



Billing Code 3510–33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 120330233-3326-02]

RIN 0694-AF64

Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment 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 is the second proposed rule to describe how military electronics and certain superconducting and cryogenic equipment and related items the President determines no longer warrant control under the United States Munitions List (USML) would be controlled on the Commerce Control List (CCL). This proposed rule also would amend ECCNs 7A001 and 7A101 to apply the “missile technology” reason for control only to items in those ECCNs on the Missile Technology Control Regime (MTCR) Annex.

This action is one in a planned series of proposed rules that would implement the Administration’s Export Control Reform Initiative by describing how certain types of articles would be controlled on the CCL after the President determines that the articles no longer warrant USML control. This proposed rule is being published in conjunction with a proposed rule from

the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category XI.

The revisions proposed in this rule are part of Commerce's retrospective plan under EO 13563 completed in August 2011. Commerce's full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

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:

- By the Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2012-0045.
- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AF64 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, US Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AF64.

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.

SUPPLEMENTARY INFORMATION:

Background

The Export Control Reform Initiative.

This proposed rule is part of the Administration's Export Control Reform Initiative, the objective of which is to protect and enhance US national security interests. The Initiative began in August 2009 when President Obama directed the Administration to conduct a broad-based review of the US export control system to identify additional ways to enhance national security. In April 2010, then-Secretary of Defense Robert M. Gates, describing the initial results of that effort, explained that fundamental reform of the US export control system is necessary to enhance national security. Once the Department of State's International Traffic in Arms Regulations (ITAR) and its US Munitions List (USML) are amended so that they control only the items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and the Export Administration Regulations (EAR) are amended to control military items that do not warrant USML controls, the US export control system will enhance national security by (i) improving interoperability of US military forces with allied countries, (ii) strengthening the US industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid US-origin content and services, and (iii) allowing export control officials to focus government resources on transactions that pose greater concern.

Pursuant to section 38(f) of the Arms Export Control Act (AECA), the President is obligated to 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).

BIS has published and will continue to publish additional *Federal Register* notices containing proposed amendments to the CCL that 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 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies' (Wassenaar Arrangement) Munitions List (Wassenaar Arrangement Munitions List or WAML) and the Missile Technology Control Regime's (MTCR) Equipment, Software and Technology Annex (MTCR Annex).

Overview of this proposed rule.

Following the structure set forth in the final rule entitled "Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform" (78 FR 22660, April 16, 2013) ("April 16 (initial implementation) rule"), this proposed rule describes BIS's proposal for controlling under the EAR's CCL certain military electronic equipment and related articles now controlled by the ITAR's USML Category XI, and equipment and related items in category ML20 of the WAML, which pertains to certain cryogenic and superconductive equipment. These items are currently controlled by "catch all" provisions of the ITAR's USML Categories VI, VII, VIII, and XV. Finally, this proposed rule would correct two ECCNs in CCL Category 7 to apply the "missile technology" reason for control only to items that are on the MTCR Annex.

This action re-proposes moving export control of certain military electronic equipment from the USML to the CCL. BIS originally proposed transferring the control of these items to the EAR in

2012, in a rule entitled, “Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)” (77 FR 70945, November 28, 2012) (“November 28 (military electronics) rule”). That action was issued simultaneously with a proposed rule by the Department of State, entitled, “Amendment to the International Traffic in Arms Regulations: Revisions of US Munitions List Category XI and Definition for ‘Equipment’” (77 FR 70958, November 28, 2012) (“State’s November 28, 2012 (military electronics) rule”) (collectively, the “November 28, 2012 (military electronics) rules”). The provisions in this second proposed rule by BIS are based on a review of public comments to the November 28 (military electronics) rule, and on a review of USML Category XI and WAML category ML20 by the Department of Defense, which worked with the Departments of State and Commerce in preparing these proposed amendments. BIS is proposing this action a second time because the comments suggested changes from the original proposed rule that are sufficiently distinct from the November 28 (military electronics) rule to warrant providing them to the public for further review and to obtain public input on the feasibility of implementing the rule as re-proposed. The criteria used in this review are described in the November 28 (military electronics) rule. *See* 77 FR 70945.

The revisions proposed in this rule are part of Commerce’s retrospective plan under EO 13563 completed in August 2011. Commerce’s full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

Consistency of Controls

This proposed rule would alter the scope of ECCNs 3B611, 3E611, 9B620 and 9E620 from what was proposed in the November 28 (military electronics) rule. Upon review, BIS determined that standard elements for test, inspection, and production equipment ECCNs and for technology ECCNs would reduce the possibility of confusion. Accordingly, BIS adopted the elements “development, production, repair, overhaul, or refurbishing” for test, inspection, and production equipment ECCNs in the 600 series and adopted “development, production, operation, installation, maintenance, repair, overhaul, or refurbishing” for technology ECCNs in the 600 series (*see* 78 FR 40892, 40894, July 8, 2013). This proposed rule would include those elements in 3B611, 3E611, 9B620 and 9E620 to conform with that decision. *Need to Avoid Ambiguous Classifications or Inadvertent License Requirements.*

BIS recognizes that because electronics frequently are installed in some other commodity, they are particularly susceptible to ambiguous classification or classification under multiple entries on the CCL. For example, a given electronic device might also be viewed as a part for an aircraft, radar, computer, laser, or some other article. How the device is viewed might affect its classification on the CCL, which could, in turn, affect license requirements or licensing policy. BIS’s intent is that the new ECCNs proposed here would not increase the number of destinations to which a license is required, alter the policy under which license application are reviewed, or create any apparent instances of an item that is subject to the EAR being covered by more than one ECCN. Parties who believe that they can identify instances where the effect of the proposed rule would be contrary to this intent are encouraged to identify those instances in a public comment on this proposed rule.

Relationship to April 16, Initial Implementation Rule.

The April 16 (initial implementation) rule will become effective on October 15, 2013. Because any final rule resulting from this proposed rule would not become effective until after that date, this proposed rule and BIS's responses to the public comments on the November 28 (military electronics) rule discussed below are written as if the April 16 (initial implementation) rule were already effective. Accordingly, commenters on this proposed rule should become familiar with the April 16 (initial implementation) rule and take it into account in formulating their comments on this proposed rule. Although BIS encourages public understanding of the entire April 16 (initial implementation) rule, the provisions listed below are likely to be particularly useful because they provide background for understanding terms and concepts that are used extensively in this proposed rule and in the discussion of the public comments. The listed page numbers refer to pages in the *Federal Register* published on April 16, 2013.

- “600 series:” preamble discussion, pages 22661-22663 and 22691; regulatory text, page 22727.
- Definition of “component:” regulatory text, page 22727.
- Definitions of “end item” and “part:” regulatory text, page 22728.
- Definition of “specially designed:” preamble discussion, pages 22682-22691; regulatory text, pages 22728-22729.
- “Dual licensing:” preamble discussion, page 22664-22665; regulatory text, page 22707.
- License Exceptions TMP, RPL, GOV, TSU and STA: preamble discussion, pages 22669-22674; regulatory text, pages 22709-22720 and 22726.

- “Order of review”: preamble discussion, page 22704; regulatory text, pages 22735-22736

Public Comments on the November 28 (military electronics) rule and BIS responses.

BIS received comments from 17 organizations and one individual, proposing a number of ideas for revising the proposed rule.

Comment: Several commenters expressed general approval of transferring some military items from the USML. As part of their comments, they noted that (i) electronic parts and components are rarely almost exclusively available from the United States; (ii) current USML requirements impose a heavy cost burden on low value parts and US manufacturers may thus be more inclined to continue making the parts if that burden is reduced; and (iii) the removal of a “see-through” rule on electronic parts and components will reduce the incentive for foreign customers in non-embargoed countries to refuse to buy US-origin parts. One commenter approved of BIS’s use of “specially designed” in “600 series” ECCNs because it would help standardize the identification of which items are and are not controlled. One commenter noted that placing monolithic microwave integrated circuit power amplifiers in 3A611.c and discrete power transistors in 3A611.d are positive moves that clearly define the articles covered.

Response: BIS agrees and these comments are consistent with the second proposed rule.

Comment: Some commenters expressed concern that the rule did not refer to a Department of Defense review process for low observable and counter low observable related items moving from the USML to the CCL.

Response: In accordance with Executive Order 12981, as amended, the Department of Defense has authority to review license applications submitted to the Department of Commerce. BIS

expects that Department to continue existing review policies for any items referred to by these commenters that are added to the CCL. In any event, no change to the regulations is necessary to implement this policy.

Comment: A commenter recommended adding an interpretation to Part 770 clarifying that items subject to a parameter-based CCL entry will be controlled by such entry if the item meets the parameter at the time of export, and not by whether it has potential capability (*e.g.*, dormant capability) to meet the control, so long as the additional capability cannot be executed by the end-user without additional activity by the exporters. Exporters would be required to obtain any necessary authorizations to activate such a capability for a customer.

Response: Items with characteristics that are within the scope of the parameters of a particular ECCN are classified under that ECCN. BIS believes that no change is needed to the regulatory text from what was published in the November 28 (military electronics) rule.

Comment: Commenters stated that more information about the order of precedence or order of review was needed for the public to be able to classify items reliably. Many items might be reasonably classified under a USML category or an ECCN, more than one ECCN, or more than one ECCN paragraph.

Response: BIS received comments along this line in response to other proposed rules. The April 16 (initial implementation) rule includes an order of review, which is intended to eliminate the possible uncertainty noted by these commenters.

Comment: Commenters expressed concern that moving items from the USML to the CCL would increase the number of licenses that some companies would need for two reasons.

First, in many instances, the Directorate of Defense Trade Controls (DDTC) in practice issues licenses covering items that are subject to the EAR, when they are being exported in conjunction with defense articles that are subject to the ITAR. The commenter suggested that these circumstances might increase the time needed to gain approval for transactions that require the export of both USML and CCL items, because BIS licenses generally take longer to obtain than DDTC licenses. The commenter proposed as a solution allowing DDTC to issue licenses for items on the CCL in such transactions. This commenter suggested that a formal process for DDTC to issue licenses for items that are subject to the EAR be authorized.

Second, license exceptions under the EAR do not apply to some transactions that would be exempt from license requirements under the ITAR. Two solutions were proposed. First, amend license exceptions under the EAR to make sure that they cover transactions that would qualify for an exemption under the ITAR. Second, create a new license exemption that authorizes using ITAR exemptions for transactions that are subject to the EAR.

Response: The potential problem of needing both a DDTC and a BIS license for a single transaction is sometimes referred to as the dual licensing issue. BIS's and DDTC's April 16 (initial implementation) rules address the dual licensing issue with a procedure for DDTC to issue licenses for items that are subject to the EAR in situations where a single transaction includes exports or reexports of items that are subject the ITAR and items that are subject to the EAR. BIS welcomes comments on whether these provisions effectively address the issues identified in the comments.

The April 16 (initial implementation) rule revises several EAR license exceptions to make them comparable to ITAR license exemptions. BIS believes that the second proposed solution -

amending the EAR to allow use of ITAR license exemptions for transactions that are subject to the EAR - would create legal and policy complications that can be avoided by simply amending existing EAR license exceptions. BIS welcomes comments on whether the revisions to license exceptions in the April 16 (initial implementation) rule effectively address the issues identified in the comments with respect to military electronic items.

Comment: A commenter recommended several steps to deal with the expected increase in the number of license applications to be submitted to BIS, such as: increase staffing levels; “enhance” the DOC licensing process to reduce cycle times; include reviewing agencies in efforts to streamline the license application review process; and leverage lessons learned and best practices from the Department of State, which has reduced processing time in recent years.

Response: BIS is taking these steps. No revision to the EAR is needed to do so.

Comments concerning proposed ECCNs 4A611, 5A611 and 6A611

Proposed ECCNs 4A611, 5A611 and 6A611 refer readers to ECCN 3A611. They are included to alert readers that military computers, military telecommunications equipment and military radars would be controlled by ECCN 3A611, a structure more similar to that of the USML, which controls all three in Category XI, than that of the CCL, which controls computers in Category 4, telecommunications equipment in Category 5, and radars in Category 6.

Comment: Commenters expressed a belief that following the USML pattern would make classification more difficult than would following the CCL pattern.

Response: This proposed rule republishes those three cross-reference ECCNs along with a fourth one: ECCN 7A613, which refers readers to 3A611 for military avionics and navigation items. BIS continues to seek comments on which pattern would be easier to understand and comply with. One pattern would create substantive ECCNs in five CCL Categories -- Category 4 (computers), Category 5 (telecommunications), Category 6 (sensors and lasers), Category 7 (avionics), and Category 3 (all other military electronics not described on the USML). The other pattern would place all substantive control text for military electronics in Category 3 with cross references to Category 3 in Categories 4, 5, 6 and 7. The advantage of breaking the different types out among the categories is that they would be described in more detail and in the CCL categories that control similar dual-use items. The disadvantage would be that 20 new substantive 600 series ECCNs would need to be created that all contain essentially the same descriptions as compared to 4 new substantive and four cross reference ECCNs that would be required by the second alternative.

Comment: A commenter requested a six-month grace period to implement the changes that would be required by the proposed rule.

Response: BIS plans to make the final rule adding to the CCL military electronic systems the President determines no longer warrant control under the USML effective 180 days after publication.

Comment: One commenter noted that the EAR contain no definition of “avionics,” making the decision to classify an item under Category 7 – Navigation and Avionics or Category 9 – Aerospace and Propulsion, difficult. The commenter stated as an example that a control panel

for anti-ice bleed air valves might belong under either Category 7 or Category 9, depending on whether it contains a digital circuit even though the function performed is the same.

Response: BIS is making no changes to this proposed rule in response to this comment, because it is outside the scope of the November 28 (military electronics) rule. However, BIS will look into ways to address elsewhere the issues raised by this commenter.

Comment: One commenter stated the policy implications of the phrase, “parts and components n.e.s. in ECCNs 7A994 and 9A991.d,” are unclear with the addition of the proposed definition of “specially designed.” The commenter noted that neither ECCN uses the term “specially designed,” and stated that the ECCNs have never been understood to control EAR99 items common to non-aircraft applications.

Response: BIS is making no changes to this proposed rule in response to this comment because it is outside the scope of the November 28 (military electronics) rule. BIS does not intend that anything in this proposed rule or in the April 16 (initial implementation) rule make a currently EAR99 item controlled under either ECCN 7A994 or 9A991. BIS will look into ways to address elsewhere the issues raised by this commenter.

Comment: Several commenters expressed concern over use of the term “specially designed” in the November 28 (military electronics) rule when the final rule defining that term had not been published. The commenters noted that they could not analyze the impact of the term without knowing its precise language.

Response: The April 16 (initial implementation) rule included the definition of “specially designed” that will apply to this proposed rule has now been published. See 78 FR 22682-91, 22728-29.

Comment: Several commenters proposed features that they thought the definition of “specially designed” should have. These recommendations were:

- Include in subsection (a)(1) of the definition application-specific components of end items for which the control parameters or character can be ascertained;
- Restrict the “necessary” standard for components set forth in subsection (a)(2) to components for which there is no basis to assess the controlled parameters or character of the end item in which the component is incorporated;
- Create a note that provides an appropriate industry definition of ASICs;
- Capture the natural meaning of the term “specially designed,” and avoid overarching exclusions and exceptions; and
- Eliminate reference in subsection (b)(3) to “form and fit” for components of equivalent performance.

