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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 180918851-8851-01]

RIN 0694-AH64

Control of Military Electronic Equipment and Other Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by correcting two entries on the Commerce Control List (CCL) that control Global Navigation Satellite Systems (GNSS) receiving equipment. It was brought to BIS' attention that it did not implement controls over items that no longer warrant control under the United States Munitions List (USML) in a previous published rule. This rule corrects that error. BIS estimates that there will be 12 license applications submitted to BIS annually as a result of this rule.

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

FOR FURTHER INFORMATION CONTACT: Dennis Krepp, Office of National Security and Technology Transfer Controls, (202) 482-1309, dennis.krepp@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2016, the Bureau of Industry and Security (BIS) published a rule in the *Federal Register* entitled “Revisions to the Export Administration Regulations (EAR): Control of Fire Control, Laser, Imaging, and Guidance Equipment the President Determines No Longer Warrant Control Under the United States Munitions List (USML)” (81 FR 70320). This rule added to the Commerce Control List military electronics and related items the President determined no longer warrant control under the United States Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130). BIS published the rule simultaneously with a Department of State rule that amended the list of articles controlled by USML Category XII (22 CFR 121.1) to control only those articles the President had determined warrant control in that category of the USML (81 FR 70340). The BIS rule was supposed to change the License Requirement section of Export Control Classification Number (ECCN) 7A005 to modify the CCL to cover 7A005.b, Global Navigation Satellite Systems (GNSS) receiving equipment employing ‘adaptive antenna systems’. This equipment was removed from the USML. However, BIS inadvertently did not update the CCL as intended. The revisions described below provide that this equipment is covered by 7A005.b, and that items otherwise subject to 7A005.a are subject to the ITAR. In order to more clearly distinguish the national security controlled items from the missile technology controlled items in ECCN 7A005, BIS is fully listing the MTCR item 11.A.3 in the CCL under ECCN 7A105. Some of the items that this rule lists in ECCN 7A105 would be fully or partially subject to the

ITAR were they not listed on the CCL. Therefore, it is very important for the public to employ the order of review principles found in Supplement No. 4 to part 774 of the EAR to classify their item correctly.

Revision to ECCN 7A005

This correction rule amends the License Requirements section of ECCN 7A005. The first amendment removes the text “These items are “subject to the ITAR” (see 22 CFR parts 120 through 130).” and adds in its place “Reason for Control: NS, MT and AT”. The second amendment adds a License Requirements table to indicate a license requirement for national security (NS) reasons for the export or reexport of items listed in ECCN 7A005.b to all countries that have an “X” in NS Column 1 on the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), i.e., all countries, except Canada. The table also includes a license requirement for anti-terrorism (AT) reasons for the export or reexport of such items to countries that have an “X” in AT Column 1 of the Commerce Country Chart and for countries for which the EAR indicates a license requirement in a referenced section of the EAR on the Commerce Country Chart. Missile Technology (MT) controls are also added to the License Requirements table for ECCN 7A005.b items that meet or exceed the parameters of ECCN 7A105 when exported or reexported to countries that have an “X” in MT Column 1 of the Commerce Country Chart.

This rule also adds a License Exception section; however, no list based license exceptions will be available for this item. Transaction-based license exceptions or License Exception STA may be available if the transaction meets the criteria for any of those license exceptions in part 740 of the EAR.

The Related Control paragraph in ECCN 7A005 is also amended. This rule adds a reference to ECCN 7A611 in paragraph (1) and revises the sentence in paragraph (1) to improve readability. It also replaces the current text of paragraph (2) (“(2) See USML Category XII(d) for GNSS receiving equipment subject to the ITAR.”) with the following text: “See USML Category XII(d) for GNSS receiving equipment subject to the ITAR and USML Category XI(c)(10) for antennae that are subject to the ITAR.” Lastly, it adds paragraph (3) to read as follows, “(3) 7A005.a is “subject to the ITAR” (see 22 CFR parts 120 through 130).”

