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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 772 and 774

[Docket No. 130104008-3008-01]

RIN 0694–AF81

Revisions to the Export Administration Regulations Based on the 2012 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2012 Plenary in Berlin, Germany, and at the MTCR Reinforced Point of Contact (RPOC) meeting in Paris, France, in December 2011. This final rule revises six Export Control Classification Numbers

(ECCNs) (1C011, 1C111, 1C116, 9A101, 9B105 and 9E101) and one defined term (the definition of “payload”) to implement the changes that were agreed to at the meetings. This final rule also revises ECCNs 7E004 and 9D004 to better align the Commerce Control List (CCL) with the MTCR Annex and past MTCR agreements.

DATES: This rule is effective: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world’s advanced suppliers of missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1992, the MTCR's original focus on missiles for nuclear weapons delivery was extended to a focus on the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to counter this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the October 2012 Plenary in Berlin, Germany, and the MTCR December 2011 Reinforced Point of Contact meeting (RPOC) in Paris, France. Corresponding MTCR Annex references are provided below for the MTCR Annex changes agreed to at the meetings. This rule also makes two conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) with the current MTCR Annex. These conforming changes are made to better align the MT controls on the CCL with the MTCR Annex and past MTCR agreements. In the explanation below for the revisions made in this rule, BIS identifies these changes as follows: "Berlin 2012 Plenary," "Paris 2011 RPOC" and "CCL Conforming Change to MTCR Annex" to assist the public in understanding the origin of each change included in this final rule.

In Section 740.20 (License Exception Strategic Trade Authorization (STA)), as a conforming change for the revision of the MT control on ECCN 7E004 described below, this rule amends paragraph (b)(2) (Limitations on Use of License Exception STA) by redesignating paragraph (b)(2)(vii) as paragraph (b)(2)(viii). Under new paragraph (b)(2)(vii), this rule continues the existing limitation on the use of License Exception STA. Paragraph (b)(2)(vii) will specify that License Exception STA may not be used for 7E004 “technology,” except for “technology” controlled under 7E004.a.7. Prior to publication of this final rule, this “technology” was not eligible for License Exception STA because the “technology” was MT controlled. This change is being made for consistency with the MTCR Annex. BIS decided it was still warranted to exclude the technology under 7E004 that had previously been excluded under License Exception STA. This change to License Exception STA continues the existing limitation on the use of License Exception STA for 7E004 “technology,” so this change preserves the status quo in terms of License Exception STA ineligibility under the EAR for 7E004.

Additionally, this rule revises the EAR in Section 772.1 (Definitions of Terms as Used in the Export Administration Regulations) by amending the definition of the term “payload” (MTCR Annex Change, Definitions: “Payload,” Berlin 2012 Plenary). The definition of “payload” is revised by changing the description for space launch vehicles in Technical Note b.1 from “satellites” to “spacecraft, including satellites,” and by changing the description for space launch vehicles in Technical Note b.2 from “satellite-to-launch vehicle adapters,” to “spacecraft-to-launch vehicle adapters.” The term satellite could be more limiting than intended, while the term spacecraft is broader and includes any type of spacecraft payload that could be carried on a

space launch vehicle. For these reasons, the MTCR members decided to revise the definition of “payload” to clarify the scope of the types of payload for space launch vehicles that are included in the “payload” definition under Technical Notes b.1 and b.2. This clarification will have little impact on items subject to the EAR, and therefore not cause an increase in license applications received by BIS.

In addition, this rule amends the CCL to reflect changes to the MTCR Annex. This final rule also revises Export Control Classification Numbers (ECCNs) 7E004 and 9D004 to better align the CCL with the MTCR Annex and past MTCR agreements. Specifically, the following eight ECCNs are affected:

