

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 738, 740, 742, 743, 744, 746, 748, 756, 762, 770, 772 and 774

[Docket No. 110310188–1335–01]

RIN 0694–AF17

Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed Rule.

SUMMARY: President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system in order to identify additional ways to enhance national security. Secretary of Defense Gates described in April 2010 the initial results of that effort and why fundamental reform of the U.S. export control system is necessary to enhance national security. The Departments of Commerce and State described in two December 2010 Advanced Notice of Proposed Rulemakings the Administration’s general plans for reviewing and revising the two primary lists of controlled items—the Commerce Control List (CCL) and the United States Munitions List (USML)—to accomplish this objective by, *inter alia*, making the lists more “positive,” “aligned,” and “tiered.” This rule proposes a new regulatory construct for the transfer of items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)(1)), the President determines no longer warrant control under the AECA and that would be controlled under the Export Administration Regulations (EAR) once the congressional notification requirements of section 38(f) and corresponding amendments to the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130) and its USML and the EAR and its CCL are completed. In addition to proposing a regulatory construct for transferring these items into the CCL, this rule proposes the transfer of an initial tranche of items from USML Category VII (Tanks and Military Vehicles) to the CCL. This rule also proposes amending the EAR to establish a process by which certain items moving from the USML to the CCL would be made eligible for License

Exception Strategic Trade Authorization (STA), and proposes EAR amendments related to movement of USML items to the CCL, such as new definitions of relevant terms, including “specially designed,” “end items,” “parts,” and “components.” Finally, this notice proposes establishing a new holding Export Control Classification Number (ECCN) in which items that warrant a significant level of control, but are not otherwise classified on the CCL, may be temporarily placed.

DATES: Comments must be received by BIS no later than September 13, 2011.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (<http://www.regulations.gov>). The regulations.gov ID for this rule is: BIS–2011–0015. Comments may also be submitted via e-mail to

publiccomments@bis.doc.gov or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, 14th St. and Pennsylvania Ave., NW., Washington, DC 20230. Please refer to RIN 0694–AF17 in all comments and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–2440, Fax: (202) 482–3355, E-mail: timothy.mooney@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

President Obama directed in August 2009 a broad-based interagency review of the U.S. export control system, including a review of the items on the USML to determine which, if any, continue to warrant ITAR controls. In April 2010, Secretary of Defense Gates described the initial results of this review and why fundamental reform of the export control system, including its lists of controlled items, is necessary to enhance national security. In December 2010, the Departments of Commerce and State described in two Advanced Notice of Proposed Rulemakings that they and the Defense Department were reviewing the State Department’s USML and the Commerce Department’s CCL and were considering how they could be revised to respond to the President’s instructions and to satisfy Section 38(f) of the AECA, 22 U.S.C. 2778(f)(1), which states that the “President shall periodically review the items on the [USML] to determine what items, if any, no longer warrant export controls under [section 2778].” See “Commerce Control List: Revising Descriptions of Items and Foreign Availability,” 75 FR 76664 (Dec.

9, 2010); “Revision to the United States Munitions List,” 75 FR 76935 (Dec. 10, 2010). In addition, the Departments of Commerce and State requested public comments in the ANPRs on how the lists could be made more “positive,” “aligned,” and “tiered.” As described in the ANPRs, “positive” lists use objective criteria for describing controlled items rather than subjective, generic, or design-intent criteria. “Aligned” lists are those that are structured similarly. “Tiered” lists identify the significance of the controlled items. Such lists will better reflect contemporary national security and foreign policy objectives, reduce confusion about which items are controlled and how, and improve the ability of the U.S. Government to monitor and enforce controls on technology transfers with national security implications while helping to speed the provision of equipment to allies and partners who fight alongside United States armed forces in coalition operations.

Based on the results of the Defense Department-led review of the USML, the President has determined, pursuant to AECA section 38(f), that multiple types of items no longer warrant control on the USML and that their jurisdictional status should be changed so that they become subject to the EAR and its controls. Before the President may make such jurisdictional changes, however, he must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The notice must also “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). The purpose of this proposed rule is to describe how items that no longer warrant control on the USML will be controlled by the EAR and its CCL. The State Department will reference this proposed rule, and any applicable follow-on proposed amendments to particular CCL categories, when it submits its 38(f) notices to Congress prior to publishing the final rules that would amend the corresponding USML category or groups of subcategories.

As a result of the Defense Department-led review of the USML, the Department of State plans to propose amendments to the USML to transfer certain items to the CCL and to make each of its categories more positive, and aligned with the CCL. Thus, for example, instead of controlling on the USML all generic “parts,” “components,” “accessories and attachments” that are in any way “specifically designed, modified, adapted, or configured” for a defense article, regardless of military

significance, it will list the specific types of parts, components, accessories and attachments that warrant ITAR controls. All other generic parts, components, accessories and attachments—and the technology for their “production,” “development,” or “use”—that are “specially designed” for an item formerly on the USML and not specifically identified on the USML will become subject to the jurisdiction of the EAR and identified on its CCL after the completion of the AECA section 38(f) process and subsequent corresponding amendments to the ITAR and its USML, and to the EAR and its CCL. Based on the same Defense Department-led review of the USML, the State Department also plans to change the jurisdictional status of militarily less significant end items, such as military recovery vehicles (i.e., tow trucks), when it revises the USML, so that they become subject to the EAR once the same process and amendments are completed.

Wassenaar Arrangement Munitions List (WAML) Items Currently on the CCL

The term “dual-use” is often informally used to describe the types of items subject to the EAR. See 15 CFR 730.3. A dual-use item has commercial applications and also has military applications or proliferation concerns. However, the items subject to the EAR encompass not only commercial items with military applications and proliferation concerns, but also items that are, by their form and fit, uniquely used in military end items. For example, items on the WAML (formerly known as the International Munitions List) that are now subject to the EAR are classified on the CCL under ECCNs ending in “018.”

In addition to the “018” items, under ECCN 0A919, the EAR controls the reexports of certain foreign-made munitions items that incorporate ECCN 6A003.b.4.b cameras that are not otherwise subject to the ITAR. This notice proposes expanding 0A919 to also include foreign-made munitions items that incorporate more than 10% “600 series” controlled content. This rule also makes conforming changes elsewhere in the EAR to reflect this control.

Addressing a Larger Movement of Items From the USML to the CCL

This proposed rule would create a new regulatory structure to address the movement of items from the USML to the CCL resulting from the revision of the USML, but still warrant control by the U.S. Government. This movement is expected to be different in scale from

previous migrations of USML items to the CCL, so it requires more substantial modifications of the CCL. This proposed rule would impose appropriate controls, consistent with Wassenaar Arrangement commitments, other multilateral export control regime commitments and national security, while minimizing the amount of restructuring to the CCL and the rest of the EAR. The movement of items from the USML to the CCL will require some special provisions to be added to the EAR, but these proposed changes are intended to be consistent with the existing EAR structure as much as possible.

Structure of the Discussion of the Proposed Changes in This Rule

This proposed rule includes a number of changes to the CCL and the EAR to address the movement of items from the USML to the CCL. This section provides an outline of the changes that are discussed in further detail under the heading “Proposed Changes.” The discussion of the changes are grouped into four broad headings, described under (1)–(4), below. Under each of the broad headings, this rule provides a discussion of the changes, which often touch on various parts or sections of the CCL and/or other parts of the EAR described under paragraphs at the (A), (i), (a) level below. This outline is not intended to be an exhaustive description of the provisions included in this rule, but is intended to help the public better understand the proposed changes. The public may wish to follow a similar structure when drafting comments on the proposed rule.

(1) “600 Series”

(A) Addition of the “600 series” on the CCL.

(i) Structure of the new “600 series.”

(ii) Reasons for control for the “600 series.”

(iii) Addition of “600 series” items classified under .y to Supplement No. 2 to part 744.

(iv) Items formerly on the USML classified under the “600 series.”

(v) Sample “600 series” entry demonstrating how “parts,” “components,” “accessories and attachments” would be described.

(vi) Current xY018 ECCNs that will be moved to the “600 series” ECCNs (while xY018 entries will continue for cross-reference purposes).

(vii) Conforming changes for other Wassenaar Arrangement Munitions List items on the CCL.

(B) Addition of license review policy for “600 series” items for National Security (NS) and Regional Stability (RS) reasons.

(C) License Exceptions for “600 series” items.

(i) Addition of general restrictions.

(ii) Revision to existing license exceptions to address “600 series.”

(iii) License Exception STA eligibility requests for “600 series” end items.

(a) Proposed new paragraph (g) to § 740.20 (License Exception Strategic Trade Authorization (STA)) explains the process through which license applicants could request License Exception STA eligibility for “600 series” “end items” (as opposed to “parts,” “components,” “accessories and attachments”).

(b) In § 748.8 (Unique application and submission requirements), this notice proposes adding paragraph (w) (License Exception STA eligibility for “600 series” end item requests) to alert license applicants that end items described in § 740.20(g) require unique application and submission requirements.

(c) Web site publication of approved License Exception STA eligibility request determinations under § 740.20(g).

(d) Supplement No. 4 to Part 774—Listing of License Exception STA Eligibility Determinations Pursuant to § 740.20(g) for “600 Series” “End Items” Eligible for License Exception STA under § 740.20(c)(1).

(iv) Other conforming changes to the EAR to address the proposed changes in license exceptions for “600 series” items.

(a) In § 732.4 (Steps regarding using License Exceptions), this proposed rule would revise Step 22 (Terms and Conditions of the License Exceptions) to add a cross reference to the Conventional Arms Reporting requirement in § 743.4 to alert exporters that, if they are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and their item is classified in the “600 series,” they should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports.

(b) Expansion of EAR’s “Know Your Customer” Guidance and Red Flags to provide compliance guidance for License Exception STA and the “600 series.”

(c) Addition of new EAR reporting requirements to support U.S. Government multilateral commitments for reporting of Wassenaar Arrangement Munitions List and formerly USML item exports to certain destinations.

(d) In § 762.2 (Records to be retained), to conform with the new recordkeeping requirements that would be added to the EAR under § 743.4 for Conventional

Arms Reporting and § 740.20(g), License Exception STA eligibility requests for “600 series” end items, this rule would add two new paragraphs to § 762.2 under (b)(47) and (b)(48) to indicate these are additional records that would need to be maintained.

(v) *De minimis* and “600 series” items.

(vi) Other conforming changes to the EAR to address the addition of the “600 series.”

(a) In § 738.2 (Commerce Control List (CCL) structure) under paragraph (d)(1), this proposed rule would add a reference to the “600 series” to indicate that items in which the third character is a “6” are “600 series” items and controlled because they are items formerly on the USML or controlled by the WAML.

(b) Clarification of items of export.

(c) Revisions to Interpretation 8: Ground Vehicles.

(2) Creation of ECCN 0Y521 as an Equivalent to USML Category XXI

(i) Purpose of ECCN 0Y521.

(ii) Sample 0Y521 entry text.

(iii) License requirements and related policies for ECCNs 0Y521.

(iv) Publication of ECCN 0Y521 classifications.

(3) Changes to EAR Definitions To Address the Movement of Items From the USML to the CCL, Including Adopting a Single Definition of “Specially Designed”

(i) Creation of New Definition of “Specially Designed” To Apply to (i) 600 Series ECCNs, (ii) Existing ECCNs Using Term, and (iii) Revised USML Categories Using Term.

(a) Purpose of adopting a single definition of “specially designed.”

(b) “Specially designed” will play an important role in the “600 series.”

(c) Clarifying the meaning of the term “specially designed” will improve the clarity of the control lists.

(d) Goals and limitations of effort to define “specially designed.”

(e) Proposed definition of “specially designed.”

(ii) Addition of ten definitions and revision to two existing definitions.

(4) Other Changes to Assist in the Structural Alignment of the USML and the CCL

(i) Revisions to CCL product group headings for product groups A and C.

(ii) Change of definition of materials (also described under (3)(ii) above).

Proposed Changes

This notice proposes making the following changes to enable control of

items that move from the USML to the CCL:

(1) “600 series”

(A) Addition of the “600 Series” on the CCL

In Supplement No. 1 to part 774 (the Commerce Control List), this rule proposes to add a new “xY6zz” control series to the CCL to control most items formerly on the USML moved to the CCL and to consolidate the thirteen existing WAML entries (i.e., those entries currently under “xY018”) to this new “600 series.” This new control series would be added to each of the 10 CCL categories and would fall after the “300 series” and before the “900 series” on the CCL.

(i) Structure of the new “600 Series”

Commerce would establish a new ECCN series within each CCL category that would be identified by a “6” at the third ECCN character (“xY6zz”) (the “600 series”). This proposal would effectively create a “Commerce Munitions List,” comprising distinct ECCNs, that allows for identification, classification, and control of items transferred from the USML that, based on their technical or other characteristics, are not classified under an existing ECCN that is subject to controls for any reason other than Anti-Terrorism (AT) reasons. This would allow for a straightforward application of a licensing policy for items that move to the CCL from the USML. It would also be a necessary intermediate step to eventually creating a single dual-use and munitions control list, which was identified by the President as a goal during a taped presentation made on August 31, 2010 to the BIS Update Conference 2010. Commerce Secretary Locke and other senior members of BIS also spoke at the same BIS Update Conference, along with other senior members of the Departments of State and Defense, regarding the importance of achieving the goal of creating a single dual-use and munitions control list and the intermediate steps that would need to be taken to accomplish this goal of the Export Control Reform (ECR) initiative. The new “600 series” would be an extension of the existing 000, 100, 200, and 300 series hierarchy in the CCL for items controlled by the various multilateral export control regimes, such as the Australia Group (AG), as outlined in § 738.2.

BIS would retain the existing CCL Category (“x”) (i.e., 0 through 9) structure and the existing Group (“Y”) (i.e., A, B, C, D, and E) structure for the types of items that move to the CCL. If

the type of item to be moved does not fit within the scope of any existing CCL Category’s title or scope, then that type of item would be classified under a new ECCN in CCL Category 0. The fourth and fifth ECCN characters (“zz”) of each new “600 series” ECCN would track the WAML categories for the types of items at issue. WAML ML21 (“software”) and ML22 (“technology”) would, however, be rolled in to the existing D (“software”) and E (“technology”) CCL Category Groups.

The WAML numbering structure for the last two characters would be used rather than the USML numbering structure because the majority of items to be transferred would be subject to the WAML, although the “600 series” would not be limited to items on the WAML. Thus, the numbering scheme would be consistent with such controls. It would also clearly demonstrate that the U.S. continues to control all WAML items. In addition, multinational companies that must deal with both the USML system and the numbering system of most other allied countries (which tracks the WAML) would find compliance and tracking of controlled items somewhat easier.

(ii) Reasons for Control for the “600 Series”

This rule proposes that items in the “600 series” ECCNs would generally be controlled for National Security Column 1 (“NS1”) reasons, which means that a license would be required to export or reexport them to all countries except Canada (excluding items also controlled for Missile Technology (MT), Proliferation of Chemical and Biological Weapons Column 1 (CB1), and Firearms Convention (FC) reasons) unless a license exception were available. MT-, CB1-, and FC-controlled end items that would move from the USML would continue to be controlled for, respectively, MT, CB, and FC reasons like all other MT-, CB1-, and FC-controlled items on the CCL. Multilateral regime-controlled items moved from the USML to the CCL would retain their regime control parameters and reasons for control, even if added to an existing ECCN or added to a new “600 series” ECCN. Items in the “600 series” would generally also be controlled for Regional Stability Column 1, Anti-Terrorism Column 1, and United Nations Embargo reasons for control.

Items that were on the CCL prior to the creation of the “600 series” and that move into the “600 series” after implementation of this rule will retain the reasons for control to which those items were subject prior to the creation of the “600 series.” For example, if an

item currently classified under an ECCN not in the “600 series” were controlled for NS2 or RS2 reasons, such controls would continue to apply after movement of that item to a “600 series” ECCN and NS1 or RS1 controls would not apply.

