

**PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATION AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 3. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 4. Amend Appendix G to Part 135 by revising section G135.2.8(b)(3) and adding paragraph G135.2.8(b)(4) to read as follows:

**Appendix G to Part 135—Extended (ETOPS)**

\* \* \* \* \*

*G135.2.8 Maintenance Program Requirements.* \* \* \*

\* \* \* \* \*

(b) \* \* \*

(3) An appropriately trained maintenance person, who is ETOPS qualified must accomplish and certify by signature ETOPS specific tasks. Before an ETOPS flight may commence, an ETOPS pre-departure service check (PDSC) Signatory Person, who has been authorized by the certificate holder, must certify by signature, that the ETOPS PDSC has been completed.

(4) For the purposes of this paragraph (b) only, the following definitions apply:

(i) ETOPS qualified person: A person is ETOPS qualified when that person satisfactorily completes the operator's ETOPS training program and is authorized by the certificate holder.

(ii) ETOPS PDSC Signatory Person: A person is an ETOPS PDSC Signatory Person when that person is ETOPS Qualified and that person:

(A) When certifying the completion of the ETOPS PDSC in the United States:

(1) Works for an operator authorized to engage in part 135 or 121 operation or works for a part 145 repair station; and

(2) Holds a U.S. Mechanic's Certificate with airframe and powerplant ratings.

(B) When certifying the completion of the ETOPS PDSC outside of the U.S. holds a certificate in accordance with § 43.17(c)(1) of this chapter; or

(C) When certifying the completion of the ETOPS PDSC outside the U.S. holds the certificates needed or has the requisite experience or training to return aircraft to service on behalf of an ETOPS maintenance entity.

(iii) ETOPS maintenance entity: An entity authorized to perform ETOPS maintenance and complete ETOPS pre-departure service checks and that entity is:

(A) Certificated to engage in part 135 or 121 operations;

(B) Repair station certificated under part 145 of this title; or

(C) Entity authorized pursuant to § 43.17(c)(2) of this chapter.

\* \* \* \* \*

Issued in Washington, DC on June 9, 2008.

**Robert A. Sturgell,**

*Acting Administrator.*

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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 772 and 774**

[Docket No. 080208146–8148–01]

**RIN 0694–AE23**

**Revisions to the Export Administration Regulations Based on the 2007 Missile Technology Control Regime Plenary Agreements**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the November 2007 Plenary in Athens, Greece.

**DATES:** *Effective Date:* This rule is effective: June 16, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AE23, by any of the following methods:

*E-mail:* [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include “RIN 0694–AE23” in the subject line of the message.

*Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

*Mail or Hand Delivery/Courier:* Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE23.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection

of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE23)—all comments on the latter should be submitted by one of the three methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. Krepp, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1309.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries implement in accordance with their national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow of missile systems capable of delivering weapons of mass destruction to the global marketplace.

While the MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also stem the flow of delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

**Amendments to the Export Administration Regulations**

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the November 2007 Plenary in Athens, Greece. Specifically, in section 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule amends the technical notes to the definition of the term “payload” to include munitions supporting structures and deployment mechanisms under paragraphs (e)(5) and (e)(7) (MTCR Annex Change Definitions: “Payload” Technical Notes 5.e and 5.g). This will clarify under the paragraph (e) technical notes to the definition of “payload” that payload for “other UAVs” (Unmanned Aerial Vehicles) includes munitions supporting structures and deployment mechanisms.

In addition, this rule amends the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) to reflect changes to the MTCR Annex. Specifically, the following Export Control Classification Numbers (ECCNs) are affected:

ECCN 1C111 paragraph (b) is amended by adding additional text to clarify the scope of materials controlled in this entry (MTCR Annex Change Category II: Item 4.C.5). Specifically, paragraph b.1 is amended to state that carboxy-terminated polybutadiene includes carboxyl-terminated polybutadiene. Similarly, paragraph b.2 is amended to state that hydroxy-terminated polybutadiene includes hydroxyl-terminated polybutadiene. BIS expects this change to have a minimal impact on license applications.

ECCN 1C116 is amended by adding text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 6.C.8). This change is made to clarify that maraging steels are iron alloys generally characterized by high nickel, very low carbon content, and the use of substitutional elements or precipitates to produce strengthening and age-hardening of the alloy. BIS expects this change to have a minimal impact on license applications.

ECCN 2B116 paragraph (a) is amended by removing the word “and” and replacing it with “while” to clarify the scope of the vibration test modes controlled under this paragraph (MTCR Annex Change Category II: Item 15.B.1.a). BIS expects this change to have no impact on license applications.

ECCN 9B106 is amended by modifying the heading to read “Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a “range” equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled)”. This change makes it clear that this ECCN controls these types of environmental chambers useable for these types of systems and their subsystems. Paragraph (a) of this ECCN is amended by removing paragraph a.1, redesignating paragraph a.2 as a new paragraph a.1, and inserting a new paragraph a.2 that includes a new control parameter. The new control parameter in paragraph a.2 specifies that environmental chambers controlled by this ECCN include those incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment that produce vibration environments equal to or greater than 10 g rms, measured ‘bare table’, between 20 Hz and 2 kHz imparting forces equal to or greater than 5 kN (MTCR Annex Change Category II: Item 15.B.4).