ECCN 1C011 is amended by revising the MT control(s) paragraph in the License Requirements section to indicate the MT control applies to 1C011.a and .b for materials that meet or exceed the parameters in 1C111. This change clarifies that the MT control applicable to 1C011.b only applies when the boron or boron alloys also meet the size requirement specific to the MTCR Annex (i.e., where at least 90% of the total particles by particle volume % or weight % are made up of particles of less than 60 μm). (MTCR Annex Change, Category II: Item 4.C.2.e., Berlin 2012 Plenary). Boron and boron alloys with the purities specified were previously controlled, but the interpretation of the size requirement was not clear between MTCR Partners. While the text could be read as meaning that all of the material had to be less than 60 μm to be controlled, many Partners were controlling material that had a median particle size of 60 μm . The new measurement criteria clarifies that at least 90% of the material must be less than 60 μm to be controlled, and the criteria encompass several techniques used for measuring particle size by including multiple standard reporting practices within the control text

and providing examples of test methods. Because the MTCR partners decided to make the size control more specific, additional detail was needed to qualify how the size is to be ascertained and reported for purposes of determining whether such material is MT controlled. The new measurement criteria being added in this final rule will ensure the different testing methods currently in use, such as laser diffraction and sieves, will be applied in a consistent manner in determining whether such material is MT controlled under ECCN 1C011 or controlled under ECCN 1C111.

Additionally, because boron of this purity is controlled by both the MTCR, and for NS reasons, by the Wassenaar Arrangement (WA), and the WA has not adopted these changes, this final rule is implementing the MTCR-agreed change to 1C011.b by qualifying the scope of the MT control(s) paragraph. As this type of boron material typically meets the specifications of both the prior and updated text, this change is not expected to have any impact on the number of license applications received by BIS.

ECCN 1C111 is amended by revising the “items” paragraph (a.1) in the List of Items Controlled section by including the term “spheroidal” and removing the phrase “particles of uniform diameter” from paragraph (a.1). (MTCR Annex Change, Category II: Item 4.C.2.c., Berlin 2012 Plenary). This change will address a concern of the MTCR members that particles that are not exactly spherical might be interpreted as being outside the scope of this control. The changes are being made because aluminum powder particles are not exactly spherical. This is a clarification of the control and is consistent with how BIS has interpreted the scope of ECCN 1C111. Therefore, this clarification will have no impact on the number of license applications received by BIS. This rule is also removing under paragraph (a.1) the phrase “other than those controlled by the U.S. Munitions List,” because this concept (that items that are enumerated or

described on the U.S. Munitions List (USML) are subject to the ITAR and therefore not “subject to the EAR”) is already stated in other places in the EAR, in particular part 734 (Scope of the Export Administration Regulations).

ECCN 1C111 is also amended by revising the “items” paragraph (a.2) in the List of Items Controlled section to modify the controls for certain powders. (MTCR Annex Change, Category II: Items 4.C.2.d. and 4.C.2.e., Berlin 2012 Plenary). The same interpretation that applies to the size criteria of boron powders as described above in ECCN 1C011 applies to zirconium, beryllium, and magnesium powders. Hence, the same new measurement criteria in modified ECCN 1C011 are being applied to ECCN 1C111 to clarify that at least 90% of the material must be less than 60 μm to be controlled. The criteria also encompass several techniques used for measuring particle size by including multiple standard reporting practices within the control text and providing examples of test methods, as described in detail in the discussion of changes to ECCN 1C011 above.

In addition, this rule removes the phrase “metal fuels and their alloys” in paragraph (a.2) and replaces it with the more precise and accurate term “metal powders” to conform to the MTCR Annex and the intent of this CCL control. This final rule adds the phrase “and alloys” after “metal powders” to clarify that although the term metal fuels is being replaced with the term metal powders, the scope of paragraph (a.2) still extends to alloys of those metal powders. This rule also removes under paragraph (a.2) the phrase “other than those controlled by the U.S. Munitions List,” because this concept (that items that are enumerated or described on the USML are subject to the ITAR and therefore not “subject to the EAR”) is already stated in other places in the EAR, in particular part 734. The criteria in 1C111 are also being updated in this final rule to clarify that alloys of these metals are only controlled when they are 97% or more, by weight,

of zirconium, beryllium, or magnesium, which is consistent with how BIS has interpreted the scope of ECCN 1C111.

This rule also adds the control on boron powders, previously only controlled in 1C011, to a new “items” paragraph (a.2.b) to differentiate between the NS controlled and MT controlled material. The new measurement criteria and other criteria added in 1C111.a.2 in this final rule clarify exactly what is controlled by including multiple standard reporting practices within the control text and providing examples of test methods. Because the MTCR partners decided to make the size control more specific, additional detail was needed to qualify how the size is to be ascertained and reported for purposes of determining whether such material is MT controlled. The new measurement criteria being added in this final rule will ensure the different testing methods currently in use, such as laser diffraction and sieves, will be applied in a consistent manner in determining whether such material is MT controlled under ECCN 1C111 or controlled under 1C011. As with the boron control, the type of metal powders typically exported currently meet the specifications of both the previous and the updated control text, and this change is not expected to have any impact on the number of license applications received by BIS.