(iii) Addition of “600 series” items classified under .y to Supplement No. 2 to part 744. In Supplement No. 2 to part 744 (List of Items Subject to the Military End-Use License Requirement of § 744.21), this rule would add a new paragraph (10) to add items classified under paragraph .y of a “600 series” entry (e.g., 0A606.y) to the scope of items subject to the military end-use license requirement of § 744.21 (Restrictions on certain military end-uses in the People’s Republic of China (PRC)). In addition, to conform to the proposed addition of paragraph (10), this rule would revise the introductory text of Supplement No. 2 to highlight the need to reference paragraph (10) for “600 series” items.

(iv) Items Captured Under the “600 Series”

Each of the new “600 series” entries would capture WAML and formerly USML end items that are not identified in either (i) the revised USML or (ii) another existing ECCN controlled for more than AT-only reasons.

Generic “parts,” “components,” “accessories” and “attachments” moved from the USML would be controlled using a similar structure in each of the “600 series” ECCNs that would be added to the CCL. Former USML “parts,” “components,” “accessories and attachments” that are not: (i) identified in the revised, positive USML; (ii) specifically identified in a new 600 series entry; or (iii) described in another ECCN controlled for more than AT-only reasons would be controlled at the end of each new corresponding 600 series ECCN as “parts,” “components,” “accessories and attachments” ‘specially designed’ for (i) items controlled elsewhere in [that ECCN] or (ii) defense articles controlled in [the corresponding USML category].”

(v) Sample “600 Series” Entry for how “Parts,” “Components,” “Accessories and Attachments” Would be Described

The sample “600 series” ECCNs 0A606 and 0B606, included in this proposed rule, demonstrate how these types of parts, components, accessories, and attachments would be described. These items were compiled by the Department of Defense, working with the Departments of State and Commerce, and are based on a review

solely of Category VII (Tanks and Military Vehicles) of the U.S. Munitions List.

“Items” paragraphs 0A606.a through w. would cover the following specific types of items (*e) through (w) would be reserved for future use in the “600 series” entry set out in the proposed amendments in this proposed rule.

Subparagraph “x” for the new ECCNs 0A606 and 0B606 is set out in the proposed amendments in this proposed rule.

Subparagraph “y” for the new ECCN 0A606 would cover specific types of “parts,” “components,” “accessories and attachments” that, even if “specially designed” for a defense article or “600 series” end item warrant no more than AT-only controls. Such “parts,” “components,” “accessories and attachments” would be indicated in new ECCN 0A606 as set out in the proposed amendments in this proposed rule.

The list of 0A606.y items will be identified in an AECA section 38(f) notification, along with the other “600 series” entries included in this proposed rule. Although this proposed rule is focused on creating new controls under the EAR for addressing the movement of items from the USML to the CCL, providing sample entries reflecting what items have already been identified as likely candidates to be moved from the USML to the CCL is intended to better inform the public.

Lastly, other positively identified “parts,” “components,” “accessories and attachments” that are directly related to end items listed in the end items section above would be listed next to the end item to which are they most directly related.

(vi) Current xY018 ECCNs Will be Moved in to the “600 Series” ECCNs

This rule proposes that all xY018 items be moved to the appropriate “600 series” ECCNs so that all Wassenaar Arrangement Munitions List and formerly USML items would be together in one series, which would create a *de facto* Commerce Munitions List inside the larger CCL, consistent with the overall structure of the CCL. This approach would enhance the ability of exporters to find relevant ECCNs and make it easier for the U.S. Government to apply a consistent licensing policy for former USML items. Thus, for example, the items in the ECCN 9A018.b (military vehicles and related parts that are now controlled in the “aerospace and propulsion” CCL category) would be moved to ECCN 0A606 where all other military vehicles and related parts would be controlled.

The old “xY018” entries would remain in the CCL for a time, but solely for cross-reference purposes. This rule proposes adding cross references in the “related controls” paragraph in the List of Items Controlled section of each “xY018” entry. These related control notes would refer to the new classification in the “600 series.” With respect to the new 0A606 entry being proposed, this notice proposes moving 0A018.a to 0A606.a and 9A018.b to 0A606.b.4.

(vii) Conforming Changes for xY018 Items on the CCL

The xY018 entries are also referred to in other provisions of the EAR, such as in the definition of “military end use” in § 744.21(f) of the EAR. There would be a transitional period, after the “600 series” entries are added to the CCL, in which certain xY018 entries would remain in the EAR while others would already have been consolidated into the respective “600 series” ECCNs. Because of this transitional status, the EAR provisions that refer to xY018 entries also would need to be revised to reference the “600 series.” Specifically, this rule proposes adding references to the “600 series” in the following five sections of the EAR that refer to xY018 entries: (i) § 742.6 (Regional stability) under paragraph (a)(4)(i); (ii) § 744.17 (Restrictions on certain exports and reexports of general purpose microprocessors for ‘military end-uses’ and to ‘military end-users’) under paragraph (d); (iii) § 744.21 (Restrictions on certain military end-uses in the People’s Republic of China (PRC)) under paragraph (f); (iv) § 746.3 (Iraq) under paragraph (b)(2); and (v) § 772.1 (Definitions of terms and used in the Export Administration Regulations (EAR)) for the definition of “military commodity.”

(B) Addition of License Review Policy for “600 Series” Items Controlled for National Security Reasons

This rule proposes in § 742.4 (National security) to revise paragraph (b)(1) by redesignating the existing text as paragraph (b)(1)(i) and adding paragraph (b)(1)(ii) to supplement the licensing policy in paragraph (b)(1)(i). Specifically, this new licensing policy in (b)(1)(ii) would state that in addition to the policy set forth in paragraph (b)(1)(i) of this section, items classified under the “600 series” would be subject to a general policy of denial when destined to a country subject to a United States arms embargo. BIS would publish the list of countries subject to a U.S. arms embargo in proposed § 740.2(a)(12), drawing from 22 CFR

126.1 and successive State Department **Federal Register** notices regarding arms embargoed destinations, which are compiled at http://www.pmdtc.state.gov/embargoed_countries/index.html. When this proposed rule is published as a final rule, paragraph (a)(12) would reflect the then-current list of arms embargoed destinations, and as the Department of State publishes amendments to § 126.1 and other arms embargo-related **Federal Register** notices, BIS would make corresponding changes to § 740.2(a)(12). For a determinative understanding at any given time of which countries are subject to a general policy of denial for U.S. arms embargo reasons, however, § 740.2(a)(12) would direct exporters, reexporters and transferors to review relevant the Department of State **Federal Register** notices, compiled at the Web site listed above.

This new license review policy would ensure that the U.S. Government can comply with its multilateral commitments to the United Nations (U.N.) by preventing “600 series” items from being exported to destinations subject to U.N. Security Council arms embargoes. In addition, this new license review policy would ensure that any country subject to a unilateral U.S. arms embargo would also be prevented from receiving “600 series” items.

(C) License Exceptions for “600 Series” Items

(i) Addition of General Restrictions

This rule proposes four changes to part 740 (License Exceptions) to address the movement of items from the USML to the CCL. Specifically, this rule proposes changes to §§ 740.2, 740.10, 740.11 and 740.20.

In § 740.2 (Restrictions on all License Exceptions), this rule proposes adding three new paragraphs, (a)(12), (a)(13) and (a)(14), to restrict the availability of license exceptions for “600 series” items for countries subject to a United States arms embargo. The restrictions on the use of license exceptions under paragraph (a)(12) are specific to countries subject to a United States arms embargo; the restrictions under paragraph (a)(13) are tied to the type of “600 series” item; and the restrictions under (a)(14) are specific to items designated as ECCN 0Y521, discussed below. In proposed paragraph (a)(12), the list of countries subject to a United States arms embargo would be listed for cross reference elsewhere in the EAR. To the extent items subject to the Missile Technology Control Regime (MTCR) are moved from the USML to

the CCL, the same limitations and prohibitions on the use of license exceptions in connection with the export or reexport of MT-controlled items would apply to such items. This rule proposes no changes to the general restriction in paragraph (a)(5) on the use of license exceptions for items controlled for MT reasons, which means that no MT-controlled “600 series” ECCNs would be eligible for license exceptions under the EAR.

Under new paragraph (a)(12), this rule would make “600 series” items that were destined to a country subject to a United States arms embargo ineligible for license exceptions, unless authorized by License Exception GOV under § 740.11(b)(2)(ii). In paragraph (a)(12), the list of countries subject to such an embargo would be set forth. Currently, they are: Afghanistan, Belarus, Burma, China, Cuba, Cote d’Ivoire, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, Yemen, and Zimbabwe. This proposed paragraph (a)(12) would also include a note, as described above, directing exporter, reexporters and transferors to consult the Department of State Web site for the controlling list of countries subject to U.S. arms embargoes.

Under new paragraph (a)(13), this rule would also restrict the availability of license exceptions for “600 series” items to all countries other than those listed in new paragraph (a)(12). These restrictions would be added under three new paragraphs (a)(13)(i), (ii) and (iii).

Paragraph (a)(13)(i) would be specific to end items classified in “xA6zz” entries. This paragraph would exclude the use of license exceptions, except for License Exceptions LVS (§ 740.3); TMP (§ 740.9); RPL (§ 740.10); or GOV (under § 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV under (b)(2)(iii) would only be eligible for the governments identified in (b)(3)(iii), i.e., one of the STA-36 countries, which are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. License Exception STA under § 740.20(c)(1) would be available, provided License Exception STA had been identified by BIS in writing as an eligible license exception for the particular end item classified in an

“xA6zz” ECCN in response to a License Exception STA eligibility request in accordance with proposed § 740.20(g) of the EAR and the end item is destined, at the time of export, reexport or transfer (in-country) for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government in one of the STA-36 countries. The condition that the end item be destined, at the time of export, reexport or transfer (in-country) for ultimate end use by such agencies of a government of one of the STA-36 countries means that exports and reexports to non-governmental end users under STA in STA-36 countries would be permissible so long as the item at issue would ultimately be provided to a STA-36 government for end use by such a government. This eligibility under License Exception STA is proposed because the U.S. Government recognizes that there would be a significant volume of trade between and among private companies in the STA countries regarding “600 series” end items that would ultimately be for use by such agencies in governments in one of the STA-36 countries. Provided these end items would be exported, reexported or transferred (in-country) in accordance with the terms of License Exception STA, U.S. export control interests would be protected while at the same time transactions for the governments of STA-36 countries would be facilitated. BIS particularly welcomes comments on the types of government agencies that would be eligible to ultimately receive items through this license exception. If there are types of agencies that have been omitted from this list but should be included, commenters should provide BIS with this information, including specific examples of such agencies.

Paragraph (a)(13)(ii) would be specific to “parts,” “components,” “accessories and attachments,” in addition to any item classified in a “xB6zz” or “xC6zz” entry. This paragraph would exclude the use of license exceptions, except for License Exceptions LVS (§ 740.3); TMP (§ 740.9); RPL (§ 740.10); and GOV (under § 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV under (b)(2)(iii), which applies to items for official use within national territory by agencies of cooperating governments, would only be available for governments identified in (b)(3)(iii). License Exception STA (§ 740.20(c)(1)) would be available and would not need to be authorized through the § 740.20(g) process that is required for “600 series” end items

identified in (a)(13)(i), provided the “parts,” “components,” “accessories and attachments,” or any item classified in a “XB6zz” or “XC6zz” entry are destined, at the time of export, reexport or transfer (in-country) for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government in one of the countries listed in § 740.20(c)(1). The condition that the end item be destined, at the time of export, reexport or transfer (in-country) for ultimate end use by such agencies of a government of one of the License Exception STA–36 countries would mean that exports and reexports under STA to non-governmental end users in one of the STA–36 countries would be permissible so long as the item at issue would ultimately be provided to a government of one of the STA countries for end use by such agencies of a government.

Paragraph (a)(13)(iii) would be specific to “software” and “technology” classified in a “xD6zz” or “xE6zz” entry. This paragraph would exclude the use of license exceptions, except for License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV under (b)(2)(iii) would only be eligible for those governments identified in (b)(3)(iii). License Exception TSU (§ 740.13(a) and (b)) would also be available. License Exception STA (§ 740.20(c)(1)) would be available, provided the “software” or “technology” is destined, at the time of export, reexport or transfer (in-country) for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government in one of the STA countries listed in § 740.20(c)(1). The condition that the end item be destined, at the time of export, reexport or transfer (in-country) for ultimate end use by such agencies of a government of one of these STA–36 countries means that exports and reexports to non-governmental end users under STA in one of the STA–36 countries would be permissible so long as the item at issue would ultimately be provided to such agencies of a government of one of the STA–36 countries for end use by such a government.

Under new paragraph (a)(14), this rule would restrict using license exceptions for items classified under ECCN 0Y521, described below, unless authorized by License Exception GOV under § 740.11(b)(2)(ii).

(ii) Revision to existing license exceptions to address “600 series.”

In § 740.10 (Servicing and replacement of parts and equipment (RPL)), this rule proposes revising License Exception RPL to add “600 series” “parts,” “components,” “accessories and attachments” to the scope of this authorization. This rule also proposes imposing special restrictions on the use of License Exception RPL for the export or reexport of “parts,” “components,” “accessories and attachments” classified in “600 series” ECCNs. The proposed changes to License Exception RPL would also indicate that this license exception authorizes exports and reexports of certain items “subject to the EAR” to or for a defense article described in an export or reexport authorization issued under the authority of the AECA. The proposed revisions to License Exception RPL would also indicate that the authorization does not, however, authorize the export or reexport of “parts,” “components,” accessories,” or “attachments” that are “defense articles” identified on the USML (22 CFR 120.6 and 121.1).

In § 740.11 (Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV)), this rule proposes revising License Exception GOV to add a new paragraph (b)(3)(iii) to identify which countries would be eligible to receive “600 series” items. This list of countries would be identical to those listed in License Exception STA under paragraph 740.20(c)(1). This rule proposes adding the STA–36 countries to (b)(3)(iii) as eligible to receive “600 series” items.

(iii) License Exception STA eligibility request for “600 series” “end items.”

(a) In § 740.20 (License Exception Strategic Trade Authorization (STA)), this rule proposes adding a new paragraph (g) to create a new interagency process through which license applicants could request License Exception STA eligibility for “600 series” “end items” (as opposed to “parts,” “components,” “accessories,” or “attachments”) classified in an ECCN “xA6zz” entry at the same time that they submit license applications covering such items. This new interagency review process would be a key component of the new control structure that is included in this proposed rule for addressing the movement of items from the USML to the CCL and ensuring that the governments of the STA–36 destinations would have access to these “600 series” “end items” once an interagency review and determination is made that such

“end items” should be exportable under License Exception STA.

Proposed new paragraph (g)(1) would clarify when to submit a request for a License Exception STA eligibility requests for “600 series” end items. Exporters, reexporters, and transferors would request that specific “end items” classified in an ECCN “xA6zz” entry be identified as eligible for License Exception STA. Requests under paragraph (g) could only be submitted to BIS as part of a license application submitted for an export, reexport, or transfer (in-country) for an “end item” classified in an ECCN(s) “xA6zz” entry. Paragraph (g)(1) would specify that requests may not be submitted under paragraph (g) for items controlled for MT reasons, as such items would not be eligible for this procedure. Proposed paragraph (g)(2) would specify what information is required to be included in License Exception STA eligibility requests.