It is logical and feasible to tie the control of “specially designed” components to the related end-item, but only to the extent that the “specially designed” component is peculiarly responsible for the controlled parameters of the controlled character as a whole of the end item.

Form and fit adapted to a particular end item or special protective packaging adapted to the environment in which that end-item functions should not make a part or component specially designed for a particular end item if the function that the part or component performs is the same as that it would perform in some other end-item where a different form or fit is required, or such special protective packaging or housing is not needed.

Consider modifications to basic hardware as minor and, therefore not “specially designed” if they: a) are unclassified; b) are not for the purpose of improving the item’s resistance or hardness to nuclear radiation, nuclear electromagnetic pulse, or resistance to chemicals or biological agents controlled under the ITAR; and c) are not made to achieve special designated military properties (*e.g.*, special low observable, acoustic, electromagnetic properties, hot section technology for military gas turbine engines, or characteristics identified in the proposed Supplement No. 4 to Part 740 of the EAR).

Response: Following the closing comment period date for the November 28 (military electronics) rule, the April 16 (initial implementation) rule set forth the definition of “specially designed.” This definition provides that modifications to a part or component made *solely* to fit a particular commodity do not make the part or component specially designed. The definition also states that certain specific parts are not specially designed. The definition is not limited to parts or components that are peculiarly responsible for achieving the control parameters of the end item, nor does it exclude modifications or packaging applied to a part or component adapted to the environment in which the end-item performs. Although the notion of a short “natural meaning” definition is interesting, experience has indicated that determining the actual purpose for which something was designed is often difficult and can lead different readers to different conclusions based on the same sets of facts. BIS believes that the definition set forth in April 16

(initial implementation) rule provides a reasonable, repeatable, verifiable, and as certain as possible framework for determining which parts and components are and are not “specially designed.” However, BIS welcomes comments regarding the impact the term “specially designed” has on the ECCNs in this proposed rule.

Comment: One commenter recommended removing minor parts and components in normal commercial use to which minor modifications have been made from the catch-all paragraphs for the 600 series ECCNs, arguing that such common hardware does not warrant this level of control.

Response: BIS is not adopting this recommendation. License requirements on parts and components that are specially designed for military equipment, even if they do not give the military equipment its military character, can serve the US government’s national security and foreign policy interests in being able to monitor, control, and otherwise have visibility into the supply chain of the parts and components that are necessary to keep military equipment functioning. The US government has made a determination that such parts and components, which are now ITAR controlled, do not warrant all the controls of the ITAR. The government has not made, and does not intend to make, a determination that such items do not warrant control at all.

Comment: One commenter stated that BIS should respect prior commodity jurisdiction rulings. The US government has already determined that these items do not warrant control on the ITAR as it currently exists. Therefore, they should not warrant control under 600 series ECCNs.

Response: Items not currently on the USML, in an ECCN that ends with “018,” or in ECCN 0A918, have been determined not to be military items. BIS confirmed in General Order No. 5 in the April 16 (initial implementation rule) that one may conclude that such items within the scope of a Commodity Jurisdiction (“CJ”) determination are not 600 series items (*See* 78 FR 22660, 22708, April 16, 2013). If readers believe that this proposed rule would do so, they should submit a comment indicating specifically what items in ECCNs other than those described above or what EAR99 items they believe would be moved to the 600 series by this proposed rule.

Comments on ECCN 3A101

Comment: One commenter recommended replacing the phrase “usable in missiles” with “specially designed for use in missiles,” stating that the former language could lead to controlling almost any analog to digital converter because it would be impossible to prove that it could not be used in some capacity in anything considered a missile. This same commenter recommended removing paragraph .a.1 from ECCN 3A101, which applies to analog to digital converters that are “‘Specially designed’ to meet military specifications for ruggedized equipment,” because published military specifications for ruggedized equipment address a number of characteristics that are not uniquely military.

Response: The phrases “usable in missiles” and “‘[s]pecially designed’ to meet military specifications for ruggedized equipment” are close paraphrases that accurately convey the meaning of the corresponding language in Category II, Item 14, 14.A.1 of the MTCR Annex. The ECCNs at issue implement the controls described in the MTCR Annex. The changes that this commenter proposes would alter ECCN 3A101 sufficiently that it would no longer accurately convey the meaning of the Annex. Therefore, BIS is not making this change. BIS notes that the control phrase “usable in missiles” is indeed substantially broader in scope than the

control phrase “specially designed.” BIS encourages the public to review the definition of the term in EAR section 772 for purposes of making classification determinations of items that are potentially within the scope of ECCNs that use the phrase “usable in missiles.”

Comment: One commenter stated that adding analog-to-digital converters to ECCN 3A101.a is a positive change, but thought that doing so was inconsistent with the other changes that were adding electronic items from the USML to ECCN 3A611. The commenter thought the departure from the standard pattern would cause confusion.

Response: BIS proposed adding these analog-to-digital converters to ECCN 3A101.a because that paragraph currently addresses those analog-to-digital converters by referring readers to the USML. BIS believes that implementing the EAR control in the paragraph that currently refers readers to the USML for controls on the same commodities would be less confusing than adding these analog-to-digital converters to a new 600 series ECCN. This proposed rule slightly revises the November 28 (military electronics) rule language to conform more closely to the MTCR text, but continues to control these analog-to-digital converters under ECCN 3A101.a. BIS invites further comment on whether controlling these analog-to-digital converters in ECCN 3A101 or in ECCN 3A611 would be easier for readers of the EAR.

Comments on ECCN 3A611.

Comment: One commenter recommended changing the LVS paragraph in ECCN 3A611 to read \$1500, N/A for 3A611.c, to be consistent with other ECCN entries that contain similar paragraph restrictions.

Response: BIS agrees that the proposed rule phrasing was not consistent with the pattern used in most ECCNs. To improve consistency and clarity, this proposed phrases the LVS limit as \$1500 for 3A611.a, .d through .h and .x; N/A for 3A611.c and .y

Comment: BIS received several comments concerning related controls note number (2) in the November 28 (military electronics) rule (related control note number 6 in this proposed rule), which reads:

Electronic items “specially designed” for military use that are not controlled in any USML category but are within the scope of another “600 series” ECCN are controlled by that “600 series” ECCN. Thus, ECCN 3A611 controls only electronic items “specially designed” for a military use that are not otherwise within the scope of a USML category or “600 series” ECCN other than ECCN 3A611. For example, electronic components not enumerated on the USML or another 600 series entry that are “specially designed” for a military aircraft controlled by USML Category VIII or ECCN 9A610 are controlled by the catch-all control in ECCN 9A610.x. Electronic components not enumerated on the

USML or another 600 series entry that are “specially designed” for a military vehicle controlled by USML Category VII or ECCN 0A606 are controlled by ECCN 0A606.x. Electronic components not enumerated on the USML that are “specially designed” for a missile controlled by USML Category IV are controlled by ECCN 0A604.

One commenter stated that many types of electronic equipment are used in military vehicles or other military equipment and have no functional or technical difference from similar equipment used in civilian vehicles or equipment. Unless the definition of “specially designed” allows for minor modifications to be made without an item being considered “specially designed,” the proposed rule would have the potential to impose significant controls on automotive electronic items that are in normal commercial use throughout the world. The proposed rule should be clarified to address this issue by including a note reading, “Automotive electronic parts, components, accessories and attachments, controlled by 0A606.y are not subject to 3A611.y simply because they contain electronics, rather they are controlled by 0A606.y.”

Response: The definition of “specially designed” as published in the April 16, (initial implementation) rule excludes parts that otherwise would be specially designed if the only modification is to make the part fit a particular commodity. Even for electronic parts and components that, according to the definition, are specially designed for military ground vehicles, BIS believes that the commenter’s proposed language is unnecessary. The first sentence of the related control note in ECCN 3A611 states that electronic items that are not on the USML and

are within the scope of another 600 series ECCN are controlled by that 600 series ECCN. BIS believes that neither modification to this text nor an additional note in paragraph .x is necessary to make the point. A note should not be necessary for the .y paragraphs because the .y paragraphs list specific commodities.

Comment: One commenter recommended that the sentence reading: “Thus, ECCN 3A611 controls only electronic items ‘specially designed’ for a military use that are not otherwise within the scope of a USML category or ‘600 series’ ECCN other than ECCN 3A611” be revised by replacing the phrase or “‘600 series’ ECCN other than ECCN 3A611” with “another 600 series ECCN,” because the note is within ECCN 3A611, and therefore the reference to 3A611 is unnecessary.

Response: BIS acknowledges the reference to ECCN 3A611 is, as a matter of syntax, unnecessary. However, experience indicates that in the EAR, explicit references, even at the risk of sounding pedantic, often result in fewer misunderstandings. Therefore, BIS is not adopting this change.

Comment: One commenter stated that the text in the related control note to 3A611 that reads “. . . that are not controlled in any USML category but are within the scope of another ‘600 series’ ECCN are controlled by that ‘600 series’ ECCN” appears contrary to the reasoning used to

include military computers, telecommunications devices and radars in 3A611, and further clouds exactly where electronic components should be classified.

Response: ECCNs 4A611, 5A611 and 6A611 in the November 28 (military electronics) rule are merely ECCN headers that indicate that specially designed military computers, telecommunications equipment and radars, respectively, if not on the USML are controlled under ECCN 3A611. They do not contain any “List of Items Controlled” or other text indicating that they are used to impose license requirements. BIS thinks it unlikely that readers, on the basis of the related control note in ECCN 3A611, will look for license requirements in ECCNs 4A611, 5A611 or 6A611; even if they do so, they would be directed back to ECCN 3A611.

Accordingly, this proposed rule does not change the text of the first sentence of related control note (6). However, readers are encouraged to submit further comments on this point. As described above, BIS is specifically seeking comments about whether it would be easier to understand and make compliance determinations if separate 600 series ECCNs sets were created for military computers, military telecommunications, and military lasers and radar in CCL Categories 4, 5, and 6, respectively or if all such items are controlled within the scope of a general military electronics 600 series ECCN, i.e., 3x611.

Comment: One commenter noted that the second sentence of this related control note (number 6 in this proposed rule) refers to ECCN 3A611, whereas the corresponding explanatory text in the preamble refers to ECCN 3A611.x. The commenter believes that the regulatory text is correct and that the explanatory text should be modified accordingly.

Response: BIS agrees and the explanatory text has been modified accordingly in this proposed rule.

Comment: One commenter recommended changing “directly related” to “specially designed” in the first related controls note, which states technical data that are directly related to electronic items controlled in USML Category XI or other USML categories are subject to the ITAR.

Response: BIS is not adopting this recommendation. The purpose of the related controls note is to call readers’ attention to regulatory provisions that apply to items related to or similar to the items in the ECCN in which the note appears. In this instance, the relevant regulatory provision is Category XI of the USML, which uses the phrase “directly related to . . .” in describing the technical data that it controls. Comments or questions regarding the meaning of “directly related” should be directed to the Department of State’s Directorate of Defense Trade Controls.

Comment: BIS received several comments about the terms used in ECCN 3A611.a.

Commenters thought certain terms were imprecise and should be eliminated or replaced with more specific listings of items controlled. The criticized terms were “equipment,” “end items,” “systems,” “specially designed” and “military use.”

Response: This proposed rule does not eliminate any of those criticized terms. The definitions of the terms “end item,” “equipment,” “specially designed” and “system” that will apply to this proposed rule were published in the April 16 (initial implementation) rule. BIS believes that, with these definitions, the terms will be sufficiently precise to be widely understood by readers of the EAR. If, after reviewing the new definitions, readers are uncertain about their meanings, BIS encourages them to describe the basis for the uncertainty in their comments to this or any other relevant proposed rule BIS publishes.

Although the term “military use” was not defined in April 16 (initial implementation) rule, that term is used in the WAML category ML11 to describe the types of electronics subject to that category. Additionally, the term “military application” is currently used in USML Category XI to describe the electronics subject to that category. BIS believes that in practical usage, the phrase “military use” is synonymous with “military application.” This proposed rule retains the term “military use” to avoid inadvertent decontrol of items currently in WAML category ML11 or USML Category XI.

Comment: One commenter focused on the portion of the note to ECCN 3A611.a that reads: “3A611.a includes any radar, telecommunications or computer equipment, end items or systems ‘specially designed’ for military use that are not enumerated in any USML category or controlled by a ‘600 series’ ECCN.” The commenter suggested that this note could create confusion as to, for example, license requirements for items controlled under ECCNs 5A002, 5A991 or EAR99. This commenter also stated that a manufacturer typically will develop a standard prototype and

offer the system in whatever frequency range the customer specifies. Such systems perform identical functions using identical technology regardless of whether they are set to operate in a traditional military or civilian frequency band. Communications systems for military customers are often assembled with commercial-off-the-shelf equipment. ECCN 3A611.a should be clarified to enumerate specific categories of items with particular threshold parameters. This commenter suggested that ECCN 3A611.a should be modified to exclude explicitly items that are composed of commercially available components – similar to the exclusion in USML Category XI(c). This commenter proposed adding a note to 3A611 that would implement both of its proposals: “Note: This ECCN does not control equipment or systems that are comprised of parts, components, or accessories in normal commercial use, which operate in a frequency range allocated for military use.”

Response: BIS is making no changes to the proposed rule in response to this comment. Items specially designed for military applications and that are not described on the USML warrant the degree of control and government visibility set forth in the 600 series ECCNs. That such items may be technologically similar to items not specially designed for military applications misses the point of 600 series controls, which is to have US government visibility and control over their export and reexport to various destinations, end users, and end uses of concern. It is because such items are technologically similar to items used in commercial applications that their jurisdictional status is being changed from an ITAR-controlled item to an EAR-controlled item. BIS also rejects that suggestion that items specially designed for military applications not be controlled by a military export control if they are composed of commercially available parts and components. Regulations that fail to control the export of items with military applications solely

because they can be built from commercially available components would risk strengthening adversaries' military capability. Moreover, such a decontrol note would likely lead to inconsistent interpretations of the EAR as each individual exporter applies its own interpretation of the term "commercially available." Finally, BIS believes that this commenter is misinterpreting USML Category XI(c), which first controls components of equipment that is controlled by Category XI(a) and (b), and then excludes from that control only those otherwise ITAR controlled parts, components, accessories, and attachments that are "in normal commercial use." The State Department has confirmed for BIS that Category XI does not exclude items specifically designed or modified for military applications from ITAR control merely because they are made from components in normal commercial use. Rather, USML Category XI(c) excludes from control the part, component, accessory, or attachment itself that is "in normal commercial use."

Comment: One commenter recommended removing the technical parameters for microwave monolithic integrated circuits (MMIC) and discrete microwave transistors from ECCN 3A611.c and .d. The commenter recommended that ECCN 3A611.c and .d should cover microwave monolithic integrated circuits and discrete microwave transistors specially designed for military applications and not found in commercial applications instead.

Response: BIS is not adopting this recommendation. One of the goals of the Export Control Reform Initiative is to describe the controlled items using specific parameters whenever feasible. The text of ECCN 3A611.c and .d in this proposed rule reflects the efforts of the Departments of

Defense, State, and Commerce to tailor the control text so that it describes the MMIC power amplifiers and discrete microwave transistors that have significant military application. If we have described in the proposed text items that are or are likely to be in normal commercial use, then please provide a comment regarding such uses and the evidence to support the comment.