Paragraph (a.2.a.4) of ECCN 1C111 is being removed to clearly reflect the interpretation that alloys controlled would fall within the 97% weight requirement of paragraph (a.2.a). As a conforming change to the removal of paragraph (a.2.a.4), this rule revises paragraph (a.2.a.2) to add the word “or” and revises paragraph (a.2.a.3) to remove the word “or” and the semicolon, and replace that text and punctuation with a period.

Finally, in ECCN 1C111 this rule also adds a new note at the end of the “items” paragraph in the List of Items Controlled section to indicate that in a multimodal particle

distribution (e.g., mixtures of different grain sizes) in which one or more modes are controlled, the entire powder mixture is controlled.

ECCN 1C116 is amended by revising the heading and the “items” paragraph in the List of Items Controlled section regarding maraging steel classified under 1C116. (MTCR Annex Change Category II: Item 6.C.8., Paris 2011 RPOC). First, the rule expands the scope of the control criteria to ensure that maraging steel that has missile applications is adequately enumerated within the scope of this ECCN. Specifically, this rule revises the heading and adds an “items” paragraph (a) and (b) in the List of Items controlled section to expand the scope of the control.

In addition to expanding the control criteria, this final rule revises the “items” paragraph to add new notes (a) and (b) to identify that maraging steels are iron alloys generally characterized by the criteria included in these notes. The MTCR members agreed to this change because maraging steel is often exported in the solution annealed stage and then further worked (i.e., processed) at the destination before being precipitation hardened. Therefore, maraging steel that has missile applications could have potentially avoided control, under ECCN 1C116, by being exported or reexported before being hardened into its final stage. This final rule addresses this missile proliferation concern by expanding the scope of 1C116 to define the ultimate tensile strength of maraging steel usable in missile applications in both the solution annealed stage and the precipitation hardened stage, and controlling both under 1C116. This expansion will result in an increase of one or two license applications per year, so the overall impact on the number of license applications received by BIS will be minimal.

ECCN 7E004 is amended by revising the MT control(s) paragraph in the License Requirements section to indicate that where “technology” for equipment or systems controlled

for MT reasons is not controlled under ECCNs 7E001, 7E002, 7E101, 7E104, and 9E101, it is controlled under ECCN 7E004 for MT reasons. (MTCR Annex Category II: Item 10.E.3)

ECCN 7E004 is also amended by revising the “related controls” paragraph to add ECCNs 7E001, 7E002, 7E101 and 9E101 as additional related controls under two new “related controls” paragraphs. Specifically, this rule revises the “related controls” under 7E004 to include ECCNs 7E001, 7E002, 7E101 and 7E994 as a new “Related Controls” paragraph (2). This rule also revises the “related controls” to include ECCNs 7E104 and 9E101 as a new “Related Controls” paragraph (3), and adds details for when 7E104 and 9E101 should also be reviewed for MT controlled technology. The remaining “related controls” text in 7E004 becomes new “Related Controls” paragraph (1). (MTCR Annex Category II: Item 9.E.1., 10.E.1., 10.E.2., and 10.E.3.; CCL Conforming Change to MTCR Annex). This conforming change will result in the revision of the MT control on 7E004 technology. However, because certain portions of the MT control are being retained in 7E004 to conform to the MTCR Annex, and the remaining technology is controlled for NS reasons, the impact on the number of license applications received per year will be minimal and likely will result in a decrease of one or two license applications per year. Also as described above under the changes being made to License Exception STA, 7E004 will continue to be ineligible for License Exception STA, except for “technology” controlled under 7E004.a.7. Lastly, in 7E004, BIS adds an STA paragraph to the License Exception section to make it explicit that License Exception STA may not be used for 7E004, except for 7E004.a.7. This new STA paragraph conforms to the exclusion being added to License Exception STA under paragraph (b)(2)(vii) for 7E004 “technology,” except for “technology” controlled under 7E004.a.7.