Proposed paragraph (g)(3) would provide the timeline for U.S. Government review of License Exception STA eligibility requests. At this time, BIS anticipates that license applications for “600 series” items and License Exception STA eligibility requests would be reviewed in accordance with the timelines set forth in Executive Order 12981 and § 750.4. With respect to license applications, the U.S. Government intends that after items move from the USML to the CCL, processing times for “600 series” items generally would not increase as compared to when such items were on the ITAR. Pursuant to EO 12981, license decisions under the EAR must be made within 39 calendar days, although the average processing time for BIS in 2011 has been 31 calendar days. For licenses processed by the Department of State, the average processing time has been generally around 17 calendar days. BIS welcomes public comments on an appropriate processing time for license applications involving these “600 series” items, in light of these timeframes. If commenters recommend a shorter review period, it would be useful if they also specify what processing times would be appropriate and identify any unique aspects of the “600 series” that may necessitate a need for a shorter review period, as well as the historical timeframes of the Department of State’s processing of license applications involving such items. With respect to the timeframe for U.S. Government reviews of License Exception STA eligibility requests pursuant to § 740.20(g), BIS also welcomes public comments, particularly in light of the connection

between license applications involving “600 series” items and License Exception STA requests.

Proposed paragraph (g)(4) would describe the process for interagency review of License Exception STA eligibility requests, stating that interagency consensus would be required in the disposition of License Exception STA eligibility requests and identifying the criteria that the U.S. Government would use to review STA requests and make such determinations. Specifically, the Departments of Commerce, Defense and State would assess whether an item will provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. If the item does not provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies, the Departments will determine that License Exception STA is available unless an overarching foreign policy rationale for restricting STA availability can be articulated. Such determinations would be made by the departments’ representatives to the Advisory Committee on Export Policy (ACEP), or their designees. As consensus between the agencies is required for License Exception STA eligibility and such decisions are foreign policy determinations, this rule proposes in a new § 756.1(a)(4) that such decisions would be final agency action on License Exception STA eligibility requests and may not be appealed to the Under Secretary for Industry and Security under part 756 (Appeals).

Proposed paragraph (g)(5) would provide information on the disposition of License Exception STA eligibility requests under paragraph (g)(5)(i) for approvals and under (g)(5)(ii) for denials.

Paragraph (g)(5)(i) would indicate that if the request were approved, the applicant would receive written notification from BIS authorizing the use of License Exception STA for the specific ECCN(s) included in the License Exception STA eligibility request. At this point, anyone complying with the requirements of License Exception STA would be able to use the license exception for the approved end item. After issuing written notification to the application, BIS would post a redacted version of the BIS written response on the BIS Web site (typically within 30 calendar days from the date on which BIS sent the response to the applicant) informing the public of the additional License

Exception STA eligibility for that ECCN. Within approximately three months after sending such a written response to the applicant (i.e., the date on the BIS response sent to the applicant), BIS would publish a final rule adding the License Exception STA eligibility to the EAR for that ECCN in the next quarterly update to Supplement No. 4 (i.e., in January, April, July, or October).

Paragraph (g)(5)(ii) would indicate that if the STA eligibility request were denied, the application would continue to be reviewed under the normal license review process described in part 750 under § 750.4(d)(2). The license application would be reviewed in accordance with the license review policies in part 742 (and parts 744 and/or 746, if applicable) of the EAR. Interagency review of license applications would be conducted without regard to the disposition of an STA eligibility request. Applicants whose requests to make a particular “600 series” end item eligible for STA are denied would not be precluded from resubmitting such a request in connection with a future export of the end item.

To confirm compliance with these provisions of License Exception STA, paragraph (g)(5)(iii) would be added to require that a copy of the BIS written response to the approved License Exception STA eligibility request be kept in accordance with the recordkeeping requirements in part 762 of the EAR in case any questions arise regarding whether that ECCN “xA6zz” end item was eligible to be exported, reexported or transferred (in-country) under License Exception STA.

Also in License Exception STA, but under paragraph (c)(1), this proposed rule would add a new Note to paragraph (c)(1) to indicate that “parts,” “components,” “accessories and attachments” are automatically eligible for License Exception STA under paragraph (c)(1), provided the export, reexport or transfer (in-country) meets the terms of the Note, which would conform with the general restriction on the use of license exceptions in § 740.2(a)(13)(ii) for “600 series” “parts,” “components,” and “accessories and attachments.”

The note is set out in the proposed amendments in this proposed rule.

(b) In § 748.8 (Unique application and submission requirements), this rule proposes adding paragraph (w) (License Exception STA eligibility for “600 series” end items requests) to alert license applicants that end items described in § 740.20(g) require unique application and submission requirements. In Supplement No. 2 to

part 748 (Unique Application and Submission Requirements), this notice proposes adding a corresponding paragraph (w) to identify the unique application and submission requirements for License Exception STA for “600 series” end items requests submitted under § 740.20(g).

Paragraph (w) in Supplement No. 2 to part 748 would indicate that in order to request a License Exception STA eligibility request pursuant to § 740.20(g), you must specify “License Exception STA eligibility requests pursuant to 740.20(g)” in Block 9 (Special Purpose) and mark “export” or “reexport” as applicable in Block 5 (Type of Application) BIS-748P “Multipurpose Application” form. If the application is for an “in-country (transfer),” the applicant would follow the instructions in Supplement No. 2 to part 748 under paragraph (v) to mark in Block 9 (Special Purpose) for in-country transfer and STA eligibility request under 740.20(g), along with marking “reexport” in Block 5.

Applicants would need to provide sufficient information for the U.S. Government to make such a determination. This would require the applicant to submit more than merely a description of the “600 series” end item. In particular, the applicant would need to provide supporting information for why it believes that the item does not, for example, provide a critical military or intelligence advantage to the United States and/or is otherwise available in countries that are not regime partners or close allies. The applicant would also need to provide information regarding whether and, if so, how the item is controlled by the export control laws and regulations of close allies and regime partners, if known. The applicant would further be advised that it may submit additional information that it believes is relevant to the U.S. Government in reviewing the License Exception STA eligibility request either under Block 24 (Additional Information) or as a separate support document attachment to the license application.

(c) Web site publication of approved License Exception STA eligibility request determinations under § 740.20(g).

This rule proposes a two-step process for informing the public of U.S. Government determinations made under § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). The first part of the process would involve publishing these determinations on the BIS website. Specifically, BIS would create on its website a link to the lists of all “600 series” end items that the departments

have agreed would be eligible for License Exception STA (pursuant to § 740.20(g)). BIS would regularly update this list. The descriptions on the list would match (e.g., by model number or other equally specific descriptor) the descriptions of the items in the RWA notices for the License Exception STA eligibility requests. The description does not necessarily need to be limited to a particular manufacturer.

The second part of the process for informing the public of the determinations made under § 740.20(g) (License Exception STA eligibility requests for “600 series” end items) would involve adding the determinations to a new supplement (Supplement No. 4 to part 774) that would be added to the CCL. BIS proposes updating this new supplement on a quarterly basis, as needed, in January, April, July and October of each calendar year. With each quarterly update, BIS would publish in the CCL the specific and general types of “600 series” “end items” that may be exported under License Exception STA.

As noted above, an STA RWA sent to an applicant would contain sufficient detail so that the exporter could have a clear record of the Government’s determination and would be able to cite the document as proof of the License Exception STA eligibility determination made pursuant to § 740.20(g).

(d) Supplement No. 4 to Part 774—Listing of License Exception STA Eligibility Determinations Pursuant to § 740.20(g) for “600 Series” “End Items” Eligible for License Exception STA under § 740.20(c)(1).

This proposed supplement would consist of two columns informing the public of munitions end items that have been determined to be eligible for License Exception STA under § 740.20(c)(1), pursuant to a License Exception STA eligibility determination under § 740.20(g). The two proposed columns on the table are set out in the proposed amendments in this proposed rule.

(iv) Other conforming changes to the EAR to address the proposed changes in license exceptions for the “600 series.”

(a) In § 732.4 (Steps regarding using License Exceptions), this proposed rule would revise Step 22 (Terms and Conditions of the License Exceptions) to add a cross reference to the Conventional Arms Reporting requirement in § 743.4 to alert exporters, if they are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and their item is classified in the “600 series,” they should review § 743.4 of the EAR to determine the applicability of certain reporting

requirements for conventional arms exports. This proposed rule would also revise the last step in § 732.4 (i.e., Step 26 License applications) to add a paragraph describing the process of requesting License Exception STA eligibility for end items classified in an ECCN “xA6zz” entry on the CCL. The revisions to Step 26 would also indicate where exporters, reexporters and transferors could review the list of such end items that have already been approved for License Exception STA. Lastly, to alert exporters, reexporters and transferors who wish to use License Exception STA in such cases in which License Exception STA has been approved, a new Note would be added to remind them to review paragraph (a) and (b) to determine the steps needed in using license exceptions.

(b) Expansion of EAR’s “Know Your Customer” Guidance and Red Flags to provide compliance guidance for License Exception STA and the “600 series.”

This rule proposes adding two paragraphs to Supplement No. 3 to part 732 (BIS’s Know Your Customer Guidance and Red Flags) to provide compliance guidance in the form of two additional red flags exporters, reexporters, and transferors for transactions that are subject to the EAR. One new red flag under new paragraph (b)(13) would refer to License Exception STA and the other would refer under proposed paragraph (b)(14) to the “600 series.”

As these two additional red flags also have broader applicability, they would benefit all persons involved in transactions subject to the EAR in evaluating whether there may be a red flag that would require additional due diligence under the EAR to resolve the red flag prior to proceeding with the transaction. The purpose of this proposed guidance would be to assist persons involved in transactions subject to the EAR, including those authorized under License Exception STA under § 740.20 and/or involved in the export, reexport or transfer (in-country) of “600 series” items to better understand their responsibilities under the EAR and develop voluntary compliance programs.

(c) Addition of new EAR reporting requirements to support U.S. Government multilateral commitments for reporting on munitions exports from the U.S. to certain destinations.

To allow the U.S. Government to fulfill its multilateral commitments to the Wassenaar Arrangement and to the United Nations in regards to reporting on the export of certain items, in part 743 (Special reporting), this rule

proposes adding a new § 743.4 (Conventional arms reporting) to create a new semi-annual reporting requirement (related to the Wassenaar Arrangement) for items that would be classified in the “600 series” and would be specifically identified in new paragraph (c)(1) as items that require reporting under the Wassenaar Arrangement. In this same section, this rule also proposes adding a new annual reporting requirement (related to the United Nations) for items that would be classified in the “600 series” and would be specifically identified in new paragraph (c)(2) as items that require reporting under the United Nations for conventional arms exports. These semi-annual and annual reports would be required for all exports of items identified in § 743.4 (which identifies certain items in the “600 series”) except exports authorized by a BIS export license. The semi-annual and annual reporting requirements would not apply to reexports or transfers (in-country).

Lastly, as a conforming change, this notice proposes revising paragraph (a) of § 743.1 (Wassenaar Arrangement) to clarify that the reporting requirements in this existing section would be specific to items listed on the Wassenaar Arrangement’s Dual-Use list. This proposed revision would alert the public that for reporting requirements for conventional arms listed on the WAML that are subject to the EAR (i.e., “600 series” ECCNs) to see § 743.4 of this part for Wassenaar Arrangement and UN reporting requirements.

(d) In § 762.2 (Records to be retained), to conform with the new recordkeeping requirements that would be added to the EAR under § 743.4 (Conventional arms reporting) and § 740.20(g) (License Exception STA eligibility requests for “600 series” end items), this rule would add two new paragraphs to § 762.2 under (b)(47) and (b)(48) to indicate these are additional records that would need to be maintained.

(v) *De minimis* and “600 series” items.

This rule proposes to add special restrictions for *de minimis* applicability for “600 series” items. The *de minimis* provisions in the EAR set forth the extent to which foreign-made items incorporating U.S. origin content are subject to the EAR. This rule proposes amending § 734.4 (*De minimis* U.S. content) by adding paragraph (b)(3) and making a conforming change to paragraph (c).

This rule proposes restricting the scope of *de minimis* for “600 series” “parts,” “components,” and other items subject to the EAR (i.e., those classified under xB6zz, xC6zz, xD6zz and xE6zz

entries). When foreign-made items that incorporate such controlled U.S. origin “600 series” items are to be exported from abroad or reexported to any country they are subject to the 10% *de minimis* rule for U.S. origin content rather than the 25% *de minimis* rule. New paragraph (b)(3) would thus limit *de minimis* eligibility for these “600 series” items. Specifically, U.S.-origin “600 series” items would be excluded from the 25% *de minimis* rule. The allowable dollar value under the 10% *de minimis* rule is not as permissive as the 25% *de minimis* rule, but even under the more restrictive 10% *de minimis* rule the U.S. Government believes this new proposed *de minimis* eligibility for items previously not eligible for *de minimis* treatment would advance the national security and industrial base objectives of the ECR initiative by reducing the incentive for foreign manufacturers to design out of their products U.S.-origin content.

This rule also would change paragraph (c) (10% *De minimis* Rule) to conform to the revision of paragraph (b).

(vi) Other conforming changes to the EAR to address the addition of the “600 series.”

(a) In § 738.2 (Commerce Control List (CCL) structure) under paragraph (d)(1), this proposed rule would add a reference to the “600 series” to indicate that items in which the third character is a “6” are “600 series” items and controlled because they are Wassenaar Arrangement Munitions List (WAML) and formerly USML items subject to the jurisdiction of the EAR. As described in the changes that would be made to part 772 in this rule, this rule also would add a definition of “600 series” to provide additional information to the public regarding this proposed control series. To explain the meaning of the last two numbers in “600 series” ECCNs, this rule would add a new paragraph (d)(1)(iv) that would indicate that the last two characters of each “600 series” ECCN will track the WAML categories for the types of items at issue. The Wassenaar Arrangement ML21 (“software”) and ML22 (“technology”) however, would be rolled into the existing D (“software”) and E (“technology”) CCL product groups.

(b) Clarification of items of export.

In § 730.3 (Dual use exports) this proposed rule would revise the heading from “Dual use exports” to “Items of export.” This change would be made to the heading and text of the section to more accurately reflect the scope of items subject to export controls under the EAR. Similar to the existing text of the section, the revised text would begin with noting the term “dual use” is often

used to describe the types of items subject to the EAR. The revised section would indicate a dual use item has commercial applications and also has military or proliferation applications, but the more precise way of describing what is subject to the EAR is: Any item that is not exclusively controlled for export or reexport by another agency of the U.S. Government or excluded from the EAR pursuant to section 734.3(b) is an item that is subject to the EAR. Items subject to the EAR include most dual-use items, most commercial items and certain munitions items listed on the WAML classified under ECCNs in the “600 series,” ECCNs ending in “018” (but these “018” ECCNs are expected to be consolidated with the “600 series” in the near future as proposed in this rule) and ECCN 0A919). So although the term dual use in the past may have often been used informally to describe the scope of items subject to the EAR, this term does not accurately reflect the full scope of items that are subject to the EAR and should therefore no longer be used in describing the scope of items subject to the EAR without also referencing that the EAR also controls most commercial items and certain munitions items. The changes proposed for this section would make it clear the scope of items subject to the EAR extends beyond just dual use types of items.

(c) Revisions to Interpretation 8: Ground Vehicles.

In § 770.2 (Item Interpretations), this notice proposes revising “Interpretation 8: Ground Vehicles.” Interpretation 8 would be updated to reflect the revised, “positive” Category VII of the USML and the proposed addition of five new ECCN entries: 0A606, 0B606, 0C606, 0D606 and 0E606, along with the consolidation of 9A018.b into 0A606.b.4. The revised, “positive” USML Category VII and these “600 series” ECCNs would clarify which ground vehicles are subject to the ITAR and which are subject to the EAR. However, because some parts of Interpretation 8 still would serve a purpose in explaining the scope of these new “600 series” entries and the revised USML Category VII, the interpretation would be retained, but updated to reflect the updated control lists.