Comment: One commenter noted that MMIC power amplifiers in ECCN 3A001.b.2 have a higher threshold floor operating frequency than MMIC power amplifier in 3A611.c. The commenter recommended that the 3A611.c operating frequency threshold floor be raised to at least 3.2 GHz.

Response: BIS is not adopting this proposal to raise the threshold floor frequency for MMIC power amplifiers. Although the current threshold floor frequency for MMIC power amplifiers listed in ECCN 3A001.b.2 is 3.2 GHz, the frequency threshold floor for MMIC power amplifiers listed in in ECCN 3A982 is 2.7 GHz. The US government has presented a proposal to the Wassenaar Arrangement to make 2.7 GHz the threshold floor on the Wassenaar Arrangement Dual-Use List. In this proposed rule, ECCN 3A611.c and .d are based on that proposal with the addition of power added efficiency, higher peak saturated power, increased fractional bandwidth, or some combination of these factors to limit ECCN 3A611.c and .d. to those MMIC power amplifiers and discrete microwave transistors that have significant military applications. BIS encourages comments on the parameters set forth in this proposed rule.

Comment: One commenter stated that MMICs and discrete microwave transistors with significant military applications operate at frequencies that fall within the gaps between the operating frequency ranges listed in paragraph .c and .d of ECCN 3A611 in the November 28 (military electronics) rule.

Response: There are no gaps between the operating frequency ranges in ECCN 3A611.c and .d in this proposed rule.

Comment: One commenter provided extensive comments on the MMIC amplifiers and discrete microwave transistors in ECCN 3A611.c and .d of the November 28 (military electronics) rule. Those comments are summarized below.

- Wireless broadband and mobile carriers operate in the 2.5 – 2.7 GHz segment of the S-band frequency range.
- Descriptions of operating frequency thresholds should be consistent among ECCNs, and recommend the pattern currently in ECCN 3A001 (frequencies exceeding X up to and including Y) as being better than the pattern in the November 28 (military electronics) rule (frequencies of X up to and including Y). The commenter stated that the bottom threshold creates a problem because standard cell phone carrier equipment typically operates in the range of 2.5 to 2.7 GHz, with a performance roll off slightly above that

frequency. Using “exceeding” would prevent 3A611 from capturing a large segment of commercial products that are currently EAR99.

- A total overlap exists between the frequency ranges for both MMIC amplifier and transistors in proposed ECCN 3A611 and existing ECCN 3A982. ECCN 3A611 would add a power added efficiency metric of 30% and a third unit of measure for power thresholds to the two already implemented under ECCN 3A982. The result would make ECCN 3A982 entirely redundant, and make these products ineligible for License Exception STA, *i.e.*, tightening export controls in these products.
- ECCNs 3A611.c and .d – For tiers exceeding 3.2 GHz, proposed ECCN 3A611 would encompass the same frequencies currently covered by ECCN 3A001 (with carve outs in the 31.8 GHz range and for frequencies exceeding 75 GHz). However, by changing the unit of measure for the wattage cut-off points from average power to peak power, the power thresholds would become more restrictive.
- The proposed power thresholds for transistors and MMICs in ECCN 3A611 bear no direct correlation to military-specific applications in accordance with the stated intention. By taking the existing frequency and power thresholds under ECCNs 3A001 and 3A982 and converting the power unit of measure to a tighter metric, this rule would have the opposite effect.
- The addition of a power-added efficiency metric to the transistor and MMIC controls does not lessen the impact of overly restrictive power thresholds. Most Gallium Nitride (GaN) transistors and MMICs perform at levels that exceed the proposed power added efficiency thresholds for 3A611. Accordingly, it does not help to focus the ECCN on

high performance parts, which instead would capture most of the GaN transistors and MMICs presently used in telecom, backhaul, point-to-point, and satellite applications.

- Telecom infrastructure providers use wide band gap products, such as with a frequency range of DC-18 GHz for backhaul services (telecom providers can take the traffic at a local cell phone tower back to the switchboard by aggregating the calls).
- The proposed power added efficiency thresholds, as a function of bandwidth, bear no logical correlation to the way that discrete microwave transistors and MMIC technologies actually work. The lower frequencies should correspond with higher power-added efficiency; as the frequency goes higher, the power-added efficiency should decrease.
- The proposed power-added efficiency values start at 30% for the lowest frequency tier, go up to 40%, then go back down to 35% before hitting 30% again. The commenter believes that these thresholds are arbitrary and impractical, and proposes alternatives of 60%, 53%, 45%, 30%, 15%, & 10% for HEMTs and 65%, 57%, 50%, 30%, & 15% for MMICs.
- Saturated peak output power is the most appropriate measure. A peak output power metric would most accurately address potential concern relating to military importance for parts. This unit also would eliminate many of the close-to-the-threshold concerns by providing a more precise measure of power. BIS should adopt peak output power for all ECCNs that apply to discrete microwave transistors and MMICs. In particular, the average power metric should be eliminated from proposed 3A611, 3A001 and 3A982, or at least that term should be clearly defined in a way that corresponds to peak power.

- The commenter expects a surge in demand for discrete microwave transistors with a rated peak power of 120 W in the 3.55-3.65 GHz band (currently used by naval radar systems) because of an FCC proposal to allow small cells / citizens band radio to operate in that range (78 F. Reg. 1188, January 8, 2013).
- The commenter recommended that 3A611 exclude discrete microwave transistors and MMICs that are specifically designed for communications in a frequency band allocated by the International Telecommunications Union, stating that similar language is used in ECCN 3A001.
- Proposed 3A611 would expand controls on several commercial parts that are, and should continue to be, 3A001 or EAR99. Similar parts are available without license restrictions from UMS (Germany), Mitsubishi (Japan), Toshiba (Japan), and Sumitomo (Japan).
- Increasing controls on parts that currently are available without restriction, and creating ambiguity among proposed ECCN 3A611 and existing ECCNs 3A001 and 3A982, would create an unlevel playing field for US manufacturers and jeopardize thousands of high paying jobs.
- This commenter urged removal of discrete microwave transistors and MMICs from proposed 3A611 altogether, because proposed control thresholds overlap with existing controls on the CCL. Alternatively, if they are to remain in 3A611, the commenter stated that BIS should tailor the provisions narrowly so that they apply only to a limited range of products that truly are specially designed for military use, with no potential commercial applications in the designated power, frequency, and efficiency ranges.

There should be a logical progression from ECCNs 3A001 to 3A983 to 3A611.

Additionally, the units of measure should be harmonized for all three ECCNs.

Response: BIS has substantially revamped the criteria for proposed ECCNs 3A611.c and .d in this proposed rule compared to the November 28 (military electronics) rule, in an effort to tailor these paragraphs to apply to MMIC power amplifiers and discrete microwave transistors that have significant military applications. These changes are also intended to avoid controlling MMIC power amplifiers and discrete microwave transistors that have significant civil applications, which will remain in ECCNs 3A001 and 3A982. Furthermore, The US government has presented a proposal to the Wassenaar Arrangement to modify the Wassenaar Arrangement Dual List parameters for MMIC power amplifiers and discrete transistors. These proposed modifications are being evaluated and would align controls among ECCNs 3A001, 3A982, and 3A611 and prevent overlap.

In this proposed rule, paragraph .c would control MMIC power amplifiers and paragraph .d would control discrete microwave transistors, as was the case in the November 28 (military electronics) rule. As recommended by this commenter, frequency ranges are expressed in the form “frequencies exceeding X up to and including Y” for all subparagraphs of both paragraphs .c and .d.

The MMIC power amplifiers subject to paragraph .c would be described in 13 subparagraphs. Each subparagraph would apply to a specified operating frequency range, starting with subparagraph .c.1, which would apply to MMIC power amplifiers with operating frequencies exceeding 2.7 GHz up to and including 2.9 GHz), and increasing with each paragraph to paragraph c.13, which applies to MMIC power amplifiers with operating frequencies exceeding 110 GHz. Each subparagraph would be further defined by the peak saturated power output value that the MMIC power amplifiers must exceed to be included within that paragraph. Fractional bandwidth and power added efficiency would further define the MMIC power amplifiers controlled by some of the subparagraphs. The terms “average power output,” “pulse power output,” and “duty cycle,” would not be used to describe the MMIC power amplifiers in paragraph .c.

The Departments of Defense, State and Commerce identified these parameters as describing the MMIC power amplifiers that are sufficiently important to military applications to justify control under a 600 series ECCN. BIS believes that when the EAR are read according to the order of review published in the April 16 (initial implementation) rule, any apparent overlap between the MMIC power amplifiers listed in proposed ECCN 3A611 and those listed in ECCNs 3A001 or 3A982 would be unambiguously resolved, and that only those MMIC power amplifiers with significant military application would be in ECCN 3A611.c. BIS welcomes comments on whether such is, in fact, the case.

The discrete microwave transistors subject to paragraph .d are described in 12 subparagraphs. Each subparagraph applies to a specified operating frequency range starting with subparagraph .d.1, which applies to discrete microwave transistors with operating frequencies exceeding 2.7 GHz up to and including 2.9 GHz, increasing with each paragraph to paragraph c.12, which applies to discrete microwave transistors with operating frequencies exceeding 75 GHz. Within each of the first 11 subparagraphs peak saturated power output and power added efficiency further define the discrete microwave transistors to which paragraph .d would apply. In the twelfth and final subparagraph, only peak saturated power output further defines the controlled discrete microwave transistors. BIS and the Departments Defense, State and Commerce identified these parameters as describing the discrete microwave transistors that are sufficiently important to military applications to justify control under a 600 series ECCN. BIS believes that when the EAR are read according to the order of review published in the April 16 (initial implementation) rule, any apparent overlap between the transistors listed in proposed ECCN 3A611 and those listed in ECCNs 3A001.b.3 or 3A982 can be unambiguously resolved and that only those discrete microwave transistors with significant military application would be in ECCN 3A611.d. BIS welcomes comments on whether such is, in fact, the case.

Comment: One commenter stated that the description in 3A611.d “discrete radio frequency transistors” should be the same as ECCN 3A001.b.3 “discrete microwave transistors.”

Response: The preamble to the November 28 (military electronics) rule used the phrase “discrete radio frequency transistors,” whereas the regulatory text used the phrase “discrete microwave transistors.” This proposed rule uses the latter phrase in the preamble.

Comment: One commenter stated that discrete microwave transistors in 3A611.d have a higher operating frequency than those in 3A001.b.3. This commenter recommended that threshold floor operating frequency in 3A611.d be raised to at least 3.2 GHz.

Response: This second proposed rule would not raise the operating frequency threshold floor for discrete microwave transistors as compared to the November 28 (military electronics) rule.

Although the current threshold floor frequency for power transistors listed in ECCN 3A001.b.3 is 3.2 GHz, the frequency threshold floor for transistors listed in in ECCN 3A982 is 2.7 GHz.

The US government has presented a proposal to the Wassenaar Arrangement to make 2.7 GHz the threshold for coverage on the Wassenaar Arrangement Dual Use List. In this proposed rule, ECCN 3A611.d is based on that proposal with the added factor of power added efficiency, or peak saturated power, or some combination thereof, to identify discrete microwave transistors that have sufficient military significance to warrant inclusion in a 600 series ECCN. BIS encourages comments on the parameters in this proposed rule.

Comment: One commenter stated that proposed ECCN 3A611.e duplicates equipment proposed to be classified under Category XI(a)(2)(v) and (vi). The commenter urged the Departments of

State and Commerce to specify exactly what is proposed for each list either by name or discrete technical parameters.

Response: BIS believes that the commenter was referring to proposed Category XI(a)(3)(v) and (vi), which address radars, as does ECCN 3A611.e. (The Department of State's November 28 (military electronics) rule did not contain a Category XI(a)(2)(v) or (vi)). This second proposed rule and the proposed rule being published simultaneously by the Department of State include revisions to proposed Category XI(a)(3)(v) and ECCN 3A611.e to more precisely describe each than was done in BIS's and State's November 28 (military electronics) rules. Under the order of review published in the April 16 (initial implementation) rule, if an item meets the specific parameters of a USML category, it is classified under that category, and one need not refer to the CCL. BIS believes that the revised text in this second proposed rule, combined with the order of review, removes any ambiguity that may have existed in the November 28 (military electronics) rule.

Comment: Several commenters addressed the originally proposed ECCN 3A611.f, which applied to microelectronic devices or printed circuit boards produced at a trusted foundry, trusted source or trusted supplier accredited by the Defense Microelectronics Activity (DEMA). One commenter stated that this paragraph would be a positive move that would clearly define the articles covered. Other commenters perceived problems with the paragraph. Those perceived problems were: the paragraph appeared to be a delegation by BIS of a Department of State classification authority to the DEMA; the rule provided no guidance as to how to validate a

supplier's accreditation; the paragraph would control items not necessarily made for military use if they were trusted devices; and DEMA accredits various facilities for a variety of functions relating to production and testing—the rule needs clarifying language on this point.

Response: Upon review, the Department of Defense concluded that all of the items in proposed 3A611.f that would be appropriate for “600 series” ECCN classification can be fully covered elsewhere in 3A611 or other “600 series” ECCNs. Therefore, this re-proposed rule does not mention microelectronic devices or printed circuit boards produced at a trusted foundry, trusted source or trusted supplier accredited by DEMA.

Comments: One commenter stated that the .x concept in the 600 series is confusing and would frustrate users attempting to classify parts correctly. This commenter also stated that the .x control did not clearly align jurisdictional status of software and technology with the items to which they relate. This commenter suggested that confusion could be reduced by revising the first two related control notes in ECCN 3A611 to read, “(1) Electronic items that are *BY THEMSELVES* enumerated” and “(2) Electronic items ‘specially designed’ for military end use that are not *BY THEMSELVES* controlled within any USML category but are within the scope of another ‘600 series’ ECCN”

Another commenter stated that 3A611.x includes parts, components, accessories and attachments “specially designed” for military end use that are neither enumerated in any USML category nor

another “600 series” ECCN. The commenter stated that it is not clear that there are any such parts, components, accessories and attachments. The commenter noted that electronics are often found in other end-items, and as such would be controlled under the ECCN for the end-item, and that the proposed language is not required and needlessly complicates the CCL.

Response: This proposed rule would continue to use the “.x” concept. The April 16 (initial implementation) rule specifies an order of review and provides a definition of the term “specially designed.” BIS believes that these provisions, read together, would make clear that a part, software, or technology for a commodity, unless specifically enumerated elsewhere on the USML or CCL, is treated for purposes of EAR license requirements as a part of that component rather than as a part of an end-item into which the component will be installed. The specially designed definition provides greater clarity as to which parts and components are specially designed for commodities on the CCL.

Moreover, listing in ECCN 3A611 every single specially designed part or component of every piece of military electronic equipment found on the USML or in ECCN 3A611 would make the ECCN long and cumbersome. Some catch-all license requirements, as currently exist on the USML, are needed to provide the United States Government with visibility into the disposition and use of military equipment around the world. Finally, there are many types of electronic components specially designed for military items that would not be controlled under other 600 series items.

BIS welcomes further comments on whether the definition of “specially designed” and the order of review add clarity and certainty to the process of classifying parts for military electronics.

