

Paragraph 6011 United States Area Navigation Routes.

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T-288 Gillette, WY (GCC) to Wolbach, NE (OBH) [Amended]

Table with 3 columns: Location, Code, and Coordinates. Locations include Gillette, WY (GCC), KARAS, Rapid City, SD (RAP), WNDED, SD, Valentine, NE (VTN), Ainsworth, NE (ANW), FESNT, NE, and Wolbach, NE (OBH). Codes include VOR/DME, INT, VORTAC, and WP. Coordinates are provided for each location.

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Issued in Washington, DC on November 29, 2011.

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Acting Manager, Airspace, Regulations and ATC Procedures Group.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742 and 774

[Docket No. 111020646-1645-01]

RIN 0694-AF41

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

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

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security publishes this proposed rule that describes how military gas turbine engines and related articles that the President determines no longer warrant control under Category VI, VII, or VIII of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 9A619, 9B619, 9C619, 9D619 and 9E619. In addition, this proposed rule would control military trainer aircraft turbo prop engines and related items, which are currently controlled under ECCN 9A018.a.2 or .a.3, 9D018 or 9E018, under new ECCN 9A619, 9D619 or 9E619.

This rule is one of a planned series of proposed rules that are part of the

Administration's Export Control Reform Initiative under which various types of articles presently controlled on the USML under the International Traffic in Arms Regulations (ITAR) would, instead, be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR), if and after the President determines that such articles no longer warrant control on the USML. This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls that would consolidate in USML Category XIX the military gas turbine engines and related articles that would remain on the USML.

DATES: Comments must be received by January 20, 2012.

ADDRESSES: You may submit comments by any of the following methods:

• Federal eRulemaking Portal: http://www.regulations.gov. The identification number for this rulemaking is BIS-2011-0042.

• By email directly to: publiccomments@bis.doc.gov. Include RIN 0694-AF41 in the subject line.

• By mail or delivery to: Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694-AF41.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482-2984, Email: Gene.Christiansen@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of

Industry and Security (BIS) published a proposed rule (76 FR 41958) ("the July 15 proposed rule") that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) and, instead, would be controlled on the Commerce Control List (CCL). The July 15 proposed rule also contained a proposal by BIS describing how military vehicles and related articles in USML Category VII that no longer warrant control under the USML would be controlled on the CCL.

On November 7, 2011 (76 FR 68675), BIS published a proposed rule describing how aircraft and related items determined by the President to no longer warrant control under the USML would be controlled on the CCL. In that proposed rule, BIS also made several changes and additions to the framework proposed in the July 15 proposed rule.

BIS plans to publish additional proposed rules describing how surface vessels and related articles (currently controlled under USML Category VI) and submersibles, submarines, and related articles (currently controlled by USML Category VI or XX) that the President determines no longer warrant control on the USML would be controlled on the CCL.

BIS also plans to publish a proposed rule describing how the new controls described in this and similar notices would be implemented, such as through the use of "grandfather" clauses and additional exceptions. The goal of such provisions would be to give exporters sufficient time to implement the final versions of such changes and to avoid, to the extent possible, situations where transactions would require licenses from both the State Department and the Commerce Department.

Following the structure of the July 15 and November 7 proposed rules, which describe the “export control reform initiative framework” for controlling on the CCL articles that the President determines no longer warrant control on the USML, this proposed rule describes BIS’s proposal for how another group of items—gas turbine engines and related articles for military vessels, vehicles, and aircraft that are controlled by USML Categories VI, VII, and VIII, respectively—would be controlled on the CCL. The changes described in this proposed rule and the State Department’s proposed amendment to the USML, which would move those items that would be retained on the USML into Category XIX (currently reserved), are based on a review of Categories VI, VII, and VIII by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of military gas turbine engines and related articles now controlled by these USML categories that are either: (i) Inherently military and otherwise warrant control on the USML, or (ii) if they are a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies either or both of those criteria, the article would remain on the USML. If an article does not satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, “specially designed” for military applications, then it is identified in one of the new ECCNs in this proposed rule. Finally, if an article does not satisfy either of the two criteria and is not found to be “specially designed” for military applications, the article is not affected by this rule because such items already are not on the USML. The licensing policies and other EAR-specific controls for such items that are also described in this proposed rule would enhance our national security by: (i) Allowing for greater interoperability with our NATO, and other, allies while maintaining and expanding robust controls that, in some instances, would include prohibitions on exports or reexports destined for other countries or intended for proscribed end-users and end-uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to

generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end users, and end uses of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “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). This proposed rule describes how certain military gas turbine engines and related articles in USML Categories VI, VII, and VIII would be controlled by the EAR and identified on the CCL, if the President determines that the articles no longer warrant control on the USML.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) Would be moved from the USML to the CCL or (ii) are listed on the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) and are already controlled elsewhere on the CCL. The proposed rule referred to this series as the “600 series” because the third character in each of the new ECCNs would be a “6.” The first two characters of the 600 series ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