(2) *Creation of ECCN 0Y521 as an equivalent to USML Category XXI.*

(i) *Purpose of ECCN 0Y521.* As a mechanism for situations in which an item that warrants control is not controlled yet—e.g., as with an emerging technology—this rule proposes the addition of a new, miscellaneous ECCN to the CCL, similar

to USML Category XXI (Miscellaneous Articles).

This new temporary holding classification would be included in Supplement No. 1 to part 774 in ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 (the 0Y521 ECCNs). The 0Y521 ECCNs would be designed as a temporary “holding” category for items not elsewhere classified on the CCL for which the U.S. Government is determining an appropriate control.

(ii) *Sample 0Y521 control text.* Each of the new five 0Y521 ECCNs would contain similar language, as set out in the proposed amendments to 0A521 in this proposed rule.

(iii) *License requirements and related policies for ECCNs 0Y521.* As set forth in § 742.6 (Regional stability) under proposed paragraph (a)(7), items classified under 0Y521 ECCNs would be identified by the Department of Commerce with the concurrence of the Departments of Defense and State. 0Y521 ECCN items would be identified as needed, giving the U.S. Government the opportunity to review the sensitivity of each potential ECCN 0Y521 item on a case-by-case basis and to make a positive determination regarding the sensitivity of each item.

ECCN 0Y521 items would be subject to a nearly worldwide license requirement (i.e., for every country except Canada) with a case-by-case license review policy. This would be accomplished by subjecting 0Y521 items to an RS1 license requirement. No license exceptions would be available for items classified under these ECCNs other than License Exception GOV if within the scope of § 740.11(b)(2)(ii) (Items for official use by personnel and agencies of the U.S. Government). A new § 740.2(a)(14) would be added to reflect this.

ECCN 0Y521 classifications would go into effect upon publication of a final rule in the **Federal Register**, amending the EAR, and would expire one year following the date of **Federal Register** publication. During that period, the U.S. Government would review the ECCN 0Y521 item to determine whether classification under a different ECCN or EAR99 designation might be appropriate. ECCN 0Y521 classification would be removed if one of the following events occurs: (1) The one-year 0Y521 classification period expires; or (2) the item is re-classified under a different ECCN or designated in writing by BIS as EAR99 and the ECCN 0Y521 entry is revised to remove the item. Alternatively, the item’s ECCN 0Y521 classification may be re-extended for one or more one-year periods, provided a consensus determination was made by

the Departments of Commerce, State and Defense to seek multilateral controls for the ECCN 0Y521 item and the U.S. Government submitted a proposal to obtain multilateral controls over the item. The proposed rule specifies that such classification may not be re-extended for more than two one-year periods, i.e., that an item would, at the most, be classified under ECCN 0Y521 for three years.

Although described as a classification, the decision to identify an item as included in an 0Y521 ECCN would be a foreign policy determination, not a technical classification. Pursuant to § 756.1(a)(1), listing of items in Supplement No. 5 to part 774 would be an action that is excluded from the part 756 appeals process.

Finally, this rule proposes revising paragraph (b)(1) licensing policy to add paragraph (a)(7) to the licensing policy in paragraph (b)(1) that applies for exports and reexports described in paragraph (a)(1), (a)(2) or (a)(6). The license review policy would be used to evaluate on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would destabilize a region's military balance contrary to the foreign policy interests of the United States.

(iv) Publication of ECCN 0Y521 classifications.

This rule proposes adding Supplement No. 5 to Part 774—Items Classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. This proposed supplement would consist of a table that would seek to identify the items as “positively” as possible; it may include identifying items by model number or a broader descriptor that would not necessarily be company specific. This table would specifically enumerate the items classified as 0Y521, along with providing information on when such items were classified under the relevant ECCN and when they would be designated as EAR99, be added to another ECCN on the CCL, or be included in a new ECCN on the CCL. Controls on items classified as 0Y521 would not go into effect until the ECCN 0Y521 determinations were published in the **Federal Register** with a description of the 0Y521 classified items added to Supplement No. 5 to part 774. BIS would publish rules revising Supplement No. 5 to part 774 as soon as possible once a new 0Y521 classification was made.

Column 1: Item descriptor. **Note:** The description must match by model number or a broader descriptor that

does not necessarily need to be company specific;

Column 2: Date of initial or subsequent BIS classification.

Column 3: Date on which the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.

(3) Changes to definitions to address the movement of items from the USML to the CCL, including adopting a single definition of “specially designed.”

(i) Creation of New Definition of “Specially Designed” To Apply to (i) 600 Series ECCNs, (ii) Existing ECCNs Using Term, and (iii) Revised USML Categories Using Term.

(a) Purpose of adopting a single definition of “specially designed.”

As described in the ANPRs, a core element of the positive USML review exercise is to avoid using design-intent based control parameters for generic items. The Administration has nonetheless determined that it cannot completely eliminate “specially designed” as a control parameter. The term is commonly used in the multilateral export control regimes’ control lists upon which much of the CCL and USML are based. A basket category for controlling militarily less significant items “specially designed” for defense articles that move to the CCL is still necessary to achieve the larger national security objectives of the reform effort. Creating a positive list of the tens of thousands of such parts, components, accessories, and attachments that warrant some degree of control is not practicable as “specially designed” is used 264 times in the current CCL. Reviewing each such CCL reference, and clearing the proposed revisions through the multilateral regimes where required, is not realistically possible in the near term. Adopting the MTCR’s definition of “specially designed” as the standard for the definition applicable to items controlled by the other multilateral export control regimes or that would move from the USML to the CCL is inappropriate. The U.S. Government has the national authority and discretion to define “specially designed” consistent with its regime commitments.

To accomplish the regulatory and definitional harmonization objectives described in the ANPRs, the definition of “specially designed” must be single, clear, and objective. This proposed rule contains, for public review and comment, a single definition the Administration believes satisfies all these objectives. BIS seeks public comments particularly on whether there would be any anticipated change in controls based on adoption of this

definition, relative to the current situation where “specially designed” is only defined for MT-controlled items. Through this proposed definition, if an item is “specially designed” today, it would continue to be “specially designed” after adoption of this definition. If it is not “specially designed” today (meaning prior to adoption of the definition included in this rule), it also should not, except in rare cases, become “specially designed” after adoption of this definition in a final rule. As a result, BIS strongly encourages the public to apply the proposed definition to items, particularly “end items,” “parts” and “components,” it believes are or are not currently covered by “specially designed” and report to BIS any instances in which the proposed definition produces different results from the current definition. Such comments should describe the item and why the commentator believes that the item at issue is not now “specially designed” but would be as a result of the application of the new definition.

(b) “Specially designed” will play an important role in the “600 series.”

As described above, generic “parts,” “components,” and “accessories and attachments” would be classified under the “600 series” “x” subparagraphs if they were “specially designed” for an end item in that “600 series” ECCN or a defense article in a corresponding USML category. “End items” not specifically enumerated would be classified in the “600 series” if they were “specially designed” for a particular function or purpose or to have a type of capability. The term would also be used by the Department of State in the revised USML categories.

Although a core element of the positive USML review exercise is to avoid using design-intent based control parameters for generic items, the U.S. Government cannot completely eliminate “specially designed” as a control standard for two primary reasons: The term is used in the multilateral regimes’ control lists upon which most of the CCL is based, and a basket category for controlling militarily less significant items “specially designed” for defense articles that move to the CCL is still necessary.

Adopting the MTCR’s definition of “specially designed” as the definition applicable to items controlled by the other regimes or items that would move from the USML to the CCL is inappropriate because of its limitation to items *exclusively* used for the controlled end item at issue. The MTCR definition of “specially designed” is: “Specially designed. (MTCR context)—

Equipment, parts, components, or 'software' that, as a result of development, have unique properties that distinguish them for certain predetermined purposes. For example, a piece of equipment that is "specially designed" for use in a "missile" will only be considered so if it has no other function or use. Similarly, a piece of manufacturing equipment that is 'specially designed' to produce a certain type of component will only be considered such if it is not capable of producing any other type of component. The reliance of the MTCR definition on the concept of exclusively used limits the utility of this term as a single term for all of the items on the two control lists.

The single definition of "specially designed" proposed in this rule would not be limited to items with an exclusive use. In addition, the approach proposed in this rule would avoid confusion for exporters, jurors, prosecutors, and government officials responsible for export controls. Once incorporated into U.S. regulations, the U.S. Government will seek agreement in the Australia Group (AG), Nuclear Suppliers Group (NSG), and WA—which do not currently define the term—to use this definition in those regimes.

(c) Clarifying the meaning of the term "specially designed" will improve the clarity of the control lists.

In addition to playing an important role in the control structure proposed in this rule, the clarification of the meaning of "specially designed" as it is used on the two control lists would improve the clarity and "positive" nature of the two control lists and allow for drawing more clearly defined jurisdictional lines. Other regulatory initiatives are currently under way to address the meaning of other key terms used on the two control lists, such as "technology" and "public domain," and to harmonize those other terms, but the harmonization of "specially designed," given how closely tied the term is to the control structure that has been developed for addressing the movement of items from the USML to the CCL, needs to be addressed now. Specifically, this clarification would definitively answer any questions the public may have regarding the intended meaning of the term "specially designed" for all references to this term on the USML and the CCL and allow the term "specially designed" to play a key role in the "600 series" ECCNs that are proposed to be created.

(d) Goals and Limitations of Effort to Define "Specially Designed."

The U.S. Government has the national authority and discretion to define "specially designed," so long as our definition is consistent with our regime commitments. A single, clear definition is necessary for most of the key goals of the export control reform effort to be realized. Specifically, this single definition must:

Preclude multiple or overlapping controls of similar items within and across the two control lists;

Be capable of being easily understood and applied by exporters, prosecutors, juries, and the U.S. Government—e.g., by using objective, knowable, and clear requirements that do not rely upon a need to investigate and divine the intentions of the original designer of a part or the predominant market applications for such items;

Be consistent with definitions used by the international export control regimes;

Not include any item specifically enumerated on either the USML or the CCL and, in order to avoid a definitional loop, do not use "specially designed" as a control criterion;

Be capable of excluding from control simple or multi-use parts such as springs, bolts, and rivets, and other types of items the U.S. Government determines do not warrant significant export controls;

Be applicable to both descriptions of end items that are "specially designed" to have particular characteristics *and* to parts and components that were "specially designed" for particular end items;

Be applicable to materials and software because they are "specially designed" to have a particular characteristic or for a particular type of end item;

Not result in an increase in the current control level to "600 series" control or other higher end controls of items (i.e., not moving items currently subject to a lower control status to a higher level control status), particularly current EAR99 items, that are now controlled at lower levels; *and*

Not, merely as a result of the definition, cause historically EAR controlled items to become ITAR controlled.

(e) Proposed Definition of "Specially Designed."

BIS, in working closely with the Departments of State and Defense on the issue, has determined that the following proposed definition of "specially designed" achieves the objectives noted above. A proposed definition of the term that would be added to the definitions section of the EAR and the ITAR (the proposed definition of "specially designed" for the ITAR would include

ITAR specific references, ITAR and USML) is set out in the proposed amendments to 15 CFR 772.1 in this proposed rule.

(ii) Addition of ten definitions and revision to one existing definition.

In addition to revising definitions of the terms "specially designed" and "material," which are discussed elsewhere in this proposed rule, in § 772.1 (Definitions of terms used in the Export Administration Regulations (EAR)), this rule also proposes adding ten definitions and revising one definition to aid in the structural alignment of the CCL with the USML and to add specificity regarding what items are classified under certain entries on the CCL. The ITAR and the USML describe with specificity what these defined ITAR terms, described below, are with respect to what defense articles subject to the ITAR are caught or not caught within the scope of specific entries on the USML. The EAR, in many places, does not draw a clear distinction between what constitutes a "part" versus a "component," although in certain places the EAR does draw these types of distinctions. This proposed rule would add these definitions to the EAR. In a separate regulatory initiative, BIS plans to publish another proposed rule that will propose various conforming changes to the CCL and the overall EAR to reflect these new definitions.

Specifically, this rule proposes adding definitions for the following terms, which are used in the EAR but are currently undefined: "600 series," "accessories and attachments," "component," "end item," "equipment," "facilities," "part," "serial production" and "system." It further proposed revising the existing definition of "military commodity," which is noted with an asterisk below.

The proposed definitions for these terms are set out in the proposed amendments in this proposed rule.

(4) *Other changes to assist in the structural alignment of the USML and the CCL.*

(i) Revisions to CCL product group headings for product group A.

To conform to the proposed changes described below under § 770.2, this proposed rule would update the product group heading for A in each Category of the CCL. This proposed change would help with the structural alignment of the CCL and USML by ensuring these terms and control lists' product group headings are used in a consistent way. Specifically, this proposed rule would change the product group A heading as set out in the proposed amendments.

(ii) Change to definition of "Materials."

This proposed rule would not change the heading except for adding quotation marks around the term to indicate it was defined, and would add a new definition in § 772.1 to define the term “materials” as it is used in this CCL Product Group C heading and in other parts of the EAR. Specifically, this proposed rule would add quotes around the product group C heading as set out in the proposed amendments.

In addition, this proposed rule would adopt the definition of “Material” in § 772.1 as set out in the proposed amendments.

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 extended by the Notice of August 12, 2010, 75 FR 50681 (August 16, 2010), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

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 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.

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 Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under the following control numbers: 0694–0088, and 0694–0137. Specifically, BIS would be requesting a revision and extension of existing collection OMB 0694–0088 (Simplified Network Application Processing and Multipurpose Application Form), and 0694–0137 (License Exemptions and Exclusions).

This proposed rule will significantly reduce the overall burden associated with exporting certain items; however, the burden will shift among collections. This proposed rule will increase public burden in a collection of information approved by OMB under control number 0694–0088, which authorizes, among other things, export license applications. The creation of the “600 series” would result in increased license applications being submitted to BIS by exporters. In addition, certain license applications that include License Exception STA eligibility requests for “600 series” end items made pursuant to § 740.20(g) would also involve submitting additional information as part of the license application process. However, some of this increased burden, as noted above, will be mitigated by the availability of certain EAR license exceptions or portions of certain license exceptions for some of these items moved from the USML to the CCL. Total burden hours associated with the Paperwork Reduction Act and OMB control number 0694–0088 are expected to increase by about 5,067 hours (16,000 transactions @ 17 minutes each) if all items anticipated to be moved from the ITAR to the CCL are moved.

This rule also increases public burden in a collection of information approved by OMB under control number 0694–0137. In addition this notice proposes adding certain additional restrictions that will be placed on the use of license exceptions in § 740.2. These changes involve including additional restrictions, but also involve adding license exception eligibility that previously had not been available for these items when they were under the jurisdiction of the ITAR, so any burden should be offset by the benefits of moving such items from the USML to the CCL. BIS expects the requirements, if all items anticipated to be moved from the USML to the CCL are moved, are likely to increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each) for the increase to license exception STA and 95 hours for license exception GOV (1,000 transactions @ 5.7 minutes per transaction).

This increased burden is significantly mitigated by the reductions in burden that would occur as a result of moving these items from the more restrictive licensing regime required by the AECA and implemented in the ITAR to the more flexible licensing regime of the EAR. The movement of these items from the USML to the CCL will significantly reduce the overall burden associated

with exporting such items. Specifically, the movement of these items from the USML to the CCL will address and indeed largely solve simultaneously many of the most significant issues and goals of the ECR effort, such as (i) immediate relief from certain USML controls on non-military end items and militarily less significant parts and components; (ii) the collateral ITAR-specific consequences of such controls (e.g., the need for registration and Manufacturing Licensing Agreements (MLAs)/Technical Assistance Agreements (TAAs)); (iii) the process to accomplish the already agreed-upon transfer of such items to the CCL to allow for more flexible controls consistent with the criteria developed under the ECR initiative; and (iv) the collateral consequences of the “see-through” rule and the “ITAR-free” issues that create an incentive for foreign companies to buy foreign-made items that are not on the WAML instead of the U.S.-origin versions that are on the USML as a result of its broad controls over generic parts and components. For these reasons, BIS has determined that any increase in the burden associated with these collections is offset by the benefits of moving these items from the USML to the CCL. In addition, as noted above, looking at the overall burden on exporters under the U.S. export control system, the movement of these items from the USML to the CCL would result in a “net reduction” in the overall burden on exporters under the U.S. export control system.