Comments on ECCN 3A611.y and .y paragraphs generally.

Comment: One commenter expressed a belief that placing the .y paragraphs in separate ECCNs would lead to inconsistent classifications. That commenter offered several examples from various BIS proposed rules, e.g., indicator lights for commodities in some ECCNs would be in the .y paragraph, but not in other ECCNs that apply to items that have indicator lights. This commenter asserted that the multiple .y paragraphs would create an unnecessary classification burden. This commenter recommended a single list of all .y items. (The only CCL reason for control that applies to items in the .y paragraphs of 600 series ECCNs is antiterrorism. Such items are also subject to the China military end-use requirement.)

Response: Although this second proposed rule continues to list separate ECCN-specific .y paragraphs, BIS is considering four options to address items of limited military significance, and would like additional public comments on the desirability of each alternative. Those options are: 1) creating separate ECCN-specific .y paragraphs; 2) creating a single list of 600 series items subject only to antiterrorism and China military end-use license requirements; 3) establishing a

classification request procedure whereby a 600 series item could be designated as subject to only antiterrorism and China military end-use license requirements, but eliminating the .y listings from the regulations; or removing all .y lists completely. In evaluating the desirability of each option, commenters should bear in mind that the .y designation indicates that the Departments of Defense, State and Commerce have agreed that a specified item is of such limited military significance, for almost all destinations, that the US government need not attempt to control access to items or monitor their distribution to obtain visibility into supply chains necessary to keep military equipment functioning. Each option presents different advantages and disadvantages.

Creating separate ECCN specific .y paragraphs would allow BIS to tailor the controls most precisely, but would also produce the most complex and lengthy regulations. Control over a commodity designed for a military ground vehicle might provide less visibility into relevant supply chains than would control over that same type of commodity for a submarine or surface vessel of war. A single .y list would make the regulation of insignificant military items shorter and less complex, but likely would contain fewer items than separate .y paragraphs. Such a list would need to be a lowest common denominator list equally relevant to all parts for all types of military end items, from military trucks to advanced submarines. Only those items that do not provide useful visibility into the relevant supply chain for any 600 series ECCN or USML category could be included in such a list. A case-by-case classification process would likely produce the simplest and shortest regulations; it could also tailor .y status to very specific items. However, the classification process likely would be time consuming and, because classifications are not published by BIS, the results would not be as widely distributed as would a list or lists in

the EAR. Removing all .y lists completely. This would have the benefit of substantially simplifying and shortening the relevant ECCNs and leaving to one paragraph – the .x paragraphs – the controls over non-enumerated parts, components, accessories, and attachments. The downside to this option would be substantial over-control on insignificant items.

Comment: Some commenters expressed concern about controlling commodities of little or no military significance in 3A611.y. One commenter thought that such items could be controlled in existing ECCNs. Another commenter suggested that paragraph .y might cause confusion with items controlled under other categories, and might increase controls on items already classified as EAR99. One commenter recommended that three specific commodities: electrical connectors, electrical connector backshells, and waveguides, would be more appropriately controlled in a non-600 series ECCN because of their commercial applications.

Response: Commodities proposed for ECCN 3A611.y are currently controlled in the catch-all paragraph XI(c) on the USML. BIS has not proposed moving any EAR99 items and is proposing to move only items controlled by other than -018 ECCNs or ECCN 0A918 into the 600 series ECCNs. Although commodities with the same or a similar name, *e.g.*, “electric fans,” may be controlled under other ECCNs or may be EAR99, the distinguishing factor that makes a commodity subject to 3A611.y is that it is both “‘specially designed’ for a commodity in ECCN 3A611 and not elsewhere specified in the CCL (revised to read “not elsewhere specified in a 600 series ECCN” in this proposed rule – see explanation below). Items that are specified in a non-600 series ECCN (other than those ending in “018,” all of which are expected to be subsumed

into the 600 series in the course of the Export Control Reform Initiative) would not be specifically designed for the military electronic equipment in 3A611. Items that are specially designed need some measure of control and for consistency that control should be in a 600 series. Readers should review the final definition of “specially designed” (cited above) in evaluating paragraph .y in this proposed rule.

Comment: Some commenters recommended adding some commodities to 3A611.y because they believed that the commodities have commercial application or perform the same function in military equipment as they do in commercial applications. The items proposed for addition were:

- Crystals and crystal oscillators used a components in articles enumerated under USML Category XI
- Cross-field amplifiers, inductive output tubes
- Optical and electrical cables, and harnesses
- Capacitors, crystals oscillators, diodes
- Electrical sockets, optical connectors
- Inductors
- Relays, resistors
- Optical connector backshells

- Optical switches
- Laser and optical terminals
- Digital signal processors
- Power supply
- Passive microwave components
- Telecom receivers and transmitters

Response: This proposed rule does not add any items to the .y paragraphs that did not appear in the November 28 (military electronics) rule. Based on the responses to the question whether to modify or even maintain the .y list as proposed. BIS will consider whether to add more items to a .y structure. The public is encouraged to provide justification why particular types of items, regardless of how they would be modified for any military item, are nonetheless so insignificant as to not warrant more than AT-only controls.

Comment on ECCN 3B611.

Comment: One commenter noted that BIS originally stated that ECCN 3B611 is intended to align with WAML category ML18. This commenter recommended including the WAML category ML18 note listing the equipment subject to this control in ECCN 3B611.

Response: BIS is not adopting this recommendation. ECCN 3B611 applies to test, inspection and production equipment for military electronics. WAML category ML18 applies to such equipment for items on the WAML in general. Note 2 to WAML category ML18 lists examples of production and test equipment for a wide range of items on the WAML, but none of the examples relates specifically to production or testing of military electronics. Therefore, BIS believes that adding that list to ECCN 3B611 would be less helpful than suggested.

Comment on ECCN 3D611.

Comment: One commenter recommended that ECCN 3D611 be revised for consistency with the EAR interpretation of “use,” *i.e.*, all six elements of the term use must be present for the software to be controlled as “use” software. Alternatively, the commenter recommended limiting ECCN 3D611 to software for development and production. The commenter thought the proposed rule language may cause confusion and result in a “roll-back” from BIS’s prior interpretation. *See* 71 FR 30840, 30843 (May 31, 2006).

Response: BIS is not adopting either of these recommendations. The *Federal Register* notice to which the commenter referred interpreted the adjective “use” as it applied to software and technology on the CCL prior to the creation of the 600 series ECCNs. Nearly all of the software

and technology in existing and proposed 600 series ECCNs comes from USML categories. One goal of the US government in the Export Control Reform Initiative is not to decontrol completely and inadvertently items the President determines no longer warrant control on the USML. BIS believes that the formulation in ECCN 3D611 in the November 28 (military electronics) rule, controlling “software ‘specially designed’ for the ‘production,’ ‘development,’ operation or maintenance . . .” achieves this objective.

Comments on ECCN 3E611.

Comment: One commenter stated that the following phrase in ECCN 3E611.a “Technology” (other than that described in ECCN 3E611.b or 3E611.y) not otherwise enumerated in this ECCN . . .” was redundant.

Response: BIS agrees. The phrase “not otherwise enumerated in this ECCN” . . .” does not appear in ECCN 3E611.a of this proposed rule.

Comment: One commenter noted that paragraph .b of ECCN 3E611 in the November 28 (military electronics) rule lists technology for helix traveling wave tubes, transmit / receive modules, MMICs and discrete radio frequency transistors. However, nothing in this paragraph would limit its scope to technology for commodities and software in ECCNs 3A611, 3B611 or

3D611. This omission gives the impression that 3E611 controls technology for commodities and software in non-600 series ECCNs, which is inconsistent with the wording in the preamble. *See* 77 FR 70947 (November 28, 2012). The commenter suggests removing paragraph .b and the reference to paragraph .b that was in the parenthetical in paragraph .a as a way to eliminate the problem.

Response: BIS agrees that the technology in ECCN 3E611.b should not apply beyond helix traveling wave tubes, transmit / receive modules, MMICs and discrete microwave transistors covered by ECCN 3A611, and this proposed rule modifies ECCN 3E611.b to that effect. This proposed rule does not adopt the commenter's suggestion to eliminate paragraph .b. Paragraph .b is needed because use of License Exception STA is limited to "build-to-print" technology with respect to the items listed in paragraph .b. No such limitation applies to paragraph .a.

Comment: One commenter noted that proposed ECCN 3E611 applied to "'technology' 'required' for the 'development,' 'production,' operation, installation, maintenance, repair, or overhaul of" and proposed replacing that phrase with the phrase "'technology' 'required' for the 'development,' 'production,' operation, installation, maintenance, repair, and overhaul of" or with the word "use." The commenter noted that its recommended change would make ECCN 3E611 consistent with other technology ECCNs in which the word use indicates that the software must perform all six functions to be covered.

Response: BIS is not making this change. As described above, BIS is revising 3E611 to include all six elements.

Comment: One commenter noted BIS's December 6 (military vehicles) rule (*See* 76 FR 76085 (December 6, 2011)), which stated that BIS was considering recommendations to "limit the controls on form, fit, and function data needed to provide military insignificant items for military vehicles to the antiterrorism reason." This commenter recommended that the rule make clear that ECCN 3E611 does not control information about automotive electronics that is outside the scope of ECCN 0E606, nor does it control information about automotive electronics that is controlled by ECCN 0E606, because that information relates to an item controlled by ECCN 0A606.y. This commenter also noted that manufacturers of commercially available automotive electronics may employ people from a number of countries. If information about minor adaptations to widely commercially available components must be kept from foreign employees, or licenses are required to share such information with foreign employees, compliance costs would be significant, resulting in higher costs for the US military. The commenter reiterated the definition of specially designed that it provided in response to the proposed rule entitled "'Specially Designed' Definition" (77 FR 36409, June 19, 2012) as an alternative to its specific proposal that ECCN 3E611 should not control information controlled by ECCN 0E606.

Response: The Related Controls paragraph of ECCN 3A611 in this second proposed rule contains the following statement "Electronic components not enumerated on the USML or another 600 series entry that are 'specially designed' for a military vehicle controlled by USML

Category VII or ECCN 0A606 are controlled by ECCN 0A606.x.” Additionally, the final definition of “specially designed,” in the April 16 (initial implementation) rule, excludes certain named parts and components, parts and components that are identical to parts and components used in civil items that are in production or that differ from items only with respect to fit. It also excludes parts and components where documentation contemporaneous with development indicates the part or component was designed for a civil item or for no specific item. BIS welcomes comments on the impact of that definition on the provisions of this proposed rule.

Comment: One commenter expressed approval of using the word “required” in ECCN 3E611, because it serves to focus the controls on critical technology and is well understood by exporters.

Response: BIS agrees. The term “required” is based on the Wassenaar Arrangement general technology note and is used in technology ECCNs throughout the EAR to focus the scope of the control.

Comment: One commenter questioned whether the reference to “§ 746.3 (Iraq)” is needed in note 1 in ECCN 4A003.

Response: The reference to § 746.3 (Iraq) is currently in note 1 in ECCN 4A003. The note indicates that certain transactions that do not require a license for many destinations do, however,

require a license pursuant to § 746.3 of the EAR for destinations in Iraq. It is unrelated to the purpose of the proposed revisions to ECCN 4A003 in the November 28 (military electronics) rule, which was to impose the missile technology (MT Column 1) reason for control on analog-to-digital converters in 4A003.e that meet or exceed the parameters of ECCN 3A101.a.4. Therefore, BIS is not making any changes to the text of proposed ECCN 4A003 as a result of this comment.

Comment: One commenter stated that ECCN 5A001.f and .h duplicate items found in proposed USML Category XI(a)(4)(iii), and recommended that the overlap be resolved before releasing a final rule.

Response: The proposed Department of State rule being published simultaneously with this proposed rule contains a note to USML Category XI(a)(4)(iii) stating that “Paragraph XI(a)(4)(iii) does not control mobile telecommunications jamming equipment determined to be subject to the EAR via a commodity jurisdiction determination” BIS believes that the commodity jurisdiction process will effectively resolve the overlap that this commenter perceived and is, therefore, not making any changes to the text of ECCN 5A001.f and .h in this proposed rule.

Comment: One commenter stated that changes proposed to USML Category XI(b) would complicate the classification of equipment currently classified in 5A001.i and 5A980, and

recommended that both rules be revised to create jurisdictional “bright lines” and “positive lists” of the equipment controlled in each list as intended by the Export Control Reform Initiative.

Response: BIS believes that the USML Category XI(b) as set forth in the proposed Department of State rule being published simultaneously with this proposed rule, along with the order of review in the April 16 (initial implementation) final rule published by BIS (*See* 78 FR 22735, April 16, 2013), will provide certainty as to which agency has jurisdiction over which articles. Under the order of review, items enumerated on the USML are subject to the ITAR, even if they are within the parameters of an ECCN. Accordingly, BIS is making no changes to ECCNs 5A001.i or 5A980 as a result of this comment. However, if upon review of the Department of State text in light of the “order of review,” readers believe uncertainty still exists, BIS will consider comments to that effect. In addition, BIS invites recommendations from the public regarding text that would provide a clear distinction between the items controlled by USML Category XI(b) and items controlled by ECCN 5A001.i or 5A980.

Comment: One commenter stated that the “Reason for Control” table in ECCN 7A006 indicates that MT controls apply to commodities that meet or exceed the parameters of 7A106. It appears that, by definition, all items in 7A006 meet or exceed the parameters of 7A106; therefore this language should be removed.

Response: BIS believes that this language is needed because of the longstanding order of review of non-600 series ECCNs, wherein one reviews ECCNs within a category in order. ECCNs with a 0 as the third character follow the Wassenaar Arrangement Dual Use List text. ECCNs with a 1 as the third character generally follow the MTCR text. When the two regimes have identical text about a particular item, the MT reason for control is included in an ECCN with the 0 as the third character. However, when the MTCR text differs from the Wassenaar Arrangement Dual Use List text, the reference to the parameters of the MTCR based ECCN are used to identify items in the text of the ECCN with the 0 as the third character to be precise. This system is used throughout the EAR. Therefore, BIS is making no changes in response to this comment.

Comments Concerning License Exception STA.

Comment: Some commenters noted that exports under STA are likely to be in support of foreign defense programs. One commenter recommended the proposed language for the License Exception STA consignee statement set forth in the June 21 (transition) rule (*See* 77 FR 37541, June 21, 2013) be revised to include the following underscored language: “(vi) For ‘600 series’ items, confirms that unless otherwise authorized by the US government, the items are for end use by a government of a country listed in § 740.20(c)” The Commenter cited the example of a European-built military transport aircraft that contains some US-origin parts and components. Some of the aircraft would be sold to governments eligible to receive items under STA, while others would be sold elsewhere. Neither the US supplier nor the foreign manufacturer would have any way of knowing which parts would go into aircraft for eligible governments and which

would not and, thus, under BIS's proposed language, could not use STA. This commenter appeared to contemplate a situation in which the consignee could apply for a license to use parts already received under License Exception STA in connection with an activity or end-user not authorized by License Exception STA.

One commenter proposed allowing use of STA based on the consignee's assurance that the appropriate US government authorization would be obtained before sending the item outside the STA eligible countries. Another commenter proposed allowing some kind of use of STA on a program basis.