ECCN 9A101 is amended by revising the “related definitions” paragraph in the List of Items Controlled section to add an ECCN-specific definition for ‘maximum thrust value.’ (MTCR Annex Change, Category II: Item 3.A.1.a.1., Technical Note, Berlin 2012 Plenary). There is a possible discrepancy between the actual thrust value of an engine and what it is certified to, which could lead to certain engines used on small aircraft being unintentionally caught by this control. This definition coincides with the way BIS currently interprets this control. However, this interpretation was not true of all MTCR Partners and the addition of the note makes the control more uniform. This clarification will have no impact on the number of license applications received by BIS.

ECCN 9B105 is amended by replacing the term wind tunnels in the heading with the term ‘aerodynamic test facilities’ (which, as noted in the new technical note described below, includes wind tunnels and shock tunnels), adding a note, and adding one technical note to the “items” paragraph in the List of Items Controlled section. (MTCR Annex Change, Category II: Item 15.B.2., Berlin 2012 Plenary). The new note is an exclusion note specifying that ECCN 9B105 does not control wind tunnels for speeds of Mach 3 or less with the dimension of the test cross section size equal to or less than 250 mm. This specific decontrol helps to clarify what is usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a range equal to or greater than 300 km and the subsystems of these items. This final rule also adds two new technical notes to assist the public in understanding and applying the revised ECCN 9B105. The first technical note clarifies that ‘aerodynamic test facilities’ includes wind tunnels and shock tunnels for the study of airflow over objects. This final rule adds the second technical note to assist the public in understanding and applying the new exclusion note for 9B105 by clarifying that ‘test cross section size’ means the diameter of the circle, or the side of the square, or the

longest side of the rectangle, or the major axis of the ellipse at the largest test cross section location. In addition, this second new technical note clarifies that the ‘test cross section’ is the section perpendicular to the flow direction.

ECCN 9D004 is amended by revising the MT control(s) paragraph in the License Requirements section to indicate the MT control does not apply to this entry. This change is made to more closely align the scope of this MT control with the MTCR Annex. (No MTCR Annex reference is applicable to all of the software described in 9D004; CCL Conforming Change to MTCR Annex). This change will result in the removal of the MT control on 9D004 software, as the corresponding MTCR Annex entry related to this control is already controlled in ECCN 9D104. However, because the 9D004 software remains controlled for NS reasons, the impact on the number of license applications received per year will be minimal, resulting in a decrease of one or two per year. Lastly, to alert people regarding other related software controls, 9D004 is amended by revising the “related controls” paragraph in the List of Items Controlled section to add a reference to 9D104.

ECCN 9E101 is amended by revising the heading and the “related controls” paragraph in the List of Items Controlled section to add a reference to ECCN 9A103. (MTCR Annex Change, Category II: Item 3.E.1., Paris 2011 RPOC). This final rule makes this change because the MTCR Annex was updated to include technology for liquid propellant tanks specially designed for propellants specified by 4.C. in the Annex or used in Category I rocket systems. These commodities and the related technology are “subject to the ITAR,” and the commodities are referenced on the CCL under 9A103. This change will have no impact on the number of license applications received by BIS because ECCNs 9E101 and 9A103 are both “subject to the ITAR,” so the change is limited to updating the scope of an ECCN cross reference between two ECCNs

that are “subject to the ITAR.” The heading has also been changed to reflect that the MT control only applies to 9A012 commodities that are themselves controlled for MT reasons. This change is made to more closely align the scope of this MT control with the MTCR Annex. (Category II: Item 19.A.2., CCL Conforming Change to MTCR Annex). This clarification will have no impact on the number of license applications received by BIS.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]. Any such items not actually exported or reexported before midnight, on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION], require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry

out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.
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 the following approved collection: Simplified Network Application Processing System (control number 0694-0088), which includes, among other things, license applications and carries a burden estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Sehra, OMB Desk Officer, by e-mail at Jasmeet_K._Seehra@omb.eop.gov or by fax to (202) 395-7285; and to the Office of

Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW, Room 6622, Washington, DC 20230.