Lastly, with respect to the PRA estimates included in this proposed rule, BIS has worked with the Department of State to estimate the volume of export related activity for these items that may be moved over, but given the “positive” review of the USML is still ongoing and there are other steps that are required prior to any items being moved from the USML to the CCL, such as the AECA section 38(f) notification process with Congress, the numbers used in this PRA estimate are a rough estimate that will be revised as subsequent rules begin the process of formally moving certain items from the USML to the CCL.

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

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted in final form, would not have

a significant economic impact on a substantial number of small entities.

Number of Small Entities

Currently, BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be impacted by this rule, it does acknowledge that this rule will impact some unknown number.

Economic Impact

Under the ECR initiative, a revised, “positive” USML is being created to protect and enhance U.S. national security interests by focusing munitions controls subject to the jurisdiction of the ITAR on the most sensitive items. As part of the ECR initiative to create a revised, “positive” USML, militarily less significant items will be moved from the USML to the CCL after the completion of the AECA section 38(f) process and subsequent corresponding amendments to the ITAR and its USML and to the EAR and its CCL.

BIS believes focusing U.S. export controls in this way will reduce the costs on small entities (and all other entities) subject to U.S. export controls, once this process of revising the two control lists and moving the militarily less significant items from the USML to CCL is completed in 2012, as currently projected. BIS believes that this rule would reduce the costs to small entities (and all other entities) because it would create a control structure under the EAR that would allow militarily less sensitive items to be moved from the USML, to the CCL and be subject to a more flexible licensing regime under the EAR.

BIS believes the creation of the control structure included in this proposed rule is a prerequisite before any items could be moved from the USML to the CCL (*i.e.*, before small entities and all other entities could benefit from the movement of items from the USML to the CCL). The purpose of this rule is to propose the new control structure and to explain to small entities (and all other entities) how items moved from the USML will be classified under the CCL and what other provisions will be added to the EAR to address the movement of items from the USML to the CCL. The control structure itself will not impact the regulated entities until items are moved from the USML to the CCL.

This rule will create new license requirements such as imposing a NS1 and RS1 worldwide license requirement, except for Canada, for the items moved from the USML to the CCL

that would be classified in the new “600 series.” This rule will significantly reduce the costs on small entities (and all other entities) by allowing for certain *de minimis* eligibility for these items moved from the USML to the CCL, but certain restrictions on the use of *de minimis* and restrictions on the use of license exceptions would be added to the EAR which create limits on small entities (and all other entities). This rule would also create new reporting requirements related to the export of certain “600 series” items under new § 743.4. However, these new reporting requirements can be conceptualized as a shifting the reporting burdens as the burdens are largely the same in type and scope as those required under the USML. As a result, although the reporting requirement proposed in this rule is a new reporting requirement under the EAR, the burden placed on small entities (and all other entities) is not increased in terms of the overall burden placed on them under the U.S. export control system.

BIS believes the additional controls and requirements discussed above are required to protect U.S. national security and that the benefits of moving these items from the USML to the CCL far outweigh any additional costs associated with moving these militarily less sensitive items to the CCL both from a U.S. national security perspective and in terms of the costs placed on small entities (and all other entities). In addition, as much as possible, these additional controls would be added to the CCL in a manner that is consistent with the existing CCL and EAR control structure to minimize the costs associated with understanding and complying with these new controls.

In addition to the establishment of a control structure, this rule proposes to move a limited number of items from the USML to the CCL as a pilot. Because this rule proposes to move only a relatively small number of items from the USML to the CCL at this time, the economic impact of this rule will be minimal. These items would be moved from Category VII (Tanks and Military Vehicles) of the U.S. Munitions List to the following five ECCNs included in this proposed rule: 0A606, 0B606, 0C606, 0D606 and 0E606. Future transfers of items from the USML to the CCL will be conducted under separate rulemakings and BIS will conduct an analysis regarding each rule’s economic impact.

The other changes included in this proposed rule, in particular the clarification of “specially designed,” will benefit small entities (and all other entities), once a larger number of items

are moved from the USML to the CCL in subsequent rulemakings because of the improved clarity of the control lists and the improvements that will occur in drawing a bright line between the two control lists. The focusing of the two control lists, along with the clarification of key control lists terms such as “specially designed”—a term small entities (and all other entities) have long requested be clarified under U.S. export controls—and the other changes included in this proposed rule to structurally align the two control lists are expected to reduce the costs on small entities (and all other entities) of complying with U.S. export controls.

Although BIS is not able to quantify the economic impact, it estimates that small entities (and all other entities) would benefit from the movement of these items from the USML to the CCL. BIS believes moving certain parts and components from the USML to the CCL in particular would reduce the costs on small entities (and all other entities), once such items are moved from the USML to the CCL in subsequent rulemakings. Specifically, BIS believes that moving these militarily less sensitive parts and components to the CCL will address and indeed largely solve simultaneously many of the most significant issues and goals of the ECR effort, such as (i) Immediate relief from USML control of non-military end items and militarily less significant parts and components; (ii) the collateral ITAR-specific consequences of such controls (e.g., the need for registration and MLAs/TAAAs); (iii) the process to accomplish the already agreed-upon transfer of such items to the CCL to allow for more flexible controls consistent with the criteria developed under the ECR initiative; (iv) the collateral consequences of the “see-through” rule and the “ITAR-free” issues that create an incentive for foreign companies to buy foreign-made items that are not on the WAML instead of the U.S.-origin versions that are on the USML as a result of its broad controls over generic parts and components.

Conclusion

BIS is unable to determine whether there are a substantial number of small entities affected by this rule. However, the effect of this rule on all entities is not likely to be a significant economic impact because, as mentioned above, through this proposed rule is limited to creating the new control structure and moving only a small, first tranche of items from the USML to the CCL.

BIS believes, along with the other agencies participating in the ECR

initiative, that distinguishing between different levels of sensitivity to determine what items need to be maintained on the USML and what militarily less sensitive items should be transferred to the CCL to allow for more flexible licensing for the militarily less sensitive items will have significant benefits in improving the efficiency of the U.S. export control system by focusing the most restrictive controls on the most sensitive items, which will protect and enhance U.S. national security while also reducing the costs associated with complying with U.S. export controls, particularly for small and medium-sized entities. Specifically, moving these militarily less sensitive items to the EAR will protect and enhance U.S. national security by improving the interoperability of U.S. military forces with allied countries and reducing the incentive to design-out U.S.-origin items. Reducing the incentive to design out U.S.-origin “600 series” items, along with all of the other benefits that come along with moving these items to the more flexible licensing regime of the EAR will help protect the U.S. industrial base. This is essential to ensuring the U.S. armed forces are properly equipped.

For the reasons above, the Chief Counsel for Regulation certified that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 732

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Parts 738 and 772

Exports.

15 CFR Parts 740, 748 and 770

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 730, 732, 734, 738, 740, 742, 743, 744, 746, 748, 756, 762, 770, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

PART 730—[AMENDED]

1. The authority citation for 15 CFR part 730 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. 2151 note; 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. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009 (January 18, 2011).

2. Section 730.3 is revised to read as follows:

§ 730.3 Items of export.

The term “dual use” is often used to describe the types of items subject to the

EAR. A dual use item has commercial applications and also has military applications or proliferation concerns, but the more precise way of describing what is subject to the EAR is: any item that is not exclusively controlled for export or reexport by another agency of the U.S. Government or excluded from the EAR pursuant to section 734.3(b) is an item that is subject to the EAR. Items subject to the EAR encompass not only commercial items with military applications and proliferation concerns, but also certain items that, by their form and fit, are uniquely used in military end items. Items subject to the EAR include most dual-use items, most commercial items and certain munitions items listed on the Wassenaar Arrangement Munitions List (WAML) or formerly on the USML classified under ECCNs in the “600 series,” ECCNs ending in “018” (but these “018” ECCNs are expected to be consolidated with the “600 series” in the near future) and ECCN 0A919). So although the term dual use in the past may have often been used informally to describe the scope of items subject to the EAR, this term no longer accurately reflects the full scope of items that are subject to the EAR and should therefore no longer be used in describing the scope of items subject to the EAR without also referencing that the EAR also controls most commercial items and certain munitions items.

PART 732—[AMENDED]

3. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

4. Section 732.4 is amended:

- a. By adding one sentence to the end of paragraph (b)(3)(iv);
- b. By revising paragraph (b)(7); and
- c. By adding a Note to paragraph (b)(7)(ii), to read as follows:

§ 732.4 Steps Regarding Using License Exceptions.

* * * * *

(b) * * *

(3) * * *

(iv) * * * If you are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and your item is classified in the “600 series,” you should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports.

* * * * *

(7) Step 26: License applications.

(i) If you are going to file a license application with BIS, you should first review the requirements at part 748 of the EAR. Exporters, reexporters, and transferors should review the instructions concerning applications and required support documents prior to submitting an application for a license.

(ii) If you are going to file a license application with BIS for the export, reexport or in-country transfer for an "end item" classified in an ECCN "xA6zz" entry on the CCL, you may also request as part of the license application a License Exception STA eligibility request pursuant to the process in § 740.20(g) of the EAR. "End items" classified in an ECCN "xA6zz" entry on the CCL that have already been determined to be eligible for License Exception STA pursuant to § 740.20(g) are identified in Supplement No. 4 to part 774 of the EAR. See Supplement No. 2 to part 748 under paragraph (w) (License Exception STA eligibility requests) for instructions concerning applications and required support documents prior to submitting an application for a license which will include a License Exception STA eligibility requests.

Note to paragraph (b)(7)(ii): If you intend to use License Exception STA, return to paragraphs (a) and then (b) to review the Steps regarding the use of license exceptions.

5. Supplement No. 3 to part 732 is amended by adding paragraphs (b)13. and (b)14., to read as follows:

SUPPLEMENT NO. 3 TO PART 732—BIS'S "KNOW YOUR CUSTOMER" GUIDANCE AND RED FLAGS

* * * * *

(b) * * *

13. You receive an order for "parts" for an item in the "600 series." The requested "parts" may be eligible for License Exception STA, another authorization, or may not require a destination-based license requirement for the country in question. However, the requested "parts" would be sufficient to service one hundred of the "600 series" items, but you "know" the country does not have those types of end items or only has two of those end items.

14. The customer indicates that a "600 series" item may be reexported to a country subject to an arms embargo (see § 740.2(a)(12)).

PART 734—[AMENDED]

6. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p.

228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

7. Section 734.4 is amended:

- a. By revising the heading and the introductory text of paragraph (b);
b. By adding paragraph (b)(3); and
c. By revising the introductory text of paragraph (c), to read as follows:

§ 734.4 De minimis U.S. content.

* * * * *

(b) Special requirements for certain encryption items and "600 series" items subject to the EAR. Foreign made items that incorporate U.S. origin encryption items that are listed in this paragraph are subject to the EAR unless they meet the de minimis level and destination requirements of paragraph (c) or (d) of this section and the requirements of this paragraph. For foreign made items that incorporate U.S.-origin "600 series" items, see paragraph (b)(3) of this section.

* * * * *

(3) Foreign made items incorporating U.S.-origin items classified under the "600 series" (i.e., "xY6zz") are excluded from the "25% De minimis Rule" in paragraph (d) of this section. See the "10% De minimis Rule" in paragraph (c) of this section for exports from abroad or reexports for foreign made items incorporating U.S.-origin items classified under the "600 series" ECCNs (i.e., "xY6zz").

* * * * *

(c) 10% De Minimis Rule. Except as provided in paragraphs (a) and (b)(1)(iii) of this section and subject to the provisions of paragraphs (b)(1)(i), (b)(1)(ii), (b)(2) and (b)(3) of this section, the following reexports are not subject to the EAR when made to any country in the world. See Supplement No. 2 of this part for guidance on calculating values.

* * * * *

PART 738—[AMENDED]

8. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

9. Section 738.2 is amended:

- a. In the introductory text of paragraph (b) by removing "A—

Equipment, Assemblies and Components" and adding in its place, "A—End Items, Equipment, Accessories and Attachments, Parts, Components, and Systems";

b. In the introductory text of paragraph (d)(1) by adding paragraphs "5:" and "6:" after paragraph "3:" and before paragraph "9:"; and

c. By adding paragraph (d)(1)(iv), to read as follows:

§ 738.2 Commerce Control List (CCL) structure.

* * * * *

(d) * * *

(1) * * *

5: Items warranting national security or foreign policy controls at the determination of the Department of Commerce.

6: "600 series" controls items because they are items on the Wassenaar Arrangement Munitions List (WAML) or formerly on the USML.

* * * * *

(iv) Last two characters in a "600 series" ECCN. The last two characters of each "600 series" ECCN track the Wassenaar Arrangement Munitions List (WAML) categories for the types of items at issue. The WAML ML21 ("software") and ML22 ("technology") are, however, included in D ("software") and E ("technology") CCL product groups.

* * * * *

PART 740—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 7201 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

11. Section 740.2 is amended:

- a. By adding paragraph (a)(12), a note to paragraph (a)(12), and paragraphs (a)(13) and (a)(14); and

b. By adding a note to paragraph (a), to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(12) Items classified under the "600 series" that are destined to a country subject to a United States arms embargo or a United Nations Security Council arms embargo (Afghanistan, Belarus, Burma, China, Cote d'Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, Sudan, Sri Lanka, Syria, Venezuela, Vietnam, Yemen, and

Zimbabwe) may not be authorized under any license exception except by License Exception GOV under § 740.11(b)(2)(ii).

Note to paragraph (a)(12): Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this paragraph is drawn from 22 CFR 126.1 and State Department **Federal Register** notices related to arms embargoes (compiled at http://www.pmdtc.state.gov/embargoed_countries/index.html) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this paragraph and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

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

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

- (A) License Exception LVS (§ 740.3);
- (B) License Exception TMP (§ 740.9);
- (C) License Exception RPL (§ 740.10);
- (D) License Exception GOV

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

(E) License Exception STA under § 740.20(c)(1), provided License Exception STA has been identified by BIS in writing or published as an eligible license exception for the particular "600 series" end item in response to a License Exception STA eligibility request in accordance with § 740.20(g) of the EAR and the ultimate end use for the end item is by a government in one of the countries listed in § 740.20(c)(1). Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a

government of one of the § 740.20(c)(1) countries.

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

- (A) License Exception LVS (§ 740.3);
- (B) License Exception TMP (§ 740.9);
- (C) License Exception RPL (§ 740.10);
- (D) License Exception GOV

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

(E) License Exception STA under § 740.20(c)(1), provided the ultimate end use for the "parts," "components," "accessories and attachments" or for any item classified in a "600 series" product group B or C ECCN is by a government in one of the countries listed in § 740.20(c)(1). Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries. This provision does not alter the limitations on the use of License Exception STA contained in § 740.20(b)(2).

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

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

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

(C) License Exception STA (§ 740.20(c)(1)), provided the ultimate end use for the "software" or "technology" is by a government in one of the countries listed in § 740.20(c)(1). Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries. This provision does not alter the limitations on the use of License

Exception STA contained in § 740.20(b)(2).

(14) Items classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 may only be authorized by License Exception GOV (§ 740.11(b)(2)(ii)).

Note to paragraph (a): Items subject to the exclusive export control jurisdiction of another agency of the U.S. Government may not be authorized by a license exception or any other authorization under the EAR. If your item is subject to the exclusive jurisdiction of another agency of the U.S. Government, you must determine your export licensing requirements pursuant to the other agency's regulations. See § 734.3(b) and Supplement No. 3 to part 730 for other U.S. Government Departments and Agencies with Export Control Responsibilities.