Response: BIS intends that the US government will have authority to license shipments under STA that will not be limited to the end users specified in § 740.20(c). Under the April 16 (initial implementation) rule, the US government could issue a license authorizing the use of License Exception STA to ship to a consignee parts that would ultimately be incorporated into items that will be used by end-users not otherwise be eligible to receive 600 series end items. BIS did not intend to require that the license explicitly mention License Exception STA. BIS intends to publish a correction rule so that any license issued to the STA consignee authorized the end use, could be a basis for authorizing an export, reexport or transfer to that consignee under License Exception STA of items otherwise eligible for transfer under License Exception STA.

The consignee would have to obtain the license prior to any shipment of parts to it under License Exception STA because the consignee would have to furnish a copy of the license to the exporter before the exporter could ship under License Exception STA. If after the consignee received parts under License Exception STA, the consignee learned that those already received parts are needed for an item being produced for an end user other than one authorized under STA, that consignee could still apply to the US government for a license to use those parts in such production, notwithstanding the language about end use in the consignee's prior statement. BIS does not intend to preclude STA consignees from requesting a new or expanded authorization based on facts of which the consignee was unaware at the time it made the original statement. BIS does not believe that a change in the regulatory text is needed to make this point. BIS is interested in comments on whether the approach described in the initial implementation rule is feasible and addresses the point of the comment.

Comment: One commenter expressed general approval of License Exception STA and recommended more outreach to increase understanding and use of it.

Response: BIS is developing outreach programs to address this need.

Comment: One commenter recommended that, provided security needs are adequately addressed, the number of eligible STA destinations should be increased.

Response: Although the number of License Exception STA eligible destinations may grow or shrink over time, expanding the geographic scope of License Exception STA is not a part of this rulemaking exercise, which is concerned with adding to the CCL items that the President determines no longer warrant control under the USML.

Comment: One commenter recommended that BIS eliminate the STA consignee statement entirely (or at least to NATO countries) to significantly ease the administrative burden on industry when using this exception. The commenter asserted that this statement is similar to the DSP-83 “Nontransfer and Use Certificate” form, which is required currently for Significant Military Equipment (SME) but not for the non-SME articles in Category XI(c). Most of the items would be moved to the CCL 600 series under the proposed rule are not SME.

Response: BIS is not adopting this recommendation. Use of the STA consignee statement can readily be distinguished from use of the DSP-83. The consignee must send the STA consignee statement to the exporter as one of the requirements that the parties to the transaction must meet in order to be able to execute the transaction without prior US government approval. The DSP-83 is a document that must be submitted to the US government in support of an application for a government authorization to proceed with the transaction. The STA consignee statement is required for all transactions under License Exception STA. Although statements for 600 series items have more elements than statements for non-600 series items, those additional elements

reflect the limitations on use of License Exception STA that are appropriate given the military nature of the 600 series items. This STA consignee statement is necessary to provide reasonable assurance that the consignee is aware of the requirements and limitations of License Exception STA, and has agreed to abide by them before the parties are permitted to proceed with a license-free transaction. The alternative is to apply for a license, which parties are free to do.

Comment: One commenter stated that making ECCN 3A611.c and d. high electron mobility transistors (HEMT)s and microwave monolithic integrated circuits (MMIC)s ineligible for License Exception STA would, when combined with the NS1 and RS1, impose a license requirement for all destinations other than Canada, making these commodities controlled as if they were subject to the ITAR. The commenter noted that commodities in ECCN 3A001 and HEMTs in ECCN 3A982 are both eligible for STA.

Response: The November 28 (military electronics) rule and this second proposed rule would make all commodities controlled in ECCN 3A611 ineligible for paragraph (c)(2) of License Exception STA (which authorizes shipments to eight countries), but would not preclude use of paragraph (c)(1) of STA (which authorizes shipments to 36 countries).

Comment: One commenter stated that two of BIS's prior proposed Export Control Reform Initiative rules (the November 7 (aircraft) and the December 6 (gas turbine engine) rules) would preclude use of License Exception STA for electrical equipment, parts, and components specially

designed for electro-magnetic interference (EMI) that conform to the requirements of MIL-STD-461. The commenter stated that this preclusion raises two difficulties. First, the distinction between electric and electronic parts and components is often unclear and that they may be ambiguously classified. The commenter also stated that this difficulty made it appropriate to raise the issue in a comment on the November 28 (military electronics) rule. Second, the commenter stated that standard MIL-STD-461 is a poor criterion for determining when items designed for EMI compatibility should be restricted from STA eligibility or subject to any reasons for control other than anti-terrorism because: 1) There are several historical versions of MIL-STD-461 that remain in effect for existing programs; 2) A number of civil requirements offer performance equal to or superior to MIL-STD-461; and 3) Military programs outside the United States may use multinational or foreign standards. The commenter states that a better criterion would be a degree of EMI protection exceeding the equivalent civil requirements for the item.

Response: BIS believes that the commenter misunderstood the scope of the rules. The rules cited by the commenter proposed restricting from STA software and technology for the development or production of aircraft electrical equipment, parts and components electrical equipment, parts, and components specially designed for electro-magnetic interference (EMI) that conform to the requirements of MIL-STD-461. They did not propose restricting from STA the equipment, parts and components themselves. The April 16 (initial implementation) rule published these restrictions in ECCNs 9D610 and 9E610 (See 78 FR 22733-22734, April 16, 2013).

Comment: One commenter provided two sets of comments. The first set provided detailed proposals for rewording USML Category XI and a number of ECCNs as they appeared in the November 28 (military electronics) rules of the Departments of State and Commerce. The second set proposed detailed rewording of a number of ECCNs and the creation of some new ECCNs in Category 9 of the CCL.

First set of comments

The commenter divided the proposals in his first set of comments into three topics, which he characterized as edits to remove: overlaps in BIS's and State's November 28 (military electronics) rules that would move items from the CCL to the USML; ambiguities in the November 28 [Commerce] rule; and other CCL ambiguities that the commenter perceived to be relevant.

Instances in which the commenter expressed a belief that the rule would transfer items from the CCL to the USML

The commenter identified 18 instances in which he asserted that overlapping text would have the effect of transferring items from the CCL to the USML. BIS is not adopting any of the specific changes proposed by the commenter under this topic. In some instances, the commenter proposed only changes to the USML and not to the CCL. In other instances, the comment appeared to reflect an incomplete reading of either the USML or CCL entries such that detailed technical specifications were interpreted without consideration of introductory text that limited the overall range of the items to which the technical specifications applied. BIS does not believe that the November 28 (military electronics) rule or this proposed rule would transfer any items from the CCL to the USML. BIS invites comments that describe specific examples of actual items that are today subject to the EAR that would become subject to the ITAR were this and the corresponding State proposed rule to become final.

Instances in which the commenter expressed a belief that the rule November 28 (military electronics) rule was ambiguous.

The commenter cited about 50 situations in which he thought the rule was ambiguous and needed changes for precision. In most instances, BIS either does not agree that the proposed text cited by the commenter was ambiguous or believes that the comment addressed text that is outside the scope of the proposal. However, in four instances, this proposed rule adopts changes recommended by this commenter.

The four instances in which this second proposed rule adopts changes from the November 28 (military electronics) rule in response to the comments proposed by this commenter are:

- Adding the phrase “or software” to paragraph .y of ECCN 3E611. Paragraph .y of ECCN 3E611 applies to technology for 3A611.y and 3D611.y. ECCN 3A611 applies to commodities and ECCN 3D611 applies to software. Use of the term “commodities” to apply to technology for both ECCNs in the November 28 (military electronics) rule was in error.
- Adding the word “acoustic” to the list of items in the note to ECCN 3A611.a and note 1 to 3A611.x. These notes describe in general terms the items that if not enumerated on the USML or another 600 series ECCN, are controlled by ECCN 3A611. Adding the word “acoustic” makes the listing more comprehensive.
- Adding the phrase “Acoustic systems and equipment” to the header of ECCN 6A611. In the November 28 (military electronics) rule, ECCN 6A611 referred readers to ECCN 3A611 for radar and related items specially designed for military use. The reference was included because CCL Category 6 controls a number of other radars. ECCN 3A611 would control acoustic systems and equipment specially designed for military use that are not on the USML or any other 600 series ECCN and other acoustic systems and equipment also in Category 6 of the CCL. Including the additional phrase will make ECCN 6A611 more descriptive and comprehensive.

- Adding a new ECCN 7A611 that only refers readers to ECCN 3A611 for navigation and avionics, parts, components, accessories and attachments “specially designed” for military use that are not enumerated in any USML category or other “600 series” ECCN. ECCN 3A611 applies to military electronic avionic and navigation devices not enumerated on the USML or in another 600 series ECCN. Because CCL Category 7 applies to such devices not specially designed for military use, the cross-reference will be helpful to alerting readers to check ECCN 3A611.

This proposed rule did not adopt the following proposals of this commenter.

Comment: Indicate in the foregoing cross-reference ECCNs that ECCN 3A611 does not control radar, acoustic systems and equipment, computers, telecommunication equipment or navigation and avionics and related items if controlled by any other ECCN, including non-600 series ECCNs. Apply ECCN 3A611 to commodities that are specially designed for military use.

Response: Commodities in non-600 series ECCNs (other than ECCNs ending in “018” and ECCN 0A918) are not specially designed for military use, so there should be no overlap between ECCN 3A611 and non-600 series ECCNs. Moreover, the April 16 (initial implementation) rule created an order of review that gives 600 series ECCNs preferences over non-600 series ECCNs. Adopting the commenter’s proposal would appear to undermine that order of review.

Comment: Replace the term “specially designed” with “required” in several ECCNs covering software. The term “required” as a well-defined meaning in the EAR that is based on a Wassenaar Arrangement definition. That term is defined in relation to technology rather than software.

Response: BIS believes that the term “specially designed” as defined on the April 16 (initial implementation) rule provides reasonable, practical and objective criteria for classifying products, the term “required” as currently defined would exclude many parts and components that are in fact designed for military items and that have no other practical use.

Comment: Do not use the term “specially designed” in instances where the Missile Technology Control Regime uses the word “designed.” Generally, the commenter recommended that no word replace the phrase “specially designed,” on the ground that the specifications in the ECCN are sufficiently precise that no qualifier is needed.

Response: BIS believes that the term specially designed as defined in the April 16 (initial implementation) rule is adequate to meet its MTCR obligations.

Comment: Replace the term “operation or maintenance” with the term “use” in several software ECCNs.

Response: BIS has adopted the phrase “‘development,’ ‘production,’ operation or maintenance” as a standard practice in 600 series ECCNs. The commenter suggested no persuasive reason to change this policy.

Comment: Remove the term “directly related” and, in some instances, replace it with the word “required” in the several “Related controls” notes of software and technology ECCNs.

Response: The related control notes at issue refer readers to the USML for controls on “technical data” (which, on the USML, includes both software and technology) that is similar to the software or technology covered by that ECCN. The USML uses the term “related to” in describing the objects to which those technical data apply. In these cross-references to the USML, using the USML terminology is appropriate.

Comment: Do not use the phrase “technical data,” except in its meaning as defined in part 772 of the EAR.

Response: The specific uses of the term “technical data” to which this commenter objected are references to the USML. In that context, the term is used in a way that is consistent with its

meaning in the USML. The term is not surrounded by quotation marks, which would signify that it is defined in part 772.

Comment: Replace the word “and” with the word “or” in the definition of “use” in the EAR.

Response: This proposal would affect every software ECCN in the entire CCL and is outside the scope of the November 28 (military electronics) rule.

Comment: The commenter recommended a number of changes to ECCNs or ECCN paragraphs for which modifications are not needed to accomplish the purpose of the November 28 (military electronics) rule and this proposed rule, which is to control on the CCL items that the President determines no longer warrant control on the USML.

Response: Without commenting on the merit of each of those proposed changes, BIS is not including them in this proposed rule because they are outside the scope of what BIS proposed in the November 28 (military electronics) rule. Including them in this proposed rule would distract readers and potential commenters, possibly depriving BIS of the benefit of informed analysis and comments on the rule’s efficacy in achieving its purpose as stated above.

In addition to the changes discussed above, this commenter recommended several changes to the proposed ECCNs in CCL Category 9 concerning cryogenic and superconductive equipment and related items.

Comment:

- Add the phrase “not controlled by 1C005, 3A001.d, 3A001.e.3, 3A201.b, 6A002.d.1, 6A006.a.1 or 8A002.o.2.c” to the header of ECCN 9A620
- Add a related control note referring to ECCNs 1C005, 3A001.d, 3A001.e.3, 3A201.b, 6A002.d.1, 6A006.a.1 or 8A002.o.2.c.
- Remove the phrase “‘specially designed’ to be installed” and the phrase “and capable of” from paragraphs .a and .b of 9A620
- Remove the words “Parts” and “attachments” from 9A620.x
- Change the word “and” to “or” everywhere it appears in the following phrase in ECCN 9B620: “Test, inspection and production end items and equipment . . .”
- In ECCN 9A620.x, replace the phrase “specially designed for a commodity controlled by ECCN 9A620” with “for a commodity controlled by ECCN 9A620.a or 9A620.b having any of the characteristics described in the texts of those sub-items.”

- In ECCN 9B620, replace the phrase: “‘specially designed’ for items controlled in ECCN 9A620” with the phrase “having any of the characteristics described in 9A620.a or 9A620.b.”

Response: The ECCNs that this commenter proposes adding to the header of ECCN 9A620 and to a related control note in that ECCN apply, *inter alia*, to a number of commodities that have cryogenic or superconducting properties. None of them has the qualifier “‘specially designed’ to be installed in a vehicle for .military . . . applications,” which appears in paragraphs .a and .b of proposed ECCN 9A620. In fact, only one ECCN, 8A002.o.2.c, relates to a vehicle of any kind. In addition, the order of review in the April 16 (initial implementation) rule makes clear that items with characteristics that meet the parameters of a 600 series ECCN are controlled by that 600 series ECCN and not by a non-600 series ECCN.

The phrases “‘specially designed’ to be installed” and the phrase “and capable of” are drawn from WAML category ML20, on which ECCN 9A620 is based. The commenter offered no specific reason to depart from the regime text. WAML category ML20 also uses the phrase “components and attachments.” The Wassenaar Arrangement does not define either “components” or “attachments.” However, BIS believes that as used in the Wassenaar Arrangement’s control lists, the term “components” would encompass “parts” and “components” as defined in the April 16 (initial implementation) rule and the term “attachments” would encompass “accessories” and “attachments” as defined in the April 16 (initial implementation) rule. The phrase “Test, inspection and production equipment” is also used

widely in describing product group B in all nine categories of the EAR. BIS believes that it is widely understood to encompass each of those three types of equipment, and that changing the formula for one ECCN would be more likely to increase than to decrease any misunderstandings that may exist. The suggested alternative phrases for ECCNs 9A620.x and 9B620 (replacing “specially designed” with “having any of the characteristics of”) would distort the meaning of these ECCNs in ways that would in some instances extend the control beyond what BIS intends, and in other instances fail to control things that BIS intends to control. BIS believes that with the publication of the definition of the term “specially designed” in the April 16 (initial implementation) rule, these ECCNs will be best understood and appropriately tailored by retaining that term.

Comments that commenter characterized as “other” military electronics ambiguities.