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 participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligations to the MTCR. The MTCR contributes to international security and regional stability by promoting greater responsibility in transfers of missile technology items, thus preventing destabilizing accumulations of such items. The MTCR consists of 34 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached by MTCR member countries at the October 2012 Plenary in Berlin, Germany and at the MTCR Reinforced Point of Contact (RPOC) meeting in Paris, France in December 2011. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the MTCR to achieve its purpose. Moreover, it is in the public's interest to waive the notice and comment requirements, as any delay in implementing this rule will disrupt the movement of affected items globally because of disharmony between export control measures implemented by MTCR members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and

comment and a 30 day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international communities' ability to effectively control the export of certain potentially national- and international-security-threatening materials.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 740, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

2. Section 740.20 is amended:

a. By redesignating paragraphs (b)(2)(vii) through (b)(2)(ix) as paragraphs (b)(2)(viii) through (b)(2)(x); and

b. By adding paragraph (b)(2)(vii) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

(b) * * *

(2) * * *

(vii) Commerce Control List Category 7 limitation on use of License Exception STA. License Exception STA may not be used for 7E004 “technology,” except for “technology” controlled under 7E004.a.7.

PART 772—[AMENDED]

3. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

4. Section 772.1 is amended by revising Technical Notes b of the “payload” definition as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

Payload. ***

TECHNICAL NOTES:

a. ***

b. Space Launch Vehicles - “Payload” includes:

1. Spacecraft (single or multiple), including satellites;

2. Spacecraft-to-launch vehicle adapters including, if applicable, apogee/perigee kick motors or similar maneuvering systems;

PART 774—[AMENDED]

5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1C011 is amended:

a. By revising the heading; and

b. By revising the “MT” paragraph in the License Requirements section to read as follows:

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

* * * * *

1C011 Metals and compounds, other than those specified in 1C111, as follows (see List of Items Controlled).

License Requirements

*Reason for Control: ****

Control(s)	Country chart

MT applies to 1C011.a and .b for items that meet or exceed the parameters in 1C111.	MT Column 1

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1C111 is amended:

a. By revising “items” paragraphs a.1, introductory text of paragraph a.2, paragraph a.2.a.2 and paragraph a.2.a.3 in the List of Items Controlled section;

- b. By removing “items” paragraph a.2.a.4 in the List of Items Controlled section;
- c. By adding “items” paragraph a.2.b in the List of Items Controlled section; and
- d. By adding a note to at the end of the “items” paragraph in the List of Items Controlled section after “items” paragraph c.5 to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

List of Items Controlled

Items:

a.1. Spherical or spheroidal aluminum powder in particle of size of less than 200×10^{-6} m (200 μ m) and with an aluminum content of 97% by weight or more, if at least 10% of the total weight is made up of particles of less than 63 μ m, according to ISO 2591:1988 or national equivalents.

Technical Note: ***

a.2. Metal powders and alloys where at least 90% of the total particles by particle volume or weight are made up of particles of less than 60 μ m (determined by measurement techniques such

as using a sieve, laser diffraction or optical scanning), whether spherical, atomized, spheroidal, flaked or ground, as follows:

a.2.a.2. Beryllium; or

a.2.a.3. Magnesium.

a.2.b Boron or boron alloys with a boron content of 85% or more by weight.

Technical Note: ***

Note: In a multimodal particle distribution (e.g., mixtures of different grain sizes) in which one or more modes are controlled, the entire powder mixture is controlled.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1C116 is amended:

a. By revising the heading;

b. By revising the “items” paragraph in the List of Items Controlled section; and

c. By adding a new “technical note” to the ‘items’ paragraph in the List of Items Controlled section to read as follows:

1C116 Maraging steels having both of the following (see List of Items Controlled).

List of Items Controlled

Items:

a. Having an ultimate tensile strength, measured at 20°C, equal to or greater than:

a.1. 0.9 GPa in the solution annealed stage; or

a.2 1.5 GPa in the precipitation hardened stage; and

b. Any of the following forms:

b.1 Sheet, plate or tubing with a wall or plate thickness equal to or less than 5.0 mm;

or

b.2 Tubular forms with a wall thickness equal to or less than 50 mm and having an inner diameter equal to or greater than 270 mm.