* * * * *

12. Section 740.10 is amended:

- a. By revising the heading of the section;
 - b. By revising the introductory text of the section;
 - c. By revising paragraph (a);
 - d. By revising paragraph (b)(1);
 - e. By revising paragraph (b)(2)(ii);
 - f. By revising paragraph (b)(3)(i);
 - g. By revising paragraph (b)(3)(ii)(C);
- and
- h. By revising paragraph (c), to read as follows:

§ 740.10 Servicing and replacement of parts, components, accessories, and attachments (RPL).

This License Exception authorizes exports and reexports associated with one-for-one replacement of parts, components, accessories, and attachments. License Exception RPL also authorizes exports and reexports of certain items currently "subject to the EAR" to or for, or to replace, a defense article described in an export or reexport authorization issued under the authority of the Arms Export Control Act. It does not, however, authorize the export or reexport of "parts," "components," "accessories and attachments" that are "defense articles" currently identified on the United States Munitions List (22 CFR 121.1).

(a) "*Parts*," "*Components*," "*Accessories and Attachments*"—(1) *Scope*. The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts, components, accessories, and attachments for previously exported equipment or other end items.

(2) *One-for-one replacement of parts, components, accessories, or attachments*. (i) The *terms replacement parts, components, accessories, or attachments* as used in this section mean parts, components, accessories, or attachments needed for the immediate

repair of equipment or other end items, including replacement of defective or worn parts or components. (It includes 'subassemblies' but does not include test instruments or operating supplies.) (The term 'subassembly' means a number of parts or components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment or other end item upon which they are installed, are not deemed to be replacement parts, components, accessories, or attachments. For kits consisting of replacement parts or components, consult § 740.9(a)(2)(ii) of this part.

(ii) Parts, components, accessories, and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments, respectively, contained in commodities that were: lawfully exported from the United States; lawfully reexported; or made in a foreign country incorporating authorized U.S.-origin parts, components, accessories, or attachments. "600 series" parts, components, accessories and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments that were: lawfully exported from the United States; or lawfully reexported. (For exports or reexports to the installed base in Libya, see § 764.7 of the EAR.) The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts, components, accessories, and attachments may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the existence of appropriate authority for the original transaction.

(iii) The parts, components, accessories, or attachments to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacements, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions to License Exception RPL.* (i) No replacement parts, components, accessories, or attachments may be exported to repair a commodity exported under a license or other authorization if that license or other authorization included a condition that

any subsequent replacements must be exported only under a license.

(ii) No parts, components, accessories, or attachments may be exported to be held abroad as spares for future use. Replacements may be exported to replace spares that were authorized to accompany the export of equipment or other end items, as those spares are used in the repair of the equipment or other end item. This is intended to allow maintenance of the stock of spares at a consistent level as the parts, components, accessories, or attachments are used.

(iii) No parts, components, accessories, or attachments may be exported to any destination, except the countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End Use Restrictions in § 744.2(a)), if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an "aircraft" (as defined in part 772 of the EAR) or is controlled for NS reasons.

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment classified under ECCN 2A983 or related software classified under ECCN 2D983.

(vi) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is concealed object detection equipment classified under ECCN 2A984 or related software classified under ECCN 2D984.

(vii) The conditions described in this paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments do not apply to reexports to a foreign country of parts, components, accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in § 734.4 of the EAR (*de minimis* U.S. content).

(vii) Parts, components, accessories, and attachments classified in "600 Series" ECCNs may not be exported or reexported to a country identified in § 740.2(a)(12).

(4) *Reexports.* (i) Parts, components, accessories, and attachments exported from the United States may be reexported to a new country of destination, provided that the conditions established in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts, components, accessories, or attachments shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be lawfully used, and that either before or promptly after reexport of the replacement parts, components, accessories, or attachments, the replaced commodities and software are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(ii) The conditions described in paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments (excluding "600 series" ECCNs) do not apply to reexports to a foreign country of parts, components, accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the foreign-origin product is not subject to the EAR pursuant to § 734.4.

(b) *Servicing and replacement—(1) Scope.* The provisions of this paragraph (b) authorize the export and reexport to any destination, except destinations identified in § 740.2(a)(12) or otherwise prohibited under the EAR, of commodities and software that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) * * *

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts, components, accessories, or attachments necessary to its repair and may be accompanied by any spare part, component, tool, accessory, attachment or other item that was sent with it for servicing.

* * * * *

(3) * * *

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace

defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software is “subject to the EAR.”

(B) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BIS or an authorization, e.g., a license or exemption, issued under the authority of the Arms Export Control Act.

(C) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(D) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally authorized, e.g., under a license, license exception or an exemption, for export or reexport.

(E) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part), or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(F) Commodities or software “subject to the EAR” and classified in “600 Series” ECCNs may not be exported or reexported to a destination identified in § 740.2(a)(12).

(ii) * * *

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement is exported from the United States.

* * * * *

(c) *Special recordkeeping requirements: ECCNs 2A983, 2A984, 2D983 and 2D984, and “600 Series” ECCNs.* (1) In addition to the other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair, replace, or service previously lawfully exported or reexported items classified under ECCNs 2A983, 2A984, 2D983 and 2D984 or a “600 Series” ECCN. The following information must be maintained for each such export or reexport transaction:

- (i) A description of the item replaced, repaired or serviced;
- (ii) The type of repair or service;
- (iii) Certification of the destruction or return of item replaced;
- (iv) Location of the item replaced, repaired or serviced;
- (v) The name and address of those who received the items for replacement, repair, or service;
- (vi) Quantity of items shipped; and
- (vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. Records that must be included in the annual or semi-annual reports of exports and reexports of “600 Series” items under the authority of License Exception RPL are described in § 743.4 and § 762.2(b)(4), (b)(47) and (b)(48).

13. Section 740.11 is amended by adding paragraph (b)(3)(iii), to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(b) * * *

(3) * * *

(iii) *Agency of a government eligible to receive “600 series” items.* Only the countries listed in § 740.20(c)(1) are eligible to receive “600 series” items.

* * * * *

14. Section 740.20 is amended:

- a. By adding a Note to paragraph (c)(1); and
- b. By adding paragraph (g), to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(c) * * *

Note to paragraph (c)(1). License Exception STA under § 740.20(c)(1) may be used to authorize the export, reexport or transfer (in-country) of “600 series” items, provided the ultimate end-use for the “parts,” “components,” “accessories and attachments” or for any item classified in a “600 series” product group B or C ECCN is by a government in one of the countries listed in § 740.20(c)(1). For “600 series” end items, see paragraph (g) of this section. Exports and reexports to non-governmental end-users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries. This provision does not alter the limitations on

the use of License Exception STA contained in § 740.20(b)(2).

* * * * *

(g) *License Exception STA eligibility requests for “600 series” end items.*

(1) *Applicability.* Exporters, reexporters and transferors may request License Exception STA eligibility for “end items” classified in a “600 series” product group A ECCN. License Exception STA requests under this paragraph (g) may only be submitted together with a license application submitted to BIS for an export, reexport or transfer (in-country) of an “end item” classified in a “600 series” product group A ECCN.

(2) *Required information for requests.* A License Exception STA eligibility request must include the following statement, “Request for additional License Exception STA eligibility for ECCN(s) “xA6zz.” For information on what information must be submitted and the information required in the BIS-748P Multipurpose Application form, see Supplement No. 2 to part 748.

(3) *Timeline for USG review.* The U.S. Government reviews license applications and License Exception STA eligibility requests at the same time to determine whether either submission should be approved. Both license applications for “600 series” items and License Exception STA eligibility requests would be reviewed in accordance with the timelines set forth in Executive Order 12981 and § 750.4. If the License Exception STA request is approved, the process outlined in paragraph (g)(5)(i) of this section is followed.

(4) *Review criteria.* The Departments of Commerce, Defense and State will determine whether the item is eligible for this license exception based on an assessment of whether it provides a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. If the item does not provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies, the Departments will determine that License Exception STA is available unless an overarching foreign policy rationale for restricting STA availability can be articulated. Consensus between the Departments is required in order for an “end item” to be eligible for License Exception STA. Such determinations are made by the departments’ representatives to the Advisory Committee on Export Policy (ACEP), or their designees.

(5) *Disposition of License Exception STA eligibility requests.*

(i) *Approvals.* If the request is approved, the applicant will receive written notification from BIS authorizing the use of the additional License Exception STA for the specific items requested. Applicants who receive an approval request may share that written notification with companies affiliated with them, such as a branch or distributor, and may also take steps to make it public (e.g., on their Web site) if the applicants so wish. In addition, BIS will add a description of the approved end item in an online table which will use the same format as Supplement No. 4 to part 774, which removes the restriction on the use of License Exception STA for the end item identified in the approved request. The description of these end items will be posted on the BIS Web site (typically within 30 calendar days from date on which the approved response was sent), informing other exporters, reexporters and transferors of the additional license exception eligibility for that “600 series” product group A ECCN. Within approximately three months after such a written response was sent to the applicant (i.e., the date of the BIS response sent to the applicant), in either a January, April, July, or October quarterly update of Supplement No. 4 to part 774 (Listing of License Exception STA Eligibility Determinations Pursuant to § 740.20(g) for “600 Series” “End Items” Eligible for License Exception STA under § 740.20(c)(1)), BIS will publish a final rule adding this license exception eligibility to the EAR for that ECCN entry.

(ii) *Denials.* If the STA eligibility request is not approved, the license application will be reviewed under the normal license review process described in part 750. The STA eligibility review is completed concurrently with the license application review period. The license application will be reviewed in accordance with the license review policies in part 742 (and parts 744 and/or 746, if applicable). Interagency review of license applications is conducted without regard to the disposition of an STA eligibility request. Applicants may re-submit STA eligibility requests at any time.

(iii) *Recordkeeping requirements for approved License Exception STA eligibility requests.* BIS written responses to License Exception STA eligibility requests (either from the BIS Web site or in original form) must be kept in accordance with the recordkeeping requirements in part 762 of the EAR.

PART 742—[AMENDED]

15. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

16. Section 742.4 is amended by revising paragraph (b)(1), to read as follows:

§ 742.4 National security.

* * * * *

(b) *Licensing policy.* (1)(i) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1.

(ii) When destined to a country subject to a United States arms embargo (see § 740.2(a)(12), however, items classified under “600 series” ECCNs are subject to a general policy of denial.

* * * * *

17. Section 742.6 is amended:

a. By revising paragraph (a)(1);

b. In the introductory text of paragraph (a)(4)(i) by removing the text “and .b” after the text “9A018.a” in three places where the text appears;

c. By adding paragraph (a)(7); and

d. By revising the first sentence of paragraph (b)(1), to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only “software” for the “development” or “production” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002

(only “software” for the “use” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only “software” for the “development,” “production,” or “use” of equipment classified under 6A002.e or 6A998.b); 6E001 (only “technology” for “development” of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only “technology” for “production” of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only “technology” for the “development,” “production,” or “use” of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only “software” for “development” or “production” of items in 7A001, 7A002, or 7A003); 7E001 (only “technology” for the “development” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only “technology” for the “production” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only “technology” for the “use” of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft).

* * * * *

(7) *RS Column 1 license requirements and related policies for ‘0Y521.’*

(i) *Scope.* This paragraph (a)(7) supplements the information in the ‘0Y521’ ECCNs and in Supplement No. 5 to part 774 (Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521). This subparagraph alerts exporters, reexporters and transferors to the procedures that apply to items classified under the ‘0Y521’ ECCNs.

(ii) *‘0Y521’ Items.* Items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State has determined should be controlled for export because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons shall be classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. These items are typically emerging technologies (including emerging commodities, software and technology) that are not otherwise yet included in the CCL, so such items are listed on the CCL through ECCNs ‘0Y521’ until the items are classified under another ECCN.

(iii) *Requirement to be classified under another ECCN within one calendar year of classification under ECCN '0Y521.'* Items classified under an ECCN '0Y521' entry must be reclassified within one calendar year from the date they are listed in Supplement No. 5 to part 774 of the EAR. If such reclassification does not occur within that period, classification under an ECCN '0Y521' entry expires, and such items are designated as EAR99 items unless the CCL is amended to either impose a control on such items under another ECCN or to re-extend for another one-year period (not to exceed two extensions) the classification under ECCN '0Y521.'

(b) *Licensing policy.* (1) Applications for exports and reexports described in paragraph (a)(1), (a)(2), (a)(6) or (a)(7) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.

* * * * *

PART 743—[AMENDED]

18. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

19. Section 743.1 is amended by adding two sentences at the end of the introductory text of paragraph (a), to read as follows:

§ 743.1 Wassenaar Arrangement.

(a) * * * This section is limited to the Wassenaar Arrangement reporting requirements for items listed on the Wassenaar Arrangement's Dual-Use list. For reporting requirements for conventional arms listed on the Wassenaar Arrangement Munitions List that are subject to the EAR (i.e., "600 series" ECCNs), see § 743.4 of this part for Wassenaar Arrangement and United Nations reporting requirements.

* * * * *

20. Add § 743.4, to read as follows:

§ 743.4 Conventional arms reporting.

(a) *Scope.* This section outlines special reporting requirements for exports of certain items controlled under the Wassenaar Arrangement Munitions List and the UN Register of Conventional Arms. Participating States of the Wassenaar Arrangement exchange information every six months on deliveries to non-participating states of

conventional arms set forth in the Wassenaar Arrangement's Basic Documents under Part II Guideline and Procedures, including the Initial Elements, Appendix 3: Specific Information Exchange on Arms Content by Category (at <http://www.wassenaar.org>), derived from the categories of the UN Register of Conventional Arms (at <http://www.un.org/disarmament/convarms/Register/HTML/RegisterIndex.shtml>). Similar, although not identical information is also reported by the U.S. Government to the United Nations on an annual basis. The reported information should include the quantity and the name of the recipient state and, except in the category of missiles and missile launchers, details of model and type. Such reports must be submitted to BIS semi-annually in accordance with the provisions of paragraph (f) of this section for items identified in paragraph (c)(1) and annually for items identified in paragraph (c)(2), and records of all exports subject to the reporting requirements of this section must be kept in accordance with part 762 of the EAR. This section does not require reports for reexports or transfers (in-country).

Note to paragraph (a): For purposes of § 743.4, the term "you" has the same meaning as the term "exporter", as defined in part 772 of the EAR.

(b) *Requirements.* You must submit one electronic copy of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) Exports authorized under License Exceptions LVS, TMP, RPL, STA, or GOV (see part 740 of the EAR);

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR); and

(3) Exports authorized under the Validated End User authorization (see § 748.15 of the EAR).

(c) *Items for which reports are required* —. (1) Wassenaar Arrangement reporting. You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [RESERVED]

(ii) [RESERVED]

(2) *United Nations reporting.* You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [RESERVED]

(ii) [RESERVED]

(d) *Country Exceptions for Wassenaar Arrangement reporting.* You must report each export subject to the provisions of this section, except for exports to Wassenaar member countries, identified in Supplement No. 1 to part 743 for reports required under paragraph (c)(1) of this section.

(e) *Information that must be included in each report.* (1) Each report submitted to BIS for items other than those identified in paragraph (e)(2) of this section must include the following information for each export during the time periods specified in paragraph (f) of this section:

(i) Export Control Classification Number and paragraph reference as identified on the Commerce Control List;

(ii) Number of units in the shipment; and

Note to paragraph (e)(1)(ii): For exports of technology for which reports are required under § 743.1(c) of this section, the number of units in the shipment should be reported as one (1) for the initial export of the technology to a single ultimate consignee. Additional exports of the technology must be reported only when the type or scope of technology changes or exports are made to other ultimate consignees.