Comment: This commenter cited ten instances of alleged military electronics ambiguities, i.e., instances in which the applicable ECCN for an item was uncertain.

Response: BIS is not adopting any of this commenter’s recommended changes in this category. Two of the comments in essence repeated the view that ECCNs 3A001.d and .e.3 should be cross referenced in ECCN 9A620 because they apply to superconducting commodities. The remaining eight comments do not address any text on the CCL that is related to or affected by the decision

to control on the CCL items that the President determines no longer warrant control on the USML and are thus outside the scope of the November 28 (military electronics) rule.

Second set of comments submitted by this commenter

Comment: The commenter proposed changes to 57 of the 63 ECCNs currently in CCL Category 9, and the creation of five new ECCNs for that category. The commenter did not propose any changes to the four new ECCNs proposed for that category by the November 28 (military electronics) rule.

Response: All these proposed changes are outside the scope of the November 28 (military electronics) rule, and are extraneous to the purpose of that or this second proposed rule.

Therefore, BIS is not making any changes to this proposed rule in response to these comments.

Detailed Description of Changes Proposed by This Rule.

Revisions to ECCN 3A101.

Currently, ECCN 3A101 refers readers to the ITAR for analog-to-digital converters described in paragraph .a. These converters would move to the CCL and continue to be controlled for MT reasons because they are identified on the MTCR Annex. Placing such items in this ECCN, rather than the new ECCN 3A611, will make it easier to identify, classify, and control such items. Consequently, this proposed rule adds analog-to-digital converters usable in “missiles” and having any of the characteristics described in proposed 3A101.a.1 or a.2. This proposed rule modifies the text of ECCN 3A101.a.1 compared to what was published in the November 28 (military electronics) rule to more closely follow the format and text of Category II, Item 14, 14.A.1 of the MTCR Annex. This is not a substantive change from what was previously proposed.

New 3Y611 Series of ECCNs.

Proposed new ECCNs 3A611, 3B611, 3D611, and 3E611 would control military electronics and related test, inspection, and production equipment and software and technology currently controlled by USML Category XI that the President determines no longer warrant control on the USML. To the extent that they are not enumerated on the proposed revisions to Category XI, these proposed new ECCNs would also control computers, telecommunications equipment, radar “specially designed” for military use, parts, components, accessories, and attachments “specially designed” therefor, and related software and technology. This structure aligns with the current USML Category XI and ML11, which include within the scope of “electronics” such items as computers, telecommunications equipment, and radar. BIS believes that it will be easier to

include such items within the scope of the proposed new 600 series that corresponds to USML Category XI, rather than creating new 600 series ECCNs in CCL Categories 4 (computers), 5 (telecommunications), 6 (radar) and 7 (avionics). BIS, however, proposes including cross references in CCL Categories 4, 5, 6 and 7 to alert readers that ECCN 3A611 may control such items. As described above, BIS nonetheless solicits comments regarding whether it would be easier to understand and comply with controls on military electronics that move to the CCL from the USML if they were divided among 600 series entries in CCL Categories 4, 5, 6, and 7.

The proposed ECCN 3X611 series, except for ECCN 3X611.y, would be controlled for national security (NS Column 1 or NS1), regional stability (RS Column 1 or RS1), antiterrorism (AT Column 1 or AT1), and United Nations embargo (UN) reasons. ECCNs 3X611.y would only be controlled for AT1 reasons (ECCN 3B611 would not have a .y paragraph). Each ECCN in this 3X611 series is described more specifically below.

New ECCN 3A611.

Proposed ECCN 3A611 paragraph .a would control electronic “equipment,” “end items,” and “systems” “specially designed” for military use that are not enumerated in either a USML category or another “600 series” ECCN.

Paragraph .b would be reserved. The corresponding USML Category is XI(b), which, in the Department of State proposed rule being published concurrently with this rule, would continue to be a catch-all control and would contain the following clarified version of the current Category XI(b): “Electronic systems or equipment specially designed for intelligence purposes that collects, surveys, monitors, or exploits the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.” In the Department of State’s proposed rule being published simultaneously with this proposed rule, Category XI(b) references certain types of equipment and systems that are *per se* within the scope of the revised Category XI(b). BIS encourages the public to comment on whether this approach creates any confusion regarding the jurisdictional status of any items that are commonly used in normal commercial, non-intelligence, or non-security use, including those controlled under ECCN 5A980 (“Devices primarily useful for the surreptitious interception of wire, oral, or electronic communications.”)

Paragraphs .c and .d would control MMIC power amplifiers and discrete microwave transistors, respectively. These two paragraphs have been extensively revised from what was proposed in the November 28 (military electronics) rule in an effort to tailor them to control MMIC power amplifiers and discrete microwave transistors that have military end use and little or no civilian application. The new parameters are discussed under the heading “Public Comments on the November 28 (military electronics) rule” below. Additionally, a note has been added stating that paragraph .d includes bare dice, dice mounted on carriers or dice mounted in packages. The note also recognizes discrete transistors may also be referred to as power amplifiers but that doing so does not change the classification, whether under ECCN 3A001.b.3 or 3A611.d.

Paragraph .e would control high frequency (HF) surface wave radar capable of “tracking” surface targets on oceans.

In this proposed rule, microelectronic devices and printed circuit boards that are certified to be a ‘trusted device’ from a DMEA accredited supplier that were listed in paragraph .f in the November 28 (military electronics) rule are not listed because, upon review, all such devices and printed circuit boards that needed to be controlled were covered by other paragraphs of 3A611.

Paragraphs .f, .g, and .h in this proposed rule apply respectively to: 1) application specific integrated circuits (ASICs) and programmable logic devices (PLD) programmed for 600 series items; 2) printed circuit boards and populated circuit card assemblies whose layout is “specially designed” for 600 series items; and 3) multichip modules for which the pattern or layout is “specially designed” for 600 series items. These commodities were not explicitly included in the November 28 (military electronics) rule, but would have been covered by the “catch all” paragraph 3A611.x in that rule. However, these same types of devices, if for defense articles on the USML, were explicitly identified in Category XI.c.1, .2 and .3 of the Department of State rule of November 28. A comment on that Department of State proposal stated that greater clarity was needed to prevent classifying ASICs, PLDs, and printed circuit boards for 600 series items as defense articles subject to the ITAR. Identifying ASICs, PLDs and printed circuit boards for

600 series items explicitly in ECCN 3A611 contributes to this clarity. These additions are not substantive changes from what was proposed in the November 28 (military electronics) rule.

Each of the foregoing ECCN 3A611 paragraphs describes electronic items that BIS understands to be inherently military or otherwise exclusively designed and manufactured for military use. BIS encourages the public to test this understanding and identify items, if any, that fall within the scope of these new ECCNs that are in normal commercial use. If so, the comments should provide details on such commercial applications. In particular, BIS asks the public to comment on whether the controls in proposed new paragraphs 3A611.c (MMIC power amplifiers) and 3A611.d (discrete microwave transistors) are sufficiently limited to those not now or likely to be in normal commercial use by US or foreign telecommunications or other non-military applications. The basis for this request is that the current USML Category XI(c) does not now control any electronic parts, components, accessories, attachments, or associated equipment “in normal commercial use” even if they were “specifically designed or modified for use with the equipment” controlled in USML categories XI(a) or XI(b), which are, in essence, electronic equipment “specifically designed, modified, or configured for military application.” One of the goals of the reform effort is to ensure that items that are currently EAR controlled are not, through the creation of the more positive lists, unintentionally made ITAR or “600 series” controlled. This objective, however, does not preclude the possibility of the Administration intentionally making ITAR or “600 series” controlled items that are today subject to the other parts of the EAR.

Paragraphs .i through .w would be reserved.

Paragraph .x would control “parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity controlled by ECCN 3A611 or for an article controlled by USML Category XI, and not enumerated in a USML category.

A related control note is proposed for ECCN 3A611 clarifying that electronic parts, components, accessories, and attachments that are “specially designed” for military use that are not enumerated in any USML Category, but are within the scope of a “600 series” ECCN, are controlled by that “600 series” ECCN. For example, electronic components not enumerated on the USML that are “specially designed” for a military aircraft controlled by USML Category VIII or ECCN 9A610 would be controlled by ECCN 9A610.x. Similarly, electronic components not enumerated on the USML that are “specially designed” for a military vehicle controlled by USML Category VII or ECCN 0A606 would be controlled by ECCN 0A606.x. The purpose of this note and the limitations in ECCN 3A611.x is to prevent any overlap of controls over electronics specially designed for particular types of items described in other 600 series ECCNs (which would not be controlled by 3A611.x), on one hand, and other electronic parts, components, accessories, and attachments specially designed for military electronics that are not enumerated on the USML (which would be controlled by ECCN 3A611.x), on the other.

Additional proposed related control notes address: electronic items that are enumerated in USML categories, application specific integrated circuits, unprogrammed programmable logic devices, printed circuit boards and populated circuit cards, and multichip modules. Finally, a related control note informs readers that certain radiation hardened microelectronic circuits would be controlled by proposed ECCN 9A515.d. See 78 FR 31431, 31442 (May 24, 2013) for the proposed text of ECCN 9A515.

A note proposed for ECCN 3A611.x specifies that ECCN 3A611.x controls parts and components “specially designed” for underwater sensors or projectors controlled by proposed USML Category XI(c)(12) containing single-crystal lead magnesium niobate lead titanate (PMN-PT) based piezoelectrics.

ECCN 3A611 also would contain a paragraph .y for items of little or no military significance that would be controlled only for AT1 reasons.

New ECCN 3B611.

Proposed ECCN 3B611 would impose, under paragraph .a, controls on test, inspection, and production end items and equipment “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of items controlled in ECCN 3A611 or USML Category XI that

are not enumerated in USML XI or controlled by a “600 series” ECCN and, under paragraph .x, for “parts,” “components,” “accessories” and “attachments” that are “specially designed” for such test, inspection and production end items and equipment that are not enumerated on the USML or controlled by another “600 series” ECCN. Paragraphs .b through .w would be reserved.

New ECCN 3D611.

Proposed ECCN 3D611 paragraph .a would impose controls on software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 3A611 or 3B611 other than software for 3A611.y. Paragraph .b would impose controls on software specially designed for the “development,” “production,” operation or maintenance of technology in ECCN 3E611.b; *i.e.*, software (other than build-to-print software) for technology for helix traveling wave tubes (TWTs), transmit/receive or transmit modules, MMICs; and discrete microwave circuits controlled under ECCN 3A611 would not be eligible for License Exception STA. Paragraphs .c through .x would be reserved. Paragraph .y would control specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities enumerated in ECCNs 3A611.y.

New ECCN 3E611.

Proposed ECCN 3E611 would impose controls on “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 3A611, 3B611 or 3D611 (except technology for 3A611.y and 3D611.y, which would be controlled for AT1 reasons only). Technology (other than “build-to-print” technology for helix traveling wave tubes (TWTs), transmit/receive or transmit modules, MMICs; and discrete microwave circuits controlled under ECCN 3A611 would not be eligible for License Exception STA.

Revisions to ECCN 4A003.

As noted above, the analog-to-digital converters described in the proposed revision to 3A101.a would become subject to the EAR. Adding the text in 3A101.a.2.b for electrical input type analog-to-digital converter printed circuit boards or modules requires that this proposed rule amend ECCN 4A003 to add an MT control for items classified under ECCN 4A003.e when meeting or exceeding the parameters described in ECCN 3A101.a.2.b. This amendment is necessary because the MT items in new paragraph 3A101.a.2.b are a subset of the items in paragraph 4A003.e.

Revisions to ECCN 5A001.

This proposed rule revises the Related Controls paragraph in ECCN 5A001 to provide more detailed references to telecommunications equipment subject to the ITAR under USML Categories XI and XV, while maintaining references to ECCNs 5A101, 5A980, and 5A991.

New Cross Reference ECCNs.

Four new cross reference ECCNs would be created to alert readers that computers, telecommunications equipment, radar and avionics – and parts, components, accessories and attachments “specially designed” therefor – are controlled by ECCN 3A611 if they are specially designed for military use. These cross references are intended to reduce the likelihood of confusion that might otherwise arise because computers, telecommunications equipment, radar and avionics generally are in CCL Categories 4, 5 (Part 1), 6 and 7, respectively. The new cross reference ECCNs and the Categories in which they would appear are: 4A611, Category 4; 5A611, Category 5, Part 1; 6A611, Category 6; 7A611, Category 7. The avionics cross reference ECCN was not in the November 28 (military electronics) rule. As discussed below, BIS received public comments expressing a preference for controlling 600 series computers, telecommunications and radar in the CCL Categories under which other computers, telecommunications and radar are controlled rather than in a single ECCN in Category 3. The latter approach more closely follows the USML pattern. BIS encourages further comment on this issue.

Corrections to ECCNs 7A006 and 7D101.

This proposed rule would correct the reasons for control paragraph of ECCN 7A006 to state that the MT reason for control applies to those items covered by ECCN 7A006 that also meet or exceed the parameters of ECCN 7A106. ECCN 7A006 now applies the missile technology reason for control to a range of airborne altimeters that extends beyond the range of altimeters that are on the MTCR Annex. BIS's practice is to apply the MT reason for control only to items on that Annex. This proposed change would conform ECCN 7A006 to that practice. Similarly, this proposed rule would add the phrase "for missile technology reasons" to the heading of ECCN 7D101. ECCN 7D101 applies the missile technology reason for control to software for a range of commodity ECCNs. Not all of those commodities are controlled for MT reasons. The text proposed here would limit the scope of missile technology controls in ECCN 7A106 to commodities on the MTCR Annex, and that of ECCN 7D101 to software for commodities on the MTCR Annex.

New 9X620 series of ECCNs.

Proposed ECCNs 9A620, 9B620, 9D620, and 9E620 would apply NS1, RS1, AT1 and UN reasons for control to cryogenic and superconducting equipment described in category ML20 of

the WAML, and to test, inspection and production equipment, software and technology therefor. Category ML20 covers cryogenic and superconducting equipment that is “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications. BIS believes that such equipment is used in experimental or developmental vehicle propulsion systems that employ superconducting components and cryogenic equipment to cool those components. BIS has not identified evidence of trade in such items. To the extent that exports do exist, the items would be subject to the license requirements of the USML category that controls the vehicle into which the equipment would be installed, *i.e.*, Category VI, surface vessels; Category VII, ground vehicles; Category VIII, aircraft; and Category XV, spacecraft. BIS proposes to place this cryogenic and superconducting equipment, its related test, inspection and production equipment, and its related software and technology into a single set of 600 series ECCNs ending with the digits “20” to correspond to the relevant WAML category. This approach would further the administration’s Export Control Reform Initiative goal of aligning US controls with multilateral controls wherever feasible. Each ECCN in this series is described more specifically below.

New ECCN 9A620.

Proposed ECCN 9A620.a would control equipment “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170°C). Paragraph .b would control “superconductive” electrical equipment (rotating machinery and transformers)

“specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion. Paragraphs .c through .w would be reserved. Paragraph .x would control parts, components, accessories and attachments “specially designed” for a commodity controlled by ECCN 9A620.

New ECCN 9B620.

Proposed ECCN 9B620 would control test, inspection, and production end items and equipment “specially designed” for the “development,” “production,” repair, overhaul or refurbishing of items controlled in proposed ECCN 9A620.