Revisions to ECCN 7A105

This rule revises the Heading of ECCN 7A105 by moving the parameter to the Items paragraph in the List of Items Controlled section, and adding a reference to the List of Items Controlled section for the parameters. This rule replaces Related Control Note 2 with three more specific Related Control Notes. The MTCR Annex item 11.A.3 parameters are added to the Items paragraph of the List of Items Controlled section of ECCN 7A105. See the background section of the preamble for BIS’s rationale.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. 115-232) that provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or

allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

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, distributive 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 not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Pursuant to Section 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115-232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date. The analytical requirements of the Regulatory

Flexibility Act (5 U.S.C. 601 et. seq.) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

3. 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 Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694-0088, 0694-0122, 0694-0134, and 0694-0137.

4. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements

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

Part 774 - [AMENDED]

1. The authority citation for part 774 continues to read as follows:

Authority: Pub. L. 115-232, Title XVII, Subtitle B; 50 U.S.C. 4601 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; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 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 8, 2018, 83 FR 39871 (August 13, 2018).

2. In Supplement No. 1, Category 7, ECCN 7A005 is revised to read as follows:

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

* * * * *

7A005 Global Navigation Satellite Systems (GNSS) receiving equipment having any of the following (see List of Items Controlled) and “specially designed” “components” therefor.

License Requirements

Reason for Control: NS, MT and AT

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to 7A005.b	NS Column 1
MT applies to commodities in 7A005.b that meet or exceed the parameters of 7A105.	MT Column 1
AT applies to 7A005.b	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Related Controls: (1) See also ECCNs 7A105, 7A611 and 7A994. Commercially available GNSS receivers do not typically employ decryption or adaptive antennae and are classified as 7A994. (2) See USML Category XII(d) for GNSS receiving equipment subject to the ITAR and USML Category XI(c)(10) for antennae that are subject to the ITAR. (3) Items that otherwise would be covered by ECCN 7A005.a are “subject to the ITAR” (see 22 CFR parts 120 through 130).

Related Definitions: N/A

Items:

- a. Employing a decryption algorithm “specially designed” or modified for government use to access the ranging code for position and time; *or*
- b. Employing ‘adaptive antenna systems’.

Note: 7A005.b does not apply to GNSS receiving equipment that only uses “components” designed to filter, switch, or combine signals from multiple omni-directional antennas that do not implement adaptive antenna techniques.

Technical Note: For the purposes of 7A005.b ‘adaptive antenna systems’ dynamically generate one or more spatial nulls in an antenna array pattern by signal processing in the time domain or frequency domain.

3. In Supplement No. 1, Category 7, ECCN 7A105 is revised to read as follows:

7A105 Receiving equipment for ‘navigation satellite systems’, having any of the following characteristics (see List of Items Controlled), and “specially designed” “parts” and “components” therefor.

License Requirements

Reason for Control: MT, AT

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Related Controls: (1) See also 7A005, 7A611 and 7A994. (2) See USML Category XII(d) for GNSS receiving equipment subject to the ITAR and USML Category XI(c)(10) for antennae that are subject to the ITAR. (3) Items that otherwise would be covered by ECCN 7A105.b.2 are “subject to the ITAR” (see 22 CFR parts 120 through 130). (4) See USML Category XII(d) for GPS receiving equipment in 7A105.a, b.1 and b.3 that are subject to the ITAR.

Related Definitions: ‘Navigation satellite systems’ include Global Navigation Satellite Systems (GNSS; e.g. GPS, GLONASS, Galileo or BeiDou) and Regional Navigation Satellite Systems (RNSS; e.g. NavIC, QZSS).

Items:

- a. Designed or modified for use in “missiles”; or
- b. Designed or modified for airborne applications and having any of the following:
 - b.1. Capable of providing navigation information at speeds in excess of

600 m/s;

b.2. Employing decryption, designed or modified for military or governmental services, to gain access to a 'navigation satellite system' secure signal/data; or

b.3. Being “specially designed” to employ anti-jam features (e.g., null steering antenna or electronically steerable antenna) to function in an environment of active or passive countermeasures.

Note: 7A105.b.2 and 7A105.b.3 do not control equipment designed for commercial, civil or Safety of Life (e.g., data integrity, flight safety) 'navigation satellite system' services.

Dated: December 17, 2018.

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Deputy Assistant Secretary

for Export Administration

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