Technical Note:

Maraging steels are iron alloys that are generally:

- a. Characterized by high nickel, very low carbon content and use substitutional elements or precipitates to produce strengthening and age-hardening of the alloy; and*
- b. Subjected to heat treatment cycles to facilitate the martensitic transformation process (solution annealed stage) and subsequently age hardened (precipitation hardened stage).*

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 – Navigation and Avionics, Export Control Classification Number (ECCN) 7E004 is amended:

- a. By revising the “MT” paragraph in the License Requirements section;
- b. By adding a License Exception STA paragraph at the end of the License Exceptions section; and
- c. By revising the “related controls” paragraph in the List of Items Controlled section, to read as follows.

7E004 Other “technology” as follows (see List of Items Controlled).

License Requirements

*Reason for Control: ****

Control(s)	Country chart
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MT applies to “technology” for equipment or systems controlled for MT reasons.	MT Column 1

License Exceptions

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 7E004, except for 7E004.a.7. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for 7E004, except for 7E004.a.7.

List of Items Controlled

Related Controls: (1) See 0D521 No. 2 (“source code” for the “development” of fly-by-wire control systems), 0E521 No. 6 (for “technology” for the “development” of “software” controlled by 0D521 No. 2). (2) See also 7E001, 7E002, 7E101, and 7E994. (3) In addition to the Related Controls in 7E001, 7E002, and 7E101 that include MT controls, also see the MT controls in 7E104 for design “technology” for the integration of the flight control, guidance, and propulsion data into a flight management system, designed or modified for rockets or missiles capable of achieving a “range” equal to or greater than 300 km, for optimization of rocket system trajectory; and also see 9E101 for design “technology” for integration of air vehicle fuselage, propulsion system and lifting control surfaces, designed or modified for unmanned aerial vehicles capable of

achieving a “range” equal to or greater than 300 km, to optimize aerodynamic performance throughout the flight regime of an unmanned aerial vehicle.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 – Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A101 is amended:

a. By revising the “related definitions” paragraph in the List of Items Controlled section; and

b. By adding single quotes around the phrase ‘maximum thrust value’ in “items” paragraph a.1 in the List of Items Controlled section to read as follows:

9A101 Turbojet and turbofan engines, other than those controlled by 9A001, as follows (see List of Items Controlled).

List of Items Controlled

Related Definitions: ‘Maximum thrust value’ in 9A101.a.1 is the manufacturer’s demonstrated maximum thrust for the engine type un-installed. The civil type certified thrust value will be equal to or less than the manufacturer’s demonstrated maximum thrust for the engine type.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 – Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B105 is amended:

a. By revising the heading; and

b. By adding a new “note” and two new “technical notes” to the end of the ‘items’ paragraph in the List of Items Controlled section to read as follows:

9B105 ‘Aerodynamic test facilities’ for speeds of Mach 0.9 or more, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a “range” equal to or greater than 300 km and their subsystems.

List of Items Controlled

*Items: ****

Note: 9B105 does not control wind tunnels for speeds of Mach 3 or less with the dimension of the ‘test cross section size’ equal to or less than 250 mm.

Technical Notes:

1. ‘Aerodynamic test facilities’ includes wind tunnels and shock tunnels for the study of airflow over objects.

2. *'Test cross section size' means the diameter of the circle, or the side of the square, or the longest side of the rectangle, or the major axis of the ellipse at the largest 'test cross section' location. 'Test cross section' is the section perpendicular to the flow direction.*

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 – Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D004 is amended:

- a. By removing the “MT” paragraph in the License Requirements section; and
- b. By revising the “related controls” paragraph in the List of Items Controlled section to read as follows:

9D004 Other “software” as follows (see List of Items Controlled).

List of Items Controlled

Related Controls: See also 9D104.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 – Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E101 is amended:

- a. By revising the heading; and
- b. By revising the “related controls” paragraph in the List of Items Controlled section to read as follows:

9E101 “Technology” according to the General Technology Note for the “development,” “production,” or “use” of commodities or software controlled by 9A012 (for MT controlled commodities only), 9A101, 9A103 to 9A111, 9A115 to 9A119, 9C110, 9D101, 9D103, 9D104 or 9D105.

List of Items Controlled

Related Controls: “Technology” controlled by 9E101 for items in 9A101.b, 9A103 to 9A111, 9A115 to 9A119, 9D103, and 9D105 is “subject to the ITAR” (see 22 CFR parts 120 through 130).

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