New ECCN 9D620.

Proposed ECCN 9D620 would control software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCNs 9A620 or 9B620.

New ECCN 9E620.

Proposed ECCN 9E620 would control a “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCNs 9A620, 9B620 or 9D620.

Proposed New ECCNs and License Exception STA.

One of the objectives of the Export Control Reform Initiative is to align the jurisdictional status of technology and software with the items to which they relate. Thus, for example, as a general matter, all technical data and software directly related to a defense article, *i.e.*, an item identified on the ITAR’s USML, will also be ITAR controlled. All technology, including technical data (other than classified technical data directly related to items controlled under ECCNs 3A611, 3B611, 3C611, or 3D611), and software for the production, development, or other aspects of an item on the EAR’s CCL, will be subject to the EAR. Nevertheless, some types of software and technology are more significant than the commodities that are developed or produced from or that utilize such software or technology. In recognition of that fact, this proposed rule would preclude in the ECCNs the use of License Exception STA for software and technology (other than build-to-print software and technology) for the following types of items if controlled by ECCN 3A611: (1) Helix traveling wave tubes (TWTs); (2) Transmit/receive or transmit modules; (3) Microwave monolithic integrated circuits (MMIC)s; and (4) Discrete microwave transistors. This fact is noted in the License Exception STA paragraphs for ECCNs 3D611 and 3E611.

Request for Comments

All comments must be in writing and submitted via one or more of the methods listed under the “ADDRESSES” caption to this notice. All comments (including any personal identifiable information) will be available for public inspection and copying. Those wishing to comment anonymously may do so by submitting their comment via regulations.gov and leaving the fields for identifying information blank.

Effects of This Proposed Rule

Use of License Exceptions

Military electronic equipment, certain cryogenic and superconducting equipment, and parts, components, and test, inspection, and production equipment therefor currently on the USML that this rule would place on the CCL would become eligible for several license exceptions, including STA, which would be available for exports to certain agencies of NATO governments and other multi-regime close allies. The exchange of information and statements required under STA are substantially less burdensome than the license application requirements under the ITAR, as discussed in more detail in the “Regulatory Requirements” section of this proposed rule. BIS

does not intend with this proposed rule to move any items currently subject to the EAR to a 600 series ECCN; therefore, it would not narrow the scope of license exception eligibility for any items currently on the CCL.

Alignment 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 control text with those of the regimes. This proposed rule would maintain the alignment that exists between the USML, in which military electronics are controlled under Category XI, and the WAML, in which military electronic equipment is controlled under ML11, and would be controlled by ECCN 3A611 in this proposed rule. Similarly, 3B611 aligns with WAML 18, which, *inter alia*, controls “specially designed or modified ‘production’ equipment for the ‘production’ of products specified by the Munitions List, and specially designed components therefor.”

This proposed rule would align cryogenic and superconducting equipment currently controlled in Categories VI, VII, VIII, and XV of the USML with Wassenaar Arrangement Munitions List category ML20 by controlling them under ECCN 9A620. As with other 600 series ECCNs, this

rule follows the existing CCL numbering pattern for test, inspection and production equipment (3B611 and 9B620), software (3D611 and 9D620) and technology (3E611 and 9E620), rather than strictly following the Wassenaar Arrangement Munitions List pattern of placing production equipment, software and technology for munitions list items in categories ML18, ML21 and ML22, respectively. BIS believes that including the ECCNs for test, inspection and production equipment, software, and technology in the same category as the items to which they relate results in an easier to understand CCL than would separate categories.

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

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 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 initially believed that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration’s Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that would come under BIS jurisdiction, whether those items would be eligible for export under license exception. As of June 21, 2012, BIS believes

the increase in license applications may be 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694–0088.

Military electronic equipment, certain cryogenic and superconducting equipment, related test, inspection and production equipment, “parts,” “components,” “accessories” and “attachments,” “software” and “technology” formerly on the USML would become eligible for License Exception STA under this 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 the EAR that would be removed from the ITAR as part of the Administration’s Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden will be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. The largest impact of the proposed rule would likely apply to exporters of replacement parts for military electronic equipment that has been approved under the ITAR for export to allies and regime partners. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports of such parts, even when destined to NATO and other close allies, require specific State Department authorization. Under the EAR, as proposed here, such parts would become eligible for export to NATO and other multi-regime 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. However, the Administration understands that complying with the burdens of STA is likely 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 reliable customers in countries that are close allies or members of export control regimes or both.

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 3E611 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 (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that the November 28 (military electronics) rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble to that proposed rule (77 FR 70945, 70950 – 70951, November 28, 2012). Although BIS received no comments on that rationale, and has accordingly made no changes to the proposed rule based on the RFA certification, BIS has determined that, in the interest of openness and transparency, it will briefly restate the rationale behind the certification here.

This rule, if implemented, is part of the Administration's Export Control Reform Initiative, which seeks to revise the USML to a positive list – one that does not use generic, catch-all controls for items listed – and to move some items that the President has determined no longer merit control under the ITAR to control under the CCL.

Although BIS does not collect data on the size of entities that apply for and are issued export licenses, and is therefore unable to estimate the exact number of small entities – as defined by the

Small Business Administration's regulations implementing the RFA – BIS acknowledges that some small entities may be affected by this proposed rule.

The main effects on small entities resulting from this rule will be in application times, costs, and delays in receiving licenses to export goods subject to the CCL. However, while small entities may experience some costs and time delays for exports due to the license requirements of the CCL, these costs and delays will likely be significantly less than they were for items previously subject to the USML. BIS believes that in fact this rule will result in significantly reduced administrative costs and delays for exports of items that will, upon this rule's implementation, be subject to the EAR rather than the ITAR. 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 \$2,250 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. By contrast, BIS is statutorily prohibited from imposing licensing fees. In addition, exporters and reexporters of goods that would become subject to the EAR under this rule would need fewer licenses because their transactions would become eligible for license exceptions that were not available under the ITAR. Additionally, the ITAR controlled parts and components even when they were incorporated – in any amount – into a foreign-made product. That limitation on the use of US-made goods subject to the ITAR discouraged foreign manufacturers from importing US goods. However, the EAR has a *de minimis* exception for US-manufactured goods that are incorporated

into foreign-made products. This exception may benefit small entities by encouraging foreign producers to use more US-made items in their goods.

Even where an exporter or reexporter would need to obtain a license under the EAR, that process is both cheaper and the process is more flexible than obtaining a license under the ITAR. For example, unlike the ITAR, the EAR does not require license applicants to provide BIS with a purchase order with the application, meaning that small (or any) entities can enter into negotiations or contracts for the sale of goods without having to caveat any sale presentations with a reference to the need to obtain a license under the ITAR before shipment can occur. Second, the EAR allows license applicants to obtain licenses to cover all expected exports or reexports to a particular consignee over the life of a license, rather than having to obtain a new license for every transaction.

In short, BIS expects that the changes to the EAR proposed in this rule will have a positive effect on all affected entities, including small entities. While BIS acknowledges that this rule may have some cost impacts to small (and other) entities, those costs are more than offset by the benefits to the entities from the licensing procedures under the EAR, which are much less costly and less time consuming than the procedures under the ITAR. Accordingly, the Chief Counsel for Regulation for the Department of Commerce has certified that this rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects in Part 774

Exports, Reporting and recordkeeping requirements

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730-774) is amended as follows:

PART 774 - [AMENDED]

1. 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).

2. In Supplement No. 1 to Part 774, Category 3, amend Export Control Classification Number (ECCN) 3A101 by:

a. revising the Related Controls paragraph in the List of Items Controlled section; and

b. revising paragraph a in the Items paragraph in the List of Items Controlled section, to read as follows:

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

* * * * *

3A101 Electronic equipment, devices and components, other than those controlled by 3A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also ECCN 4A003.e for controls on analog-to-digital converter, printed circuit boards, or modules for computers.

* * * * *

Items:

a. Analog-to-digital converters usable in “missiles,” and having any of the following characteristics:

a.1. “Specially designed” to meet military specifications for ruggedized equipment;

a.2. “Specially designed” for military use and being any of the following types:

a.2.a. Analog-to-digital converter microcircuits which are radiation-hardened or have all of the following characteristics:

a.2.a.1. Having a quantization corresponding to 8 bits or more when coded in the binary system;

a.2.a.2. Rated for operation in the temperature range from -54°C to above +125°C;
and

a.2.a.3. Hermetically sealed; *or*

a.2.b. Electrical input type analog-to-digital converter printed circuit boards or modules, having all of the following characteristics:

a.2.b.1. Having a quantization corresponding to 8 bits or more when coded in the binary system;

a.2.b.2. Rated for operation in the temperature range from below -45°C to above +55°C; *and*

a.2.b.3. Incorporating microcircuits identified in 3A101.a.2 or a.3;

* * * * *

3. In Supplement No. 1 to Part 774, between the entries for ECCNs 3A292 and 3A980, add new entry for ECCN 3A611 to read as follows:

3A611 Military electronics, as follows (see list of items controlled).

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry except 3A611.y	NS Column 1
RS applies to entire entry except 3A611.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 3A611.y	See § 746.1(b) for UN controls

License Exceptions

LVS: \$1500 for 3A611.a, .d through .h and .x; N/A for ECCN 3A611.c and .y

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 3A611.

List of Items Controlled

Unit: End items in number; parts, components, accessories and attachments in \$ value

Related Controls: (1) Electronic items that are enumerated in USML Category XI or other USML categories, and technical data (including software) directly related thereto, are subject to the ITAR. (2) Application specific integrated circuits (ASICs) and programmable logic devices that are programmed for defense articles that are subject to the ITAR are controlled in USML Category XI(c)(1). (3) See ECCN 3A001.a.7 for controls on unprogrammed programmable logic devices. (4) Printed circuit boards and populated circuit cards whose layout is specially designed for defense articles that are subject to the ITAR are controlled in USML Category XI(c)(2). (5) Multichip modules for which the pattern or layout is “specially designed” for defense articles that are subject to the ITAR are controlled in USML Category XI(c)(3). (6) Electronic items “specially designed” for military use that are not controlled in any USML category but are within the scope of another “600 series” ECCN are controlled by that “600 series” ECCN. Thus, ECCN 3A611 controls only electronic items “specially designed” for a military use that are not otherwise within the scope of a USML category or “600 series” ECCN other than ECCN 3A611. For example, electronic components not enumerated on the USML or a 600 series other than 3A611 that are “specially designed” for a military aircraft controlled by USML Category VIII or ECCN 9A610 are controlled by the catch-all control in ECCN 9A610.x. Electronic components not enumerated on the USML or another 600 series entry that are

“specially designed” for a military vehicle controlled by USML Category VII or ECCN 0A606 are controlled by ECCN 0A606.x. Electronic components not enumerated on the USML that are “specially designed” for a missile controlled by USML Category IV are controlled by ECCN 0A604. (7) Certain radiation hardened microelectronic circuits are controlled by ECCN 9A515.d, when “specially designed” for defense articles, 600 series items, or items controlled by 9A515.

Related Definitions: N/A

Items:

a. Electronic “equipment,” “end items,” and “systems” “specially designed” for military use that are not enumerated in either a USML category or another “600 series” ECCN.

Note: ECCN 3A611.a includes any radar, telecommunications, acoustic or computer equipment, end items, or systems “specially designed” for military use that are not enumerated in any USML category or controlled by a “600 series” ECCN.

b. [Reserved]

c. Microwave “monolithic integrated circuits” (MMIC) power amplifiers having any of the following:

c.1. Rated for operation at frequencies exceeding 2.7 GHz up to and including 2.9 GHz and having any of the following:

c.1.a. A “fractional bandwidth” greater than 15%, with a peak saturated power output greater than 75 W (48.75 dBm) and a power added efficiency of 50% or greater anywhere within the operating frequency range; or

c.1.b. A “fractional bandwidth” greater than 60%, with a peak saturated power output greater than 150 W (51.8 dBm) anywhere within the operating frequency range;

c.2. Rated for operation at frequencies exceeding 2.9 GHz up to and including 3.2 GHz and having any of the following:

c.2.a. A “fractional bandwidth” greater than 15%, with a peak saturated power output greater than 55 W (47.4 dBm) and a power added efficiency of 45% or greater anywhere within the operating frequency range; or

c.2.b. A “fractional bandwidth” greater than 55%, with a peak saturated power output greater than 110 W (50.4 dBm) anywhere within the operating frequency range;

c.3. Rated for operation at frequencies exceeding 3.2 GHz up to and including 3.7 GHz and having any of the following:

c.3.a. A “fractional bandwidth” greater than 15%, with a peak saturated power output greater than 40 W (46 dBm) and a power added efficiency of 45% or greater anywhere within the operating frequency range; or

c.3.b. A “fractional bandwidth” greater than 50%, with a peak saturated power output greater than 80 W (49 dBm) anywhere within the operating frequency range;

c.4. Rated for operation at frequencies exceeding 3.7 GHz up to and including 6.8 GHz and having any of the following:

c.4.a. A “fractional bandwidth” greater than 15%, with a peak saturated power output greater than 20 W (43 dBm) and a power added efficiency of 40% or greater anywhere within the operating frequency range; or

c.4.b. A “fractional bandwidth” greater than 45%, with a peak saturated power output greater than 40 W (46 dBm) anywhere within the operating frequency range;

c.5. Rated for operation at frequencies exceeding 6.8 GHz up to and including 8.5 GHz and having any of the following:

c.5.a. A “fractional bandwidth” greater than 10%, with a peak saturated power output greater than 10 W (40.0 dBm) and a power added efficiency of 40% or greater anywhere within the operating frequency range; or

c.5.b. A “fractional bandwidth” greater than 40%, with a peak saturated power output greater than 20 W (43 dBm) anywhere within the operating frequency range;

c.6. Rated for operation at frequencies exceeding 8.5 GHz up to and including 16 GHz and having any of the following:

c.6.a. A “fractional bandwidth” greater than 10%, with a peak saturated power output greater than 5 W (37 dBm) and a power added efficiency of 35% or greater anywhere within the operating frequency range; or

c.6.b A “fractional bandwidth” greater than 40%, with a peak saturated power output greater than 10 W (40 dBm) anywhere within the operating frequency range;

c.7. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz with a “fractional bandwidth” greater than 10%, and having a peak saturated power output greater than 3 W (34.77 dBm) and a power added efficiency of 20% or greater anywhere within the operating frequency range;

c.8. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37 GHz, and having a peak saturated power output greater than 2 W (33 dBm) anywhere within the operating frequency range;

c.9. Rated for operation at frequencies exceeding 37 GHz up to and including 43.5 GHz with a “fractional bandwidth” greater than 10%, and having a peak saturated power output greater than 1 W (30 dBm) and a power added efficiency of 15% or greater anywhere within the operating frequency range;

c.10. Rated for operation at frequencies exceeding 43.5 GHz up to and including 75 GHz with a “fractional bandwidth” greater than 10%, and having a peak saturated power output greater than 31.62 mW (15 dBm) and a power added efficiency of 10% or greater anywhere within the operating frequency range;

c.11. Rated for operation at frequencies exceeding 75 GHz up to and including 90 GHz with a “fractional bandwidth” greater than 5%, and having a peak saturated power output greater than 10 mW (10 dBm) and a power added efficiency of 10% or greater anywhere within the operating frequency range;

c.12. Rated for operation at frequencies exceeding 90 GHz up to and including 110 GHz and having a peak saturated power output greater than 1.0 mW (0 dBm) anywhere within the operating frequency range; or

_____ c.13. Rated for operation at frequencies exceeding 110 GHz and having a peak saturated power output greater than 100 nW (-40 dBm) anywhere within the operating frequency range.

