further restrict export of “minimum necessary” information.

2. General Software Note. License Exception TSU (mass market software) (see §740.13 of the EAR) is available to all destinations, except countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, for release of “software” which is any of the following:

1. Generally available to the public by being:
   a. Sold from stock at retail selling points, without restriction, by means of:
      1. Over the counter transactions;
      2. Mail order transactions;
      3. Electronic transactions; or
      4. Telephone call transactions; and
   b. Designed for installation by the user without further substantial support by the supplier.

2. [Reserved] See §734.3(b)(3) for “publicly available technology and software.”

3. The minimum necessary “object code” for the installation, operation, maintenance (checking) or repair of those items whose export has been authorized.

Note: Minimum necessary “object code” does not enhance or improve the performance of an item or provide new features or functionality.

Note: The General Software Note does not apply to “software” controlled by Category 5, part 2 (“Information Security”). For “software” controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2; Note 5—Cryptography Note.

[69 FR 40687, July 30, 2004, as amended at 78 FR 37994, June 20, 2013]

Supplement No. 3 to Part 774—

Statements of Understanding

(a) Statement of Understanding—medical equipment. Commodities that are “specially designed” for medical end-use” that “incorporate” commodities or software on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB) are designated by the number EAR99 (i.e., are not elsewhere specified on the Commerce Control List).

Notes to paragraph (a): (1) “Specially designed for medical end-use” means designed for medical treatment or the practice of medicine (does not include medical research).

(2) Commodities or software are considered “incorporated” if the commodity or software is: Essential to the functioning of the medical equipment; customarily included in the sale of the medical equipment; and exported or reexported with the medical equipment.

(3) Except for such software that is made publicly available consistent with §734.3(b)(3) of the EAR, commodities and software “specially designed for medical end-use” remain subject to the EAR.

(4) See also §770.2(b) interpretation 2, for other types of equipment that incorporate items on the Commerce Control List that are subject to the EAR.

(5) For computers used with medical equipment, see also ECCN 4A003 note 2 regarding the “principal element” rule.

(6) For commodities and software “specially designed” for medical end-use that incorporate an encryption or other “information security” item subject to the EAR, see also Note 1 to Category 5, Part II of the Commerce Control List.

(b) Statement of Understanding—Source Code. For the purpose of national security controlled items, “source code” items are controlled either by “software” or by “software” and “technology” controls, except when such “source code” items are explicitly decontrolled.

(c) Category 5—Part 2—Note 4 Statement of Understanding. All items previously described by Notes (b), (c) and (h) to 5A002 are now described by Note 4 to Category 5—Part 2. Note (b) to 5A002 prior to June 25, 2010 stated that the following was not controlled by 5A002:

Equipment “specially designed” for the servicing of portable or mobile radio telephones and similar client wireless devices that meet all the provisions of the Cryptography Note (Note 3 in Category 5, Part 2), where the servicing equipment meets all of the following:

(1) The cryptographic functionality of the servicing equipment cannot easily be changed by the user of the equipment;

(2) The servicing equipment is designed for installation without further substantial support by the supplier; and

(3) The servicing equipment cannot change the cryptographic functionality of the device being serviced.

(d) Statement of Understanding—Used Goods. The specifications in the Commerce Control List apply equally to new or used goods. In the case of used goods, an evaluation by the Bureau of Industry and Security may be carried out in order to assess whether the goods are capable of meeting the relevant specifications.


Supplement No. 4 to Part 774—Commerce Control List Order of Review

(a) As described in EAR §734.3, the EAR govern only items “subject to the EAR.”
e.g., items not subject to the exclusive jurisdiction of another agency. Thus, for example, if an item is described in the U.S. Munitions List (USML) (22 CFR Part 121) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), including one of its catch-all paragraphs, then the item is a "defence article" subject to the ITAR and there is no need to review the CCL with respect to whether it describes the item. See 22 CFR §120.6 ("Defense article means any item or technical data designated in §121.1 of the ITAR. The policy described in §120.3 is applicable to designations of additional items"). If an item is not described on the USML and is otherwise subject to the EAR, then work through each of the following steps to determine where the item is covered by the CCL or, if it is not covered by the CCL, and is therefore designated as EAR99.

(1) Step 1. To classify an item subject to the EAR against the CCL, review the general characteristics of the item. This will usually guide you to the appropriate category (0 through 9) on the CCL.

(2) Step 2. Once the potentially applicable CCL categories are identified, determine which product group within the CCL category or categories—i.e., A, B, C, D, or E—is applicable to the item.

(3) Step 3. The "600 series" describes military items that were once subject to the ITAR. Just as the ITAR effectively trumps the EAR, items described in a "600 series" ECCN trump other ECCNs on the CCL. Thus, the next step in conducting a classification analysis of an item subject to the EAR is to determine whether it is described in a "600 series" ECCN paragraph other than a "catch-all" paragraph such as a "x." paragraph that controls unspecified "parts" and "components" "specially designed" for items in that category or corresponding USML paragraph. If so, the item is classified under that "600 series" ECCN paragraph.

(4) Step 4. If the item is not described in a "600 series" ECCN, then determine whether the item is classified under a "600 series" catch-all paragraph, i.e., one that controls non-specific "parts," "components," "accessories," and "attachments" "specially designed" for items in that ECCN or the corresponding USML paragraph. Such items are generally in the "x." paragraph of the "600 series" ECCNs.

(i) Step 4.a. Determine whether the item would meet the criteria of either paragraphs (a)(1) or (a)(2) of the "specially designed" definition in §722.1 of the EAR. (These are informally known as the "catch" paragraphs.) If not applicable, then the item is not within the scope of the ECCN paragraph that contains a "specially designed" control parameter. Skip to Step 5.

(ii) Step 4.b. If the item meets the criteria of either paragraph (a)(1) or (a)(2) of the "specially designed" definition, then determine whether any of the provisions of paragraph (b) of the "specially designed" definition would apply. (These are informally known as the "release" provisions.) If so, then the item is not within the scope of the ECCN paragraph that contains a "specially designed" control parameter.

NOTE TO PARAGRAPH (a)(4): The emphasis on the word "control" in Steps 4.a and 4.b is deliberate. Some ECCNs use "specially designed" as a de-control parameter. If an item would not be classified under a particular ECCN because it falls within the scope of either subparagraph (a)(1) or (a)(2) of the "specially designed" definition, then there is no need to analyze whether any element of paragraph (b) of the definition would apply to the item. One needs only review the "release" provisions in paragraph (b) of the "specially designed" definition if paragraph (a) of the "specially designed" definition applies to the item in a "control" paragraph of an ECCN that uses the term "specially designed."

(5) Step 5. If an item is not classified by a "600 series" ECCN, then starting from the beginning of the product group analyze each ECCN to determine whether any other ECCN in that product group describes the item. If any ECCN uses the term "specially designed," see Steps 4a and 4b above in paragraphs (a)(4)(i) and (a)(4)(ii) respectively. If the item is described in one of these ECCNs, then the item is classified under that ECCN.

(6) Step 6. If the item is not described under any ECCN of any category of the CCL, then the item is designated as EAR99. EAR99 items may require a license if destined for a prohibited or restricted end user, end use or destination. See paragraphs (g) through (n) of §732.3, "Steps Regarding the Ten General Prohibitions," or General Prohibitions Four through Ten of part 736 of the EAR for license requirements other than those imposed by the CCL.

(b) [Reserved]

[78 FR 22735, Apr. 16, 2013]

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 identified warrant control for export or reexport because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons.