in 2012.

This rule imposes this license requirement by creating a new Export Control Classification Number (ECCN) 3A982 containing two “items” paragraphs. Paragraph 3A982.a covers packaged HEMTs with physical dimensions less than 43 mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having either an average output power equal to or greater than 48 W (46.8 dBm); or a pulsed output power equal to or greater than 240 W (53.8 dBm) and a duty cycle of 20 percent or more.

Paragraph 3A982.b covers packaged MMIC power amplifiers with physical dimensions less than 43mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having either an average output power equal to or greater than 15W (41.7 dBm); or a pulsed output power equal to or greater than 75 W (48.75 dBm) and a duty cycle of 20 percent or more.

This rule also creates new ECCNs 3D982 and 3E982 to control the software and technology, respectively, associated with the new controls set forth in new ECCN 3A982.

This rule also revises License Exception STA (§ 740.20 of the EAR) to preclude use of License Exception STA for any export, reexport or transfer of items in ECCN 3A982.b.

The U.S. Government plans to submit a proposal for control of the commodities covered by ECCN 3A982 in 2012. BIS publishes this rule to protect against the diversion of these items to users or for uses that would threaten the security of the United States or that of its allies.

The application of regional stability and antiterrorism controls to the items covered by this rule imposes a foreign policy control. Section 6(f) of the Export Administration Act requires that a report be delivered to Congress before imposing such controls. The report was delivered to Congress on December 29, 2011.

The Export Administration Act of 1979, as amended, expired on August 21, 2001. Since this lapse, the President has continued the EAR in effect through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), under the authority of the International Emergency Economic Powers Act, with the most recent extension being implemented by the Notice of August 12, 2011 (76 FR 50661 (August 16, 2011)). BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

## **RULEMAKING 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 rule affects an existing approved collection 0694-0088, Simple Network Application Process and Multipurpose Application Form for which the estimated burden is 58 minutes per submission. BIS does not believe that this rule will materially increase the number of submissions under this collection.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). BIS is implementing this rule to protect U.S. national security or foreign policy interests by imposing an export and reexport license requirement on two items that are used in military radar systems. The U.S. Government plans to propose that these two items be added to the Wassenaar Arrangement Dual-Use List. Immediate imposition of a license requirement is necessary to effect the national security and foreign policy goals of this rule. Immediate implementation will allow BIS to prevent exports of these items to users and for uses that pose a security threat to the United States or its allies. If BIS published a proposed rule soliciting notice and comment, the resulting delay in implementation would afford an opportunity to export these items to users and uses that pose such a security threat, thereby undermining the purpose of the rule. Furthermore, by demonstrating its own willingness to impose a license requirement on its exports of these items, this rule will provide support for the planned United States proposal that the Wassenaar Arrangement should add these items to its Dual-Use List. Inclusion of these items on the Wassenaar Arrangement Dual-Use and the resulting implementation of export license requirements by other Wassenaar Arrangement will further the goal of this rule by removing potential sources of these items for parties who would act in ways that threaten the security of the United States or its allies.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

## **List of Subjects**

### *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.

Accordingly, the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

**PART 740 – [AMENDED]**

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

**Authority:** 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 7201 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

2. Section 740.20 is amended by adding paragraph (b)(2)(viii) to read as follows:

**§ 740.20 License Exception Strategic Trade Authorization (STA).**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(viii) License Exception STA may not be used to export, reexport or transfer any packaged microwave “monolithic integrated circuits” (MMIC) power amplifiers classified under ECCN 3A982.b.