(iii) Country of ultimate destination.

(f) *Frequency and timing of reports*—

(1) *Semi-annual reports for items identified in paragraph (c)(1) of this section.* You must submit reports subject to the provisions of this section semiannually. The reports must be labeled with the exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during six month time periods spanning from January 1 through June 30 and July 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than [INSERT DATE] for the partial reporting period beginning [INSERT DATE] and ending [INSERT DATE]. Thereafter, reports are due according to the provisions of paragraphs (f)(2) and (f)(3) of this section.

(ii) Reports for the reporting period ending June 30 must be submitted to and received by BIS no later than August 1.

(iii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(2) *Annual reports for items identified in paragraph (c)(2) of this section.* You must submit reports subject to the provisions of this section annually. The reports must be labeled with the

exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during twelve month time periods spanning from January 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than [INSERT DATE] for the partial reporting period beginning [INSERT DATE] and ending [INSERT DATE]. Thereafter, reports are due according to the provisions of paragraph (f)(2) of this section.

(ii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(g) *Submission of reports.* Information should be submitted in the form of an EXCEL spreadsheet and e-mailed to *WAreports@BIS.DOC.GOV* or *UNreports@BIS.DOC.GOV*.

(h) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of National Security and Technology Transfer Controls, Tel. (202) 482-0092, Fax: (202) 482-4094.

PART 744—[AMENDED]

21. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009, January 18, 2011.

22. Section 744.17 is amended:
a. By revising the section heading;
and
b. By revising paragraph (d), to read as follows:

§ 744.17 Restrictions on certain exports and reexports of general purpose microprocessors for 'military end uses' and to 'military end users.'

(d) *Military end use.* In this section, the phrase 'military end use' means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International

Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); commodities classified under ECCNs ending in "A018" or under "600 series" product group A, B, or C ECCNs; or any item that is designed for the "use," "development," "production," or deployment of military items described on the USML, the Wassenaar Arrangement Munitions List or classified under ECCNs ending in "A018" or under "600 series" product group A, B, or C ECCNs. Supplement No. 1 of this part lists examples of 'military end use.'

* * * * *

23. Section 744.21 is amended by revising the first sentence of paragraph (f), to read as follows:

§ 744.21 Restrictions on certain military end uses in the People's Republic of China (PRC).

* * * * *

(f) In this section, 'military end use' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); incorporation into items classified under ECCNs ending in "A018" or under "600 series" product group A, B or C ECCNs; or for the "use," "development," or "production" of military items described on the USML or the Wassenaar Arrangement Munitions List, or items classified under ECCNs ending in "A018" or under "600 series" product group A, B or C ECCNs.

* * * * *

24. Supplement No. 2 to part 744 (List of Items Subject to the Military End-Use License Requirement of § 744.21) is amended:

a. By revising the introductory text of the Supplement; and

b. By adding paragraph (10), to read as follows:

SUPPLEMENT NO. 2 TO PART 744—LIST OF ITEMS SUBJECT TO THE MILITARY END-USE LICENSE REQUIREMENT OF § 744.21

The following items, as described, are subject to the military end-use license requirement in § 744.21. See paragraph (10) for items classified under the "600 series."

* * * * *

(10) "600 series."

(i) Any item classified in paragraph .y of a "600 series" entry (e.g., 0A606.y).
(ii) [Reserved]

PART 746—[AMENDED]

25. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007-7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

26. Section 746.3 is amended by revising paragraph (b)(2), to read as follows:

§ 746.3 Iraq.

* * * * *

(b) * * *

(2) License applications for the export or reexport to Iraq or transfer within Iraq of machine tools controlled for national security (NS) or nuclear nonproliferation (NP) reasons, as well as for any items controlled for crime control (CC) or United Nations (UN) reasons (including items classified under ECCN 0A986) or ECCNs that end in the number "018" or items classified under "600 series" ECCNs, that would make a material contribution to the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction, ballistic missiles or arms and related materiel will be subject to a general policy of denial.

* * * * *

PART 748—[AMENDED]

27. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

28. Section 748.8 is amended by adding paragraph (w), to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(w) License Exception STA eligibility requests for "600 series" end items.

29. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by adding paragraph (w), to read as follows:

SUPPLEMENT NO. 2 TO PART 748— UNIQUE APPLICATION AND SUBMISSION REQUIREMENTS

* * * * *

(w) *License Exception STA eligibility requests for “600 series” end items.* To request a License Exception STA eligibility requests for “600 series” items pursuant to § 740.20(g), you must specify “License Exception STA request pursuant to 740.20(g)” in Block 9 (Special Purpose) and mark “export” or “reexport” as applicable in Block 5 (Type of Application) of the BIS–748P “Multipurpose Application” form. If the application is for an “in-country (transfer)” follow the instructions in Supplement No. 2 to part 748 under paragraph (v) to mark in Block 9 (Special Purpose) for in-country transfer and License Exception STA eligibility request pursuant to § 740.20(g), along with marking “reexport” in Block 5. Applicants will need to provide sufficient information for the U.S. Government to make such a determination. This will require the applicant to submit more than merely a description of the end item. In particular, the applicant will need to provide supporting information for why it believes that the item does not, for example, provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. The applicant will also need to provide information regarding whether and, if so, how the item is controlled by the export control laws and regulations of close allies and regime partners, if known. The applicant should provide BIS with the text it would propose BIS use in describing the end item in Supplement No. 4 to part 774 and the online table referenced in § 740.20(g)(5)(i) in anticipation the request may be approved pursuant to § 740.20(g). You may submit additional information that you believe is relevant to the U.S. Government in reviewing the License Exception STA eligibility request either under Block 24 (Additional Information) or as a separate support document attachment to the license application.

PART 756—[AMENDED]

30. The authority citation for 15 CFR part 756 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

31. Section 756.1 is amended by adding paragraph (a)(4), to read as follows:

§ 756.1 Introduction.

(a) * * *

(4) A decision to make License Exception STA available for “600 series” “end items” pursuant to § 740.20(g).

* * * * *

PART 762—[AMENDED]

32. The authority citation for 15 CFR part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

33. Section 762.2 is amended:

- By revising paragraph (b)(4);
- In paragraph (b)(45) by removing the “and” at the end of the paragraph;
- In paragraph (b)(46) by removing the period at the end of the paragraph and adding a semi-colon at the end of the paragraph; and
- By adding paragraphs (b)(47) and (b)(48), to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(4) § 740.10, Servicing and replacement of parts, components, accessories, and attachments (RPL);

* * * * *

(47) § 743.4, Conventional Arms Reporting under (c)(1) and (c)(2); and

(48) § 740.20(g), Responses to License Exception STA eligibility requests for “600 series” end items.

* * * * *

PART 770—[AMENDED]

34. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

35. Section 770.2 is amended by revising paragraph (h), to read as follows:

§ 770.2 Item interpretations.

* * * * *

(h) *Interpretation 8: Ground vehicles.*

(1) BIS has export licensing jurisdiction over ground transport vehicles (including trailers), parts, and components therefor specially designed or modified for non-combat military use. Vehicles in this category are primarily transport vehicles designed or modified for transporting cargo, personnel and/or equipment, or to move other vehicles and equipment over land and roads in close support of fighting vehicles and troops. BIS also has export licensing jurisdiction over unarmed civil vehicles that are all-wheel drive sport utility vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection, including protection to level III (as defined by the Department of Justice’s National Institute of Justice Standard 0108.01, September 1985) or

better. In this section, and in ECCN 0A606, the word “unarmed” means not having weapons installed, not having mountings for weapons installed, and not having special reinforcements for mountings for weapons.

(2) Modification of a ground vehicle for military use entails a structural, electrical or mechanical change involving one or more “specially designed” military components. Such components include, but are not limited to:

- Pneumatic tire casings of a kind designed to be bullet-proof or to run when deflated;
- Tire inflation pressure control systems, operated from inside a moving vehicle;

- Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs);

- Special reinforcements for mountings for weapons; and
- Black-out lighting.

(3) Scope of ECCN 0A606.b.4 and ground vehicles designated as EAR99.

- Ground transport vehicles (including trailers) “specially designed” for non-combat military use are classified under ECCN 0A606.b.4.

- Unarmed civil all-wheel drive vehicles capable of off-road use that are not described in paragraph (h)(4) of this section and which have been manufactured or fitted with materials to provide ballistic protection to level III (as defined by DOJ’s National Institute of Justice Standard 0108.01, September 1985) or better are classified under ECCN 0A606.b.4.

Note 1 to paragraph (h)(3)(ii): ECCN 0A606.b.4 does not include ‘civil automobiles’, or trucks designed or modified for transporting money or valuables, having armored or ballistic protection, even if the automobiles or trucks incorporate items described in paragraphs (h)(2) (i), (ii), or (iii) of this section, provided the ‘civil automobile’ is not an all-wheel drive vehicle capable of off-road use.

Note 2 to paragraph (h)(3)(ii). In this section, the term ‘civil automobile’ means a passenger car, limousine, van or sport utility vehicle designed for the transportation of passengers and marketed through civilian channels in the United States.

- Certain “parts,” “components,” “accessories,” and “attachments” that are related to items classified under ECCN 0A606.b.4 will be specifically identified in the respective subparagraphs of ECCN 0A606.b.4. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity classified under ECCN 0A606 or a defense article in USML Category VII are classified under 0A606.x. Specific “parts,” “components,” “accessories,”

“attachments” of less military significance, but warrant AT-controls that are related to items classified under ECCN 0A606.b are classified under 0A606.y.

(iv) *EAR99*. Ground vehicles that are not described in paragraph (h)(4) of this section and that are not classified under either ECCN 0A606 or 9A990 are designated as EAR99 items, meaning that they are subject to the EAR, but not listed in any specific ECCN.

(4) *Related control*. The Department of State, Directorate of Defense Trade Controls (DDTC) has export licensing jurisdiction for all military ground armed or armored vehicles and parts and components specific thereto as described in 22 CFR part 121, Category VII. DDTC also has export licensing jurisdiction for all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR part 121.

* * * * *

PART 772—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

37. Section 772.1 is amended:
a. By revising the definition of “military commodity,” and “specially designed;” and
b. By adding the following ten definitions for the terms “600 series,” “accessories and attachments,” “component,” “end item,” “equipment,” “facilities,” “material,” “part,” “serial production,” and “system” as set forth below:

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

600 series. This is a control series in the “xY6zz” format on the Commerce Control List (CCL) that controls items on the CCL that were previously controlled on the United States Munitions List or because they are covered by the Wassenaar Arrangement Munitions List (WAML). The “6” indicates the entry is a munitions entry on the CCL. The “x” represents the CCL category and “Y” the CCL category of the respective “600 series” ECCNs, such as ECCN 0A606. The “600 series” constitutes the Commerce Munitions List within the larger CCL.

* * * * *

Accessories and attachments. These are associated items for any “component,” “end item,” or “system,” and which are not necessary for their operation, but which enhance their usefulness or effectiveness. For example, for a riding lawnmower, accessories and attachments will include the bag to capture the cut grass, and a canopy to protect the operator from the sun and rain.

* * * * *

Component. This is an item that is useful only when used in conjunction with an “end item.” Components are also commonly referred to as assemblies. For purposes of this definition an assembly and a component are the same. There are two types of “components”: “Major components” and “minor components.” A “major component” includes any assembled element which forms a portion of an “end item” without which the end item is inoperable. For example, for an automobile, components will include the engine, transmission, and battery. If you do not have all those items, the automobile will not function, or function as effectively. A “minor component” includes any assembled element of a “major component.” “Components” consist of “parts.” References in the CCL to “components” include both “major components” and “minor components.”

* * * * *

End item. This is a combination of “components,” “parts,” “accessories and attachments,” or material in the form of a product, system, or piece of equipment that is ready for its intended stand-alone use, such as a ship, aircraft, firearm, or milling machine.

* * * * *

Equipment. This is a set of tools, devices, kits, or similar items assembled for a specific purpose. Equipment is a subset of “end items.”

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Facilities. This means a building or outdoor area in which people use an item that is built, installed, produced, or developed for a particular purpose.

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Material. This is any list-specified crude or processed matter that is not clearly identifiable as any of the types of items defined in section 772.1 under the defined terms, “end item,” “component,” “accessories and attachments,” “part,” “software,” “system,” “equipment,” or “facilities.”

* * * * *

Military commodity. As used in § 734.4(a)(5), Supplement No. 1 to part 738 (footnote No. 3), § 740.2(a)(11),

§ 740.16(a)(2), § 740.16(b)(2), § 742.6(a)(3), § 744.9(a)(2), § 744.9(b), ECCN 0A919 and ECCNs 0A606, 0B606, 0C606, 0D606, 0E606, and 6A003 (Related Controls), “military commodity” or “military commodities” means an article, material or supply that is described on the United States Munitions List (22 CFR Part 121) or on the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, but does not include software, technology and any item listed in any ECCN for which the last three numerals are 018 or any item in the “600 series.”

* * * * *

Part. This is any single unassembled element of a component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. Examples include threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire.

* * * * *

Serial production. A type of production where the “items” being produced are no longer in “development.” In this type of production the “items” have passed production readiness testing (i.e., an approved, standardized design ready for large scale production) and are being or have been produced based on the approved, standardized design, including and especially on assembly lines.

* * * * *

Specially designed.—
(a) A “specially designed” item, other than a “part” or “component,” is an item that is enumerated on the CCL and, as a result of “development,” has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions of the referenced item identified in the CCL.

(b) A “specially designed” “part” or “component” is a “part” or “component” of an item ‘enumerated’ in a category of the CCL.

(c) For the purposes of this definition, an item is not considered “specially designed” if it is separately ‘enumerated’ in an USML subcategory or an ECCN that does not have “specially designed” as a control criterion.

(d) Items that are not so separately ‘enumerated’ for purposes of this definition, are also not considered

“specially designed” in any category of the CCL if they are:

(1) A single, unassembled part used in multiple types of civil items, such as threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire; or

(2) An item specifically excluded from control on the USML or the CCL; or

(3) A “part” or “component” used as a “part” or “component” of an end-item in “serial production” and not ‘enumerated’ on the USML or CCL (i.e., the end item is an EAR99 item), and the part’s or component’s form, fit, and function have not been altered for use in another end item enumerated on the USML or CCL after “serial production” of the end-item not enumerated on the USML or CCL has begun; or

(4) A “part” or “component” that can be exchanged with an EAR99 or AT-only controlled “part” or “component” on a one-for-one replacement basis without modification to the form, fit and function of the EAR99 or AT-only “part” or “component,” and the EAR99 or AT-only part’s or component’s function is identical to the “part” or “component” at issue.

Note 1 to Definition: The definition of “specially designed” does not extend control to items simply because they could in theory be used with the listed item on the USML or CCL.

Note 2 to Definition: This definition of “specially designed” is not applicable to the phrase “specifically designed” in use throughout the U.S. Munitions List or to “especially designed or prepared for” in use throughout the Nuclear Regulatory Commission regulations (see 10 CFR part 110).

Note 3 to Definition: ‘Enumerated’ means any item identified on either the USML or CCL that is controlled for more than AT-only reasons. For example, integrated circuits are identified in both the USML Category XV(d), ECCN 3A001.a, and 3A991. An integrated circuit, therefore, is a separately enumerated item that is not a “specially designed” “part” or “component” for purposes of this definition if it is within the control parameters of ECCN 3A001.a, which is an ECCN controlled for more than AT-only reasons. An integrated circuit is not a separately enumerated item if it is not within the control parameters of ECCN 3A001.a, but is within the control parameters of 3A991, which is controlled only for AT reasons. An item that falls within the technical or other parameters of an existing ECCN that has more than AT-only controls is classified under that ECCN unless the ECCN includes a “related control” note identifying that an additional control parameter needs to be assessed in a 600 series ECCN.

