Background
To date, the Nuclear Regulatory Commission (NRC) has controlled all exports of nuclear grade graphite under 10 CFR part 110, pursuant to section 109b of the Atomic Energy Act, which governs “items or substances that are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes.” 42 U.S.C. 2139. Due to improvements in technology, most U.S. bulk, non-fabricated graphite is now nuclear grade—i.e., has a purity level of less than 5 parts per million “boron equivalent” as measured according to American Society for Testing and Materials (ASTM) standard C–1233–98. The NRC has determined that the majority of nuclear grade graphite exports are intended for non-nuclear commercial end uses. The widespread commercial uses of this graphite and the limited proliferation concerns except when it is destined for a nuclear reactor, led the supplier nations to limit their export controls on nuclear grade graphite only when intended “for use in a nuclear reactor.” This limitation appears in the definitions of controlled items used by the Nuclear Non-Proliferation Treaty (NPT) Exporters (Zangger) Committee and the Nuclear Suppliers Group (NSG) (International Atomic Energy Agency INFIRC/209 and 254 respectively). The NRC has determined, in consultation with other agencies, that, consistent with these multilateral definitions of controlled items, exports of nuclear grade graphite intended for uses other than in a nuclear reactor are not significant from a nuclear proliferation perspective. This final rule is published in conjunction with a corresponding final rule published by NRC that revises 10 CFR part 110 and discontinues NRC licensing jurisdiction of nuclear grade graphite intended for non-nuclear uses. Although the NRC’s final rule removes the density parameter from its definition of nuclear grade graphite, this final rule retains the density parameter for nuclear grade graphite for non-nuclear end use in conformance with the NSG’s definition of “nuclear grade graphite” set forth in INFIRC/254/Rev. 6/Part 1 of May 2003.

Specifically, this final rule revises Export Control Classification Number (ECCN) 0C005 on the Commerce Control List, which describes graphite that is subject to NRC jurisdiction, by removing the density parameter for nuclear grade graphite, so that nuclear grade graphite is defined on the basis of its purity, consistent with the NRC definition in its corresponding rule. This final rule also revises ECCN 0C005 to reflect the NRC scope of jurisdiction for graphite intended for use in a nuclear reactor.

This final rule also adds a new ECCN 1C298 to control the export of nuclear grade graphite with a purity level of less than 5 parts per million “boron equivalent” and a density greater than 1.5 grams per cubic centimeter to countries included under NP column 2 on the Commerce Country Chart.

Finally, this final rule adds “related controls” notes to ECCNS 0C005, 1C107 and 1C298 to provide cross-references among all ECCNS that control any type of graphite. ECCN 1C107 controls graphite that meets certain density parameters for missile technology and antiterrorism reasons.

In light of NRC’s discontinued jurisdiction over graphite exports not intended for nuclear end use, nuclear grade graphite that is not described in ECCNs 1C107 or 1C298 is classified as EAR99 when intended for a use other than in a nuclear reactor. However, such graphite may require a license for reasons specified elsewhere in the EAR, for example, the end-user/end-use restrictions described in Part 744 of the EAR or the restrictions described in Part 746 of the EAR.


Rulemaking Requirements
1. This final rule has been determined to be not significant for purposes of E.O. 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be 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 rule involves collections of information subject to the PRA. These collections have been approved by the Office of Management and Budget (OMB) under control number 0990–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes to prepare and submit. This rule is anticipated to increase the number of licenses required but not to increase the range of total burden hours associated with this control number. Send
comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at david_rostker@omb.eop.gov or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20204.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 774—AMENDED

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


2. In Supplement No. 1 to part 774, Category 0, Nuclear Materials, Facilities and Equipment (And Misc. Items), ECCN 0C005 is revised to read as follows:

0C005 Graphite, having a purity level of less than 5 parts per million “boron equivalent” as measured according to ASTM standard C–1233–98 and intended for use in a nuclear reactor.

License Requirements

Reason for Control: MT, AT

Control(s) Condition chart
MT applies to entire entry

AT applies to entire entry

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: N/A.

Related Controls: None

Related Definitions: None

3. In Supplement No. 1 to part 774, Category 0, Materials, Chemicals, “Microorganisms,” and Toxins, ECCN 1C107 is revised to read as follows:

1C107 Graphite and ceramic materials, other than those controlled by 1C007, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s) Condition chart
MT applies to entire entry

AT applies to entire entry

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: N/A.

Related Controls: See also 1C107 and 0C005.

Related Definitions: For the purpose of this entry, graphite with a purity level better than 5 parts per million boron equivalent is determined according to ASTM standard C1233–98. In applying ASTM standard C1233–98, the boron equivalence of the element carbon is not included in the boron equivalence calculation, since carbon is not considered an impurity.

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

Dated: July 14, 2005.

Matthew S. Borman, Deputy Assistant Secretary for Export Administration.

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