In addition, paragraph (a) of ECCN 9B106 is amended by adding a technical note to clarify the control text and to include controls on environmental chambers that are capable of incorporating shaker units or vibration test equipment, even if the shaker units or vibration test equipment are not included at the time of export (MTCR Annex Change Category II: Item 15.B.4). This change is being made to the EAR to address a missile proliferation concern of the MTCR members with regard to this type of equipment and its usefulness in MTCR type systems (e.g., missile delivery systems). Prior to this change, environmental chambers that were capable of incorporating shaker units or vibration test equipment could be exported without being subject to an MT control when the chambers were exported separately from the shaker units or vibration test equipment controlled under this ECCN. In addition, prior to this change, shaker units or vibration test equipment, when exported separately from the environmental chambers controlled under this ECCN, could be exported without being subject to an MT control. BIS expects this amendment to the EAR to cause a slight increase in license applications.

#### *Savings Clause*

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on June 16, 2008, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before *July 16, 2008*. Any such items not actually exported or reexported before midnight, on *July 16, 2008*, require a license in accordance with this rule.

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 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

#### *Rulemaking Requirements*

1. This final rule has been determined to be not significant for purposes of Executive Order 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, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

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**

##### *15 CFR Part 772*

Exports.

##### *15 CFR Part 774*

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

#### **PART 772—[AMENDED]**

■ 1. 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 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Section 772.1 is amended by revising paragraph (e) of the Technical Notes to the definition of "payload", as set forth below:

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

\* \* \* \* \*
"Payload". (MTCR context).

- e. Other UAVs—"Payload" includes:
1. Munitions of any type (e.g., explosive or non-explosive);
2. Mechanisms and devices for safing, arming, fuzing or firing;
3. Countermeasures equipment (e.g., decoys, jammers or chaff dispensers) that can be removed without violating the structural integrity of the vehicle;
4. Signature alteration equipment that can be removed without violating the structural integrity of the vehicle;
5. Equipment required for a mission such as data gathering, recording or transmitting devices for mission-specific data and supporting structures that can be removed without violating the structural integrity of the vehicle;
6. Recovery equipment (e.g., parachutes) that can be removed without violating the structural integrity of the vehicle;
7. Munitions supporting structures and deployment mechanisms that can be removed without violating the structural integrity of the vehicle.

PART 774—[AMENDED]

■ 3. 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; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins", Export Control Classification Number (ECCN) 1C111 is amended by revising paragraphs (b)(1) and (b)(2) of the "items" paragraph in the List of Items Controlled section, to read as follows:

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

\* \* \* \* \*

1C111 Propellants and constituent chemicals for propellants, other than

those specified in 1C011, as follows (see List of Items Controlled).

\* \* \* \* \*

List of Items Controlled

Unit: \* \* \*
Related Controls: \* \* \*
Related Definitions: \* \* \*
Items:

- \* \* \* \* \*
b. Polymeric substances:
b.1. Carboxy—terminated polybutadiene (including carboxyl—terminated polybutadiene) (CTPB);
b.2. Hydroxy—terminated polybutadiene (including hydroxyl—terminated polybutadiene) (HTPB);
\* \* \* \* \*

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins", Export Control Classification Number (ECCN) 1C116 is amended by revising the heading, to read as follows:

1C116 Maraging steels (iron alloys generally characterized by high nickel, very low carbon content and the use of substitutional elements or precipitates to produce strengthening and age-hardening of the alloy) having an ultimate tensile strength equal to or greater than 1.5 GPa, measured at 293 K (20 °C), in the form of sheet, plate or tubing with a wall or plate thickness equal to or less than 5 mm.

\* \* \* \* \*

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B116 is amended by revising paragraph (a) of the "items" paragraph in the List of Items Controlled section, to read as follows:

2B116 Vibration test systems, equipment and components therefor, as follows (see List of Items Controlled).

\* \* \* \* \*

List of Items Controlled

Unit: \* \* \*
Related Controls: \* \* \*
Related Definitions: \* \* \*
Items:

- a. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at an acceleration equal to or greater than 10 g rms between 20 Hz to 2,000 Hz while imparting forces equal to or greater than 50 kN (11,250 lbs.), measured 'bare table';
\* \* \* \* \*

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B106 is amended:

■ a. By revising the heading; and

■ b. By revising paragraph (a) and the "Technical Notes" to paragraph (a) of the "items" paragraph in the List of Items Controlled section, to read as follows:

9B106 Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a "range" equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled).

\* \* \* \* \*

List of Items Controlled

Unit: \* \* \*
Related Controls: \* \* \*
Related Definitions: \* \* \*
Items:

- a. Environmental chambers capable of simulating all of the following flight conditions:
a.1. Having any of the following:
a.1.a. Altitude equal to or greater than 15,000 m; or
a.1.b. Temperature range of at least -50 °C to +125 °C; and
a.2. Incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment to produce vibration environments equal to or greater than 10 g rms, measured 'bare table', between 20 Hz and 2 kHz imparting forces equal to or greater than 5 kN;
Technical Notes:
1. Item 9B106.a.2 describes systems that are capable of generating a vibration environment with a single wave (e.g., a sine wave) and systems capable of generating a broad band random vibration (i.e., power spectrum).
2. The term 'bare table' means a flat table, or surface, with no fixture or fittings.
3. In Item 9B106.a.2, designed or modified means the environmental chamber provides appropriate interfaces (e.g., sealing devices) to incorporate a shaker unit or other vibration test equipment as specified in this Item.

\* \* \* \* \*

Dated: June 10, 2008.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E8-13468 Filed 6-13-08; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-114-FOR; OSM-2008-0010]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Interim rule with request for comments.