Note to Exclusion Paragraph Number 1: “Threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs, and wire” are identified as representative types of items excluded from the definition of “specially designed” for non-enumerated items because they are commonly used in end items that are described, generally or specifically, in multiple USML and CCL categories. Bolts are in ground vehicles, planes, and ships, for example. For purposes of exclusion paragraph number 1, the part remains excluded even if it varies by physical dimensions or materials from other parts of the same type. A pivot block that is used to hold an axle assembly to a vehicle is, although a single unassembled item, only used on vehicles. Items such as pivot blocks are thus not excluded from “specially designed” by virtue of exclusion paragraph number 1, although they are not precluded from being excluded by another paragraph in the definition.

Note to Exclusion Paragraph Number 2: Examples of items specifically excluded from control on the USML are (i) “aircraft” tires and propellers used with reciprocating engines identified in USML subcategory VIII(h) and the types of items identified as not subject to USML Category VIII in the “Note” to that category. Examples of items specifically excluded from control on the CCL are those items that may be identified at the end of each of the 600 series ECCNs as a result of notices in response to license applications.

Note to Exclusion Paragraph Number 3: “Serial production” is defined in section 772.1 as a type of production where the “items” being produced are no longer in “development.” In this type of production the “items” have passed production readiness testing (i.e., an approved, standardized design ready for large scale production) and are being or have been produced based on the approved, standardized design, including and especially on assembly lines. “Development,” is defined in EAR section 772.1 as being “related to all stages prior to serial production, such as: Design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.” Items in “serial production” that are subsequently subject to “development” activities, such as those pertaining to quality improvements, cost reductions, or feature enhancements, remain items in “serial production.” Any new models or versions of such items developed from such efforts are in “development” until and unless they enter into “serial production.”

System. This is a combination of end items, components, parts, accessories, attachments, firmware or software that are designed, modified or adapted to

operate together to perform a specialized function.

* * * * *

PART 774—[AMENDED]

38. 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 12, 2010, 75 FR 50681 (August 16, 2010).

39. In Supplement No. 1 to part 774 (the Commerce Control List) is amended:

a. By removing the product group A heading “SYSTEMS, EQUIPMENT AND COMPONENTS” and adding in its place the product group A heading “END ITEMS,” “EQUIPMENT,” “ACCESSORIES AND ATTACHMENTS,” “PARTS,” “COMPONENTS,” AND “SYSTEMS”; and

b. By adding quotes around the product group C heading MATERIALS.

40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A018 is amended:

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

b. By removing and reserving “items” paragraph (a) in the List of Items Controlled section, to read as follows:

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

* * * * *

0A018 Items on the Wassenaar Munitions List

* * * * *
List of Items Controlled
* * * * *

Related Controls: (1) See also 0A979, 0A988, and 22 CFR 121.1 Categories I(a), III(b–d), and X(a). (2) See 0A606.a for construction equipment built to military specifications that was classified under 0A108.a.

* * * * *

Items:
a. [RESERVED];

* * * * *

41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items),

ECCN 0A919 is amended by revising the “Items” paragraph to read as follows:

0A919 “Military commodities” as Follows (see List of Items Controlled)

* * * * *

Items: “Military commodities” with all of the following characteristics:

a. Described on either the United States Munitions List (22 CFR part 121) or the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (as set out on its Web site at <http://www.wassenaar.org>), but not any item listed in any Export Control Classification Number for which the last three characters are 018 or any item in the “600 series”;

b. Produced outside the United States;

c. Not subject to the International Traffic in Arms Regulations (22 CFR parts 120–130) for a reason other than presence in the United States; and

d. Either of the following characteristics:

- d.1. Incorporate one or more cameras classified under ECCN 6A003.b.4.b; or
- d.2. Incorporate more than 10% “600 series” controlled content.

42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), is amended:

a. By adding two Export Control Classification Numbers (ECCNs) 0A521 and 0A606 after ECCN 0A002 and before ECCN 0A918,

b. By adding two ECCNs 0B521 and 0B606 after ECCN 0B006 and before ECCN 0B986;

c. By adding two ECCNs 0C521 and 0C606 after ECCN 0C201 and before ECCN 0D001;

d. By adding two ECCNs 0D521 and 0D606 after ECCN 0D001 and before ECCN 0D999; and

e. By adding two ECCNs 0E521 and 0E606 after ECCN 0E001 and before ECCN 0E918, to read as follows;

0A521 Any Item Subject to the EAR That is not Listed Elsewhere in the CCL but Which is Controlled for Export Because it Provides at Least a Significant Military or Intelligence Advantage to the United States or for Foreign Policy Reasons. 0A521 Items are Subject to RS1 Controls With no License Exception Eligibility Other Than GOV for U.S. Government Personnel and Agencies Under § 740.11(b)(2)(ii). The list of Items Determined To Be Classified Under ECCN 0A521 Controls is Published in Supplement No. 5 to Part 774. The Policies and Procedures Relating to ECCN 0A521 are set Forth in 15 CFR 742.6(a)(7)

0A606 Ground Vehicles, “Parts” and “Components”, as follows:

License Requirements

Reason for Control: NS, RS, AT, UN

| Control(s) | Country chart |
|-----------------------------|--|
| NS applies to entire entry. | NS Column 1, except 0A606.y. |
| RS applies to entire entry. | RS Column 1, except 0A606.y. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry. | Cote d’Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan, except 0A606.y. |

License Exceptions

LVS: \$1500 for 0A606.a, .b, .c; N/A for Cote d’Ivoire, Democratic Republic of Congo, Lebanon, Liberia, Sierra Leone, or Somalia.

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 0A606. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any “end item” in 0A606, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). See § 740.20(g) for the procedures to follow if you wish to request new STA eligibility for “end items” under this ECCN 0A606 as part of an export, reexport or in-country (transfer) license application. “End items” under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS Web site at <http://www.bis.doc.gov>

List of Items Controlled

Unit: Equipment in number; “parts” and “components” in \$ value

Related Controls: (1) See 0B606 for test, inspection and production equipment that is “specially designed” to test, inspect, produce, or develop commodities controlled by 0A606. (2) See 0C606 for material that is “specially designed” for the “development,” or “production” of commodities controlled by 0A606. (3) See 0D606 for “software” for the “development,” “production” or “use” of ground vehicles, “parts” and “components” controlled by 0A606. (4) See 0E606 for “technology” “required” for the “development,” “production” or “use” of ground vehicles, “parts” and “components” controlled by 0A606. (5) See ECCN 7A611 for guidance and navigation equipment. (6) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (7) See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

Related Definitions: N/A

Items:

a. Construction equipment built to military specifications, including equipment “specially designed” for airborne transport; crew protection kits used as protective cabs;

b. Other equipment as follows:

- b.1. Tanks manufactured in or prior to 1955 (unless weapon is functional);
- b.2. Armored combat vehicles manufactured in or prior to 1955 (unless weapon is functional);
- b.3. Armored combat support vehicles manufactured in or prior to 1955;
- b.4. Armored vehicles employing armor that provides ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better but do not meet the criteria for USML Category VII control (See § 770.2(h)—Interpretation 8). This includes unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection to level III or better.

b.5. Ground transport vehicles (including trailers) “specially designed” for non-combat military use not controlled under USML Category VII;

- b.6. Military railway trains, except those “designed or modified” for missile launch;
- b.7. Unarmored military recovery vehicles;
- b.8. Unarmored military amphibious vehicles;

b.9. Unarmored vehicles with mounts or hard points for firearms of .50 Cal. or less.

c. Air-cooled diesel engines and engine blocks for armored combat vehicles over 40-tons.

d. Fully automatic continuously variable transmission for tracked combat vehicles.

e. through w. [RESERVED]

x. “Parts,” “components,” “accessories and attachments” that are “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VII.

y. Specific “parts,” “components,” “accessories and attachments” “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VII but which have little or no military significance (see list of items controlled).

y.1. Brake system components (discs, rotors, shoes, drums, springs, cylinders, lines, hoses);

y.2. Alternators or generators;

y.3. Axles;

y.4. Batteries;

y.5. Bearings (ball, roller, wheel);

y.6. Blackout lights;

y.7. Cables/cable assemblies/connectors;

y.8. Cooling system hoses;

y.9. Filters (hydraulic, fuel, oil, air);

y.10. Gaskets and o-rings;

y.11. Hydraulic system hoses, fittings, couplings, adapters, and valves;

y.12. Latches and hinges;

y.13. Lighting systems, fuses and components;

y.14. Pneumatic hoses, fittings, adapters, couplings and valves;

y.15. Seats, seat assemblies, seat supports, harnesses;

y.16. Tires, except run flat;

y.17. Windows, except those for armored vehicles.

Note: Vehicles are considered manufactured after 1955 if, at any time after 1955, any of the following changes occur:

- a. Propulsion upgrade to a formerly gasoline powered armored vehicle with either diesel or multi-fuel capability;
- b. Armor upgrade to employ reactive armor;
- c. Fire control upgrade with a digital control system;
- d. Addition of laser designator or laser rangefinder;
- e. Addition of autoloader or similar assisted loading/round selection;
- f. Increase of gun bore to larger than 90 mm; or
- g. Conversion to unmanned operation.

* * * * *

OB521 Any item subject to the EAR that is not listed elsewhere in the CCL but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. OB521 items are subject to RS1 controls with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN OB521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN OB521 are set forth in 15 C.F.R. Section 742.6(a)(7).

OB606 Test, inspection and production “equipment” that is “specially designed” to test, inspect, produce, or develop commodities controlled by 0A606.

License Requirements

Reason for Control: NS, RS, AT, UN

| Control(s) | Country chart |
|-----------------------------|--|
| NS applies to entire entry. | NS Column 1, except 0B606.y. |
| RS applies to entire entry. | RS Column 1, except 0B606.y. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry. | Cote d’Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan, except 0B606.y. |

License Exceptions

LVS: \$1500; N/A for Cote d’Ivoire, Democratic Republic of Congo, Lebanon, Liberia, Sierra Leone, or Somalia.

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 0B606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, “parts” and “components.” (2) See 0C606 for material that is “specially designed” for the “development,” or “production” of commodities controlled by 0A606. (3) See 0D606 for “software” for the “development,” “production” or “use” of ground vehicles, “parts” and “components” controlled by 0A606. (4) See 0E606 for “technology” “required” for the “development,” “production” or “use” of ground vehicles, “parts” and “components” controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

Related Definitions: N/A

Items:

- a. Armor plate drilling machines, other than radial drilling machines;
- b. Armor plate planing machines;
- c. Armor plate quenching presses; and
- d. Tank turret bearing grinding machines.
- e. through w. [RESERVED]
- x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VII.
- y. Specific “parts,” “components,” “accessories,” “attachments” “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VII but which have little or no military significance (see list of items controlled).
- y.1. [RESERVED]

OC521 Any item subject to the EAR that is not listed elsewhere in the CCL but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. OC521 items are subject to RS1 controls with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN OC521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN OC521 are set forth in 15 CFR 742.6(a)(7).

OC606 Material that is “specially designed” for the “development,” or “production” of commodities controlled by 0A606.

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. |

| Control(s) | Country chart |
|-----------------------------|--|
| UN applies to entire entry. | Cote d’Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan. |

License Exceptions

LVS: \$1500; N/A for Cote d’Ivoire, Democratic Republic of Congo, Lebanon, Liberia, Sierra Leone, or Somalia.

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 0C606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, “parts” and “components.” (2) See 0B606 for test, inspection and production equipment that is “specially designed” to test, inspect, produce, or develop commodities controlled by 0A606. (3) See 0D606 for “software” for the “development,” “production” or “use” of ground vehicles, “parts” and “components” controlled by 0A606. (4) See 0E606 for “technology” “required” for the “development,” “production” or “use” of ground vehicles, “parts” and “components” controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

Related Definitions: N/A

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

* * * * *

OD521 Any item subject to the EAR that is not listed elsewhere in the CCL but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. OD521 items are subject to RS1 controls with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN OD521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN OD521 are set forth in 15 CFR 742.6(a)(7).

OD606 “Software” “specially designed” for the “development,” “production,” or “use” of “equipment,” “parts” and “components” controlled by 0A606.

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. | Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan. |

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 0D606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, "parts" and "components." (2) See 0B606 for test, inspection and production equipment that is "specially designed" to test, inspect, produce, or develop commodities controlled by 0A606. (3) See 0C606 for material that is "specially designed" for the "development," or "production" of commodities controlled by 0A606. (4) See 0E606 for "technology" "required" for the "development," "production" or "use" of ground vehicles, "parts" and "components" controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919 for foreign made "military commodities" that incorporate more than 10% U.S.-origin "600 series" items.

Related Definitions: N/A

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

* * * * *

0E521 Any item subject to the EAR that is not listed elsewhere in the CCL But which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. 0E521 items are subject to RS1 controls

with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN 0E521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN 0E521 are set forth in 15 CFR 742.6(a)(7).

0E606 "Technology" "required" for the "development," "production" or "use" of "equipment," "parts" and "components" controlled by 0A606.

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. | Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan. |

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 0D606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, "parts" and "components". (2) See 0B606 for test, inspection and production equipment that is "specially designed" to test, inspect, produce, or develop commodities controlled by 0A606. (3) See 0C606 for material that is "specially designed" for the "development," or "production" of commodities controlled by 0A606. (4) See 0D606 for "software" for the "development," "production" or "use" of ground vehicles, "parts" and "components" controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919

for foreign made "military commodities" that incorporate more than 10% U.S.-origin "600 series" items.

Related Definitions: N/A

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

43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A018 is amended:

a. By revising the "related controls" paragraph in the List of Items Controlled section; and

b. By removing and reserving "items" paragraph (b) in the List of Items Controlled section, to read as follows:

9A018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

List of Items Controlled

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Related Controls: (1) Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery; instrument flight trainers for combat simulation; military ground armed or armored vehicles and parts and components specific thereto described in 22 CFR part 121, Category VII; and all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121, Category XIII (See § 770.2(h)—Interpretation 8) are all subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

(2) See 0A606.b.4 for ground transport vehicles and unarmed all-wheel drive vehicles that were classified under 9A018.b.

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Items:

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b. [RESERVED].

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44. Add Supplement No. 4 to Part 774, to read as follows:

SUPPLEMENT NO. 4 TO PART 774— LISTING OF LICENSE EXCEPTION STA ELIGIBILITY DETERMINATIONS PURSUANT TO § 740.20(g) FOR "600 SERIES" "END ITEMS" ELIGIBLE FOR LICENSE EXCEPTION STA UNDER § 740.20(c)(1)

"600 series" "end items" identifier by ECCN, ECCN "items" paragraph or other end item descriptors.

Note 1: For the other end item descriptors, the descriptions of these munitions end items must match, (e.g., by model number or other equally specific descriptor), the descriptions of the end items in the RWA notices. The description does not necessarily need to be limited to a particular manufacturer.

Note 2: Other end item descriptors (such as model number) will only be used in combination with the ECCN level identifier.

Date of initial approval of STA eligibility request (i.e., the date on which License Exception STA first may be used, provided the applicable terms of License Exception STA are met for the transaction).

45. Add Supplement No. 5 to Part 774, to read as follows:

**SUPPLEMENT NO. 5 TO PART 774—
ITEMS CLASSIFIED UNDER ECCNS
0A521, 0B521, 0C521, 0D521, AND
0E521**

The following table lists items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of

Commerce, with the concurrence of the Departments of Defense and State, has determined warrant control for export because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

| Item descriptor | Date of initial or subsequent BIS classification | Date when the item will be designated |
|---|--|--|
| Note: The description must match by model number or a broader descriptor that does not necessarily need to be company specific. | | EAR99, unless reclassified in another ECCN or the 0Y521 classification is re-issued. |

Dated: July 12, 2011.

Kevin J. Wolf,

*Assistant Secretary for Export
Administration.*

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