\* \* \* \* \*

## **PART 742—[AMENDED]**

3. The authority citation for part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR

58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

#### **§ 742.6 – [AMENDED]**

4. Section 742.6(a)(1) is amended by adding the phrase “3A982; 3D982; 3E982;” immediately following the phrase “for items described on the CCL under ECCNs”

#### **PART 774 – [AMENDED]**

5. The authority citation 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).

6. Supplement No. 1 to Part 774 – the Commerce Control List, Category 3, Export Control Classification Number 3A001 is amended by adding two sentences at the end of the “Related Controls” paragraph of the “List of Items Controlled” section to read as follows:

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

\* \* \* \* \*

**3A001 Electronic components and specially designed components therefor, as follows (see List of Items Controlled).**

\* \* \* \* \*

List of Items Controlled

\* \* \* \* \*

*Related Controls:* \* \* \* (3) See ECCN 3A982.a for discrete microwave transistors not controlled by paragraph .b.3 of this entry. (4) Packaged microwave “monolithic integrated circuits” (packaged MMIC) power amplifiers that operate within the frequency range specified in 3A982.b and that have the dimensional and output power characteristics specified for packaged MMIC power amplifiers specified in ECCN 3A982 are controlled by ECCN 3A982 even if such packaged MMIC power amplifiers also operate within the frequency range specified in ECCN 3A001.b.2.a.

\* \* \* \* \*

7. Supplement No. 1 to Part 774 – the Commerce Control List, Category 3, is amended by adding, immediately following the entry for Export Control Classification Number (ECCN) 3A981 and immediately preceding the entry for ECCN 3A991, a new ECCN 3A982 entry to read as follows:

**3A982 Microwave or millimeter wave components that operate at frequencies below those controlled by 3A001 as follows (See List of Items Controlled).**

License Requirements

*Reasons for Control:* RS, AT

Control(s)	Country Chart
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

**License Exceptions**

*LVS:* N/A

*GBS:* N/A

*CIV:* N/A

**List of Items Controlled**

*Unit:* \$ value

*Related Controls:* (1) See ECCN 3A001.b.2 for certain microwave “monolithic integrated circuits” (MMIC) power amplifiers other than those controlled by this entry. (2) See ECCN 3A001.b.3 for discrete microwave transistors other than those controlled by this entry. (3) See ECCN 3A001.h for high electron mobility transistors that are solid state semiconductor switches, diodes or modules rather than discrete microwave transistors.

*Related Definitions:* N/A

*Items:*

- a. Packaged high electron mobility transistors (HEMTs) with physical dimensions less than 43 mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having any of the following:
  - a.1. An average output power equal to or greater than 48 W (46.8 dBm); or
  - a.2. A pulsed output power equal to or greater than 240 W (53.8 dBm) and a duty cycle of 20 percent or more.

b. Packaged microwave “monolithic integrated circuits” (MMIC) power amplifiers with physical dimensions less than 43mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having either of the following:

b.1. An average output power equal to or greater than 15W (41.7 dBm); or

b.2. A pulsed output power equal to or greater than 75 W (48.75 dBm) and a duty cycle of 20 percent or more.

8. Supplement No. 1 to Part 774 – The Commerce Control List is amended by adding immediately following the entry for ECCN 3D980 and immediately preceding the entry for ECCN 3D991 a new entry 3D982 to read as follows:

**3D982 “Software” “specially designed” for the “development” or “production” of microwave or millimeter wave components classified under ECCN 3A982.**

License Requirements

*Reasons for Control:* RS, AT

Control(s)	Country Chart
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

**License Exceptions**

*CIV: N/A*

*TSR: N/A*

**List of Items Controlled**

*Unit: \$ value*

*Related Controls: N/A*

*Related Definitions: N/A*

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

9. Supplement No. 1 to Part 774 – The Commerce Control List is amended by adding immediately following the entry for ECCN 3E980 and immediately preceding the entry for ECCN 3E991 a new entry 3E982 to read as follows:

**3E982 “Technology” “required” for the “development” or “production” of microwave or millimeter wave components classified under ECCN 3A982.**

**License Requirements**

*Reasons for Control: RS, AT*

Control(s)	Country Chart
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

**License Exceptions**

*CIV: N/A*

*TSR: N/A*

**List of Items Controlled**

*Unit:* \$ value

*Related Controls:* N/A

*Related Definitions:* N/A

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

Dated: January 3, 2012

Kevin J. Wolf

Assistant Secretary for Export Administration

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