Note 1 to 3A611.c: The status of an item whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A611.c.1 through 3A611.c.13 is determined by the lowest saturated output power threshold.

Note 2 to 3A611.c: Peak saturated power output may also be referred to as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.

d. Discrete microwave transistors having any of the following:

d.1. Rated for operation at frequencies exceeding 2.7 GHz up to and including 2.9 GHz and having a peak saturated power output greater than 400 W (56 dBm) and a power added efficiency of 50% or greater anywhere within the operating frequency range;

d.2. Rated for operation at frequencies exceeding 2.9 GHz up to and including 3.2 GHz and having a peak saturated power output greater than 205 W (53.12 dBm) and a power added efficiency of 50% or greater anywhere within the operating frequency range;

d.3. Rated for operation at frequencies exceeding 3.2 GHz up to and including 3.7 GHz and having a peak saturated power output greater than 115 W (50.61 dBm) and a power added efficiency of 45% or greater anywhere within the operating frequency range;

d.4. Rated for operation at frequencies exceeding 3.7 GHz up to and including 6.8 GHz and having a peak saturated power output greater than 60 W (47.78 dBm) and a power added efficiency of 45% or greater anywhere within the operating frequency range;

d.5. Rated for operation at frequencies exceeding 6.8 GHz up to and including 8.5 GHz and having a peak saturated power output greater than 50 W (47 dBm) and a power added efficiency of 50% or greater anywhere within the operating frequency range;

d.6. Rated for operation at frequencies exceeding 8.5 GHz and up to and including 12 GHz and having a peak saturated power output greater than 20 W (43 dBm) and a power added efficiency of 35% or greater anywhere within the operating frequency range;

d.7. Rated for operation at frequencies exceeding 12 GHz up to and including 16 GHz and having a peak saturated power output greater than 40 W (46 dBm) and a power added efficiency of 35% or greater anywhere within the operating frequency range;

d.8. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz and having a peak saturated power output greater than 20 W (43 dBm) and a power added efficiency of 30% or greater anywhere within the operating frequency range;

d.9. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37 GHz and having a peak saturated power output greater than 2 W (33 dBm) anywhere within the operating frequency range;

d.10. Rated for operation at frequencies exceeding 37 GHz up to and including 43.5 GHz *and* having a peak saturated power output greater than 1 W (30 dBm) *and* a power added efficiency of 20% or greater anywhere within the operating frequency range; or

d.11. Rated for operation at frequencies exceeding 43.5 GHz to and including 75 GHz *and* having a peak saturated power output greater than 0.5 W (27 dBm) *and* a power added efficiency of 15% or greater anywhere within the operating frequency range;

d.12. Rated for operation at frequencies exceeding 75 GHz *and* having a peak saturated power output greater than 0.1 W (20 dBm) anywhere within the operating frequency range.

Note 1 to 3A611.d: The status of an item whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A611.d.1 through 3A611.d.12 is determined by the lowest saturated output power threshold.

Note 2 to 3A611.d: Peak saturated power output may also be referred to as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.

Note 3 to 3A611.d: 3A611.d includes bare dice, dice mounted on carriers, or dice mounted in packages. Some discrete transistors may also be referred to as power amplifiers, but the status of these products are determined by 3A001.b.3. and 3A611.d.

e. High frequency (HF) surface wave radar that maintains the positional state of maritime surface or low altitude airborne objects of interest in a received radar signal through time.

Note: ECCN 3A611.e does not apply to systems, equipment, and assemblies “specially designed” for marine traffic control.

f. Application specific integrated circuits (ASICs) and programmable logic devices (PLD) programmed for 600 series items.

g. Printed circuit boards and populated circuit card assemblies for which the layout is “specially designed” for 600 series items.

h. Multichip modules for which the pattern or layout is “specially designed” for 600 series items.

i. through w. [Reserved]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity controlled by this entry or for an article controlled by USML Category XI, and not enumerated in any USML category.

Note 1 to ECCN 3A611.x: ECCN 3A611.x includes parts, components, accessories, and attachments “specially designed” for a radar, telecommunications, acoustic systems or equipment or computer “specially designed” for military use that are neither enumerated in any USML category nor controlled in another “600 series” ECCN.

Note 2 to ECCN 3A611.x: ECCN 3A611.x controls parts and components “specially designed” for underwater sensors or projectors controlled by USML Category XI(c)(12) containing single-crystal lead magnesium niobate lead titanate (PMN-PT) based piezoelectrics.

y. Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity subject to control in this entry and not elsewhere specified in any 600-series ECCN as follows:

y.1. Electric couplings;

y.2. Cathode ray tubes (CRTs);

y.3. Electrical connectors;

y.4. Electric fans;

y.5. Rotron fans;

y.6. Electric fuses other than those specially designed for explosive detonation;

y.7. Grid vacuum tubes;

y.8. Audio headphones, earphones, handsets, and headsets;

y.9. Heat sinks;

y.10. Intercom systems;

y.11. Joy sticks;

y.12. Loudspeakers;

y.13. Mica paper capacitors;

y.14. Microphones;

y.15. Potentiometers;

y.16. Rheostats;

y.17. Electric connector backshells;

y.18. Solenoids;

y.19. Speakers;

y.20. Electric switches other than RF, pressure, diplexer, duplexer, circulator, or isolator switches;

y.21. Trackballs;

y.22. Electric transformers;

y.23. Vacuum tubes other than TWTs, klystron tubes, or tubes specially designed for articles enumerated in USML Category XII;

y.24. Waveguide.

4. In Supplement No. 1 to Part 774, between the entries for ECCNs 3B002 and 3B991, add new entry for ECCN 3B611 to read as follows:

3B611 Test, inspection, and production commodities for military electronics, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

LVS: \$1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 3B611.

List of Items Controlled

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items:

a. Test, inspection, and production end items and equipment “specially designed” for the “development,” “production,” repair, overhaul or refurbishing of items controlled in ECCN 3A611 or USML Category XI that are not enumerated in USML Category XI or controlled by another “600 series” ECCN.

b. through w. [Reserved]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity listed in this entry and that are not enumerated on the USML or controlled by another “600 series” ECCN.

5. In Supplement No. 1 to Part 774, between the entries for ECCNs 3D101 and 3D980, add a new entry for ECCN 3D611 to read as follows:

3D611 “Software” “specially designed” for military electronics, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry except 3D611.y	NS Column 1
RS applies to entire entry except 3D611.y	RS Column 1
AT applies to entire entry	AT Column 1

UN applies to entire entry except 3D611.y	See § 746.1(b) for UN controls
---	--------------------------------

License Exceptions

CIV: N/A

TSR: N/A

STA: 1. Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “software” in 3D611. 2. Except for “build-to-print” software, License Exception STA is not eligible for software enumerated in ECCN 3D611.b.

List of Items Controlled

Unit: \$ value

Related Controls: “Software” directly related to articles enumerated in USML Category XI is controlled in USML Category XI(d).

Related Definitions: N/A

Items:

a. Software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 3A611 (other than 3A611.y) and 3B611.

b. Software specially designed for the “development,” “production,” operation or maintenance of technology in ECCN 3E611.b.

c. through x. [Reserved]

y. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities enumerated in ECCNs 3A611.y.

6. In Supplement No. 1 to Part 774, between the entries for ECCNs 3E292 and 3E980, add new entry for ECCN 3E611 to read as follows:

3E611 Technology “required” for military electronics, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry except 3E611.y	NS Column 1
RS applies to entire entry except 3E611.y	RS Column 1
AT applies to entire entry	AT Column 1

UN applies to entire entry except 3E611.y	See § 746.1(b) for UN controls
---	--------------------------------

License Exceptions

CIV: N/A

TSR: N/A

STA: 1. Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 3E611. 2. Except for “build-to-print” technology, License Exception STA is not eligible for technology enumerated in ECCN 3E611.b.

List of Items Controlled

Unit: \$ value

Related Controls: Technical data directly related to articles enumerated in USML Category XI is controlled in USML Category XI(d).

Related Definitions: N/A

Items:

a. “Technology” (other than that described in 3E611.b or 3E611.y) “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 3A611, 3B611 or 3D611.

b. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of the following if controlled by ECCN 3A611, including 3A611.x:

b.1. Helix traveling wave tubes (TWTs);

b.2. Transmit/receive or transmit modules;

b.3. Microwave monolithic integrated circuits (MMIC); or

b.4. Discrete microwave transistors.

c. through x. [Reserved]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCNs 3A611.y or 3D611.y.

7. In Supplement No. 1 to Part 774, amend ECCN 4A003 by revising the License Requirements section to read as follows:

4A003 “Digital computers”, “electronic assemblies”, and related equipment therefor, as follows (see List of Items Controlled) and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP

Control(s)	Country chart
NS applies to 4A003.b and .c	NS Column 1
NS applies to 4A003.e and .g	NS Column 2
MT applies to 4A003.e when the parameters in 3A101.a.2.b are met or exceeded	MT Column 1
CC applies to “digital computers” for computerized finger-print equipment	CC Column 1
AT applies to entire entry (refer to 4A994 for controls on “digital computers” with a APP > 0.0128 but ≤3.0 WT)	AT Column 1

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

Note 1: For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an “Adjusted Peak Performance” (“APP”) not exceeding 3.0 Weighted TeraFLOPS (WT) and for “electronic assemblies” described in 4A003.c that are not capable of exceeding an “Adjusted Peak

Performance” (“APP”) exceeding 3.0 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in §746.3 (Iraq).

Note 2: Special Post Shipment Verification reporting and recordkeeping requirements for exports of computers to destinations in Computer Tier 3 may be found in § 743.2 of the EAR.

* * * * *

8. In Supplement No. 1 to Part 774, between the entries for ECCNs 4A102 and 4A980, add a new entry for ECCN 4A611 as follows:

4A611 Computers, and parts, components, accessories, and attachments “specially designed” therefor, “specially designed” for military use that are not enumerated in any USML category are controlled by ECCN 3A611.

9. In Supplement No. 1 to Part 774, amend ECCN 5A001 by revising the Related Controls paragraph of the List of Items Controlled section, to read as follows:

5A001 Telecommunications systems, equipment, components and accessories, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: 1. See USML Category XV for controls on telecommunications equipment defined in 5A001.a.1 and any other equipment used in satellites that are subject to the ITAR.

See USML Category XI for controls on direction finding equipment defined in 5A001.e and any other military or intelligence electronic equipment subject to the ITAR. 2. See USML Category XI(a)(4)(iii) for controls on electronic attack and jamming equipment defined in 5A001.f and .h that are subject to the ITAR. 3. See also ECCNs 5A101, 5A980, and 5A991.

* * * * *

10. In Supplement No. 1 to Part 774, between the entries for ECCNs 5A101 and 5A980, add a new entry for ECCN 5A611 as follows:

5A611 Telecommunications equipment, and parts, components, accessories, and attachments “specially designed” therefor, “specially designed” for military use that are not enumerated in any USML category are controlled by ECCN 3A611.

11. In Supplement No. 1 to Part 774, between the entries for ECCNs 6A226 and 6A991, add a new entry for ECCN 6A611 as follows:

6A611 Acoustic systems and equipment, radar, and parts, components, accessories, and attachments “specially designed” therefor, “specially designed” for military use that are not enumerated in any USML category or other ECCN are controlled by ECCN 3A611.

12. In Supplement No. 1 to Part 774, ECCN 7A006, revise the Reasons for Control paragraph of the License Requirements section to read as follows:

7A006 Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive and having any of the following (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
MT applies to commodities in this entry that meet or exceed the parameters of 7A106	MT Column 1
AT applies to entire entry	AT Column 1

* * * * *

13. In Supplement No. 1 to Part 774, between the entries for ECCNs 7A117 and 7A994, add a new entry for ECCN 7A611 as follows:

7A611 Navigation and avionics equipment and, systems and parts, components, accessories, and attachments “specially designed” therefor, “specially designed” for military use that are not enumerated in any USML category or another 600 series ECCN are controlled by ECCN 3A611.

14. In Supplement No. 1 to Part 774, ECCN 7D101, revise the heading to read as follows:

7D101 “Software” specially designed or modified for the “use” of equipment controlled for missile technology (MT) reasons by 7A001 to 7A006, 7A101 to 7A107, 7A115, 7A116, 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, or 7B103.

* * * * *

15. In Supplement No. 1 to Part 774, between the entries for ECCNs 9A120 and 9A980, add a new entry for ECCN 9A620 to read as follows:

9A620 Cryogenic and “superconductive” equipment, as follows (see list of items controlled).

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

LVS: \$1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A620.

List of Items Controlled

Unit: End items in number; parts, components, accessories and attachments in \$ value

Related Controls: Electronic items that are enumerated in USML Category XI or other USML categories, and technical data (including software) directly related thereto, are subject to the ITAR.

Related Definitions: N/A

Items:

a. Equipment “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170°C).

Note to 9A620.a: ECCN 9A620.a includes mobile systems incorporating or employing accessories or components manufactured from non-metallic or non-electrical conductive materials such as plastics or epoxy-impregnated materials.

b. “Superconductive” electrical equipment (rotating machinery and transformers) “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion.

Note to 9A610.b: ECCN 9A620.b. does not control direct-current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting components in the generator.

c. through w. [Reserved]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity controlled by ECCN 9A620.

16. In Supplement No. 1 to Part 774, between the entries for ECCNs 9B117 and 9B990, add a new entry for ECCN 9B620 to read as follows:

9B620 Test, inspection, and production commodities for cryogenic and “superconductive” equipment (see List of Items controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

LVS: \$1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9B620.

List of Items Controlled

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items:

a. Test, inspection, and production end items and equipment “specially designed” for the “development,” “production,” repair, overhaul or refurbishing of items controlled in ECCN 9A620.

b. [Reserved]

17. In Supplement No. 1 to Part 774, between the entries for ECCNs 9D105 and 9D990, add a new entry for ECCN 9D620 to read as follows:

9D620 “Software” “specially designed” for cryogenic and “superconductive” equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1

AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

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 9D620.

List of Items Controlled

Unit: \$ value

Related Controls: “Software” directly related to articles enumerated on USML are subject to the control of that USML category.

Related Definitions: N/A

Items: Software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCNs 9A620 or 9B620.

18. In Supplement No. 1 to Part 774, between the entries for ECCNs 9E102 and 9E990, add a new entry for ECCN 9E620 to read as follows:

9E620 Technology “required” for cryogenic and “superconductive” equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

License Exceptions

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 9E620.

List of Items Controlled

Unit: \$ value

Related Controls: Technical data directly related to articles enumerated on USML are subject to the control of that USML category.

Related Definitions: N/A

Items: “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 9A620, 9B620 or 9D620.

Dated: July 12, 2013

Kevin J. Wolf

Assistant Secretary of Commerce for Export Administration

[FR Doc. 2013-17559 Filed 07/24/2013 at 8:45 am; Publication Date: 07/25/2013]