This proposed rule contains an exception to the general approach of tracking the numbering structure of the WAML. BIS believes that it will be easier for industry to identify and comply with controls on USML gas turbine engines and related items if they are combined into one category, regardless of the end item for which the engines are designed or modified. The suffix “019” was used in the proposed

ECCNs to track the new Category XIX that would be used to control gas turbine engines that would remain on the USML. The Administration, however, encourages the public to comment about whether it would be easier and more convenient for industry if the controls on gas turbine engines remained in the categories of the end items into which the engines are installed. Thus, for example, BIS is soliciting public comments on whether it would be preferable to have gas turbine engines for 600 series-controlled military aircraft in the same ECCN 9A610 as such aircraft, or in new ECCN 9A619, which is specific to gas turbine engines. Similarly, the State Department, in its proposed rule, asks comments on whether it would be preferable for controls on USML aircraft engines to remain in USML Category VIII(b) or for such engines to be placed in a new USML Category XIX.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish, concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

#### *Modifications to Provisions in the July 15 and November 7 Proposed Rules*

In addition to the proposals mentioned above, this proposed rule would make the following modifications to the July 15 proposed rule:

- Addition of new Category 9 (600 series) items to proposed Supplement No. 4 to Part 740; and
- Addition of the new Category 9 (600 series) ECCNs to § 742.6(a)(1).

These modifications are described in the section “Scope of this Proposed Rule.”

Similarly, BIS will consider comments on the July 15 proposals only for the specific paragraph, note, and ECCNs referenced above, and only within the context of this proposed rule’s modifications to them.

#### **Scope of This Proposed Rule**

This proposed rule would create five new 600 series ECCNs in CCL Category 9—9A619, 9B619, 9C619, 9D619, and 9E619—that would control military gas turbine engines and related articles that the President determines no longer warrant control under USML Category

VI, VII, or VIII. Consistent with the regulatory construct identified in the July 15 proposed rule, this rule also would move military trainer aircraft turbo prop engines and related items currently classified under ECCN 9A018.a.2 or .a.3, 9D018, or 9E018 to new ECCN 9A619, 9D619, or 9E619. As part of the proposed changes, these three 018 ECCNs would cross-reference the new classifications in the 600 series. As noted in the July 15 proposed rule, moving items from 018 ECCNs to the appropriate 600 series ECCNs would consolidate WAML and formerly USML items into one series of ECCNs.

The proposed changes are discussed in more detail, below.

#### *New Category 9 (600 Series) ECCNs*

Certain military gas turbine engines and related articles that the President determines no longer warrant control in USML Category VI, VII, or VIII would be controlled under proposed new ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619.

Paragraphs .a through .d of ECCN 9A619 would control, respectively: (i) Gas turbine engines “specially designed” for military use that would not be controlled under proposed USML Category XIX; (ii) digital engine controls (e.g. Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) “specially designed” for gas turbine engines in ECCN 9A619; (iii) hot section components and related cooled components “specially designed” for gas turbine engines in ECCN 9A619; and (iv) engine monitoring systems for gas turbine engines and components in ECCN 9A619. All such items would be “components,” as that term is defined in the July 15 proposed rule, because they are items that are useful only when used in conjunction with an “end item.” The definition distinguishes between 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. A “minor component” includes any assembled element of a “major component.”

Paragraphs .e through .w would be reserved for possible future use. Paragraph .x would consist of “parts,” “components,” “accessories and attachments” (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are “specially designed” for a commodity in ECCN 9A619 (other than ECCN 9A619.c) or a defense article in

proposed USML Category XIX and not elsewhere specified in the CCL or on the USML. Paragraph .y would consist of eight specific types of commodities that, if “specially designed” for a commodity subject to control in ECCN 9A619 or a defense article in proposed USML Category XIX, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y would be subject to antiterrorism (AT Column 1) controls, which currently impose a license requirement for five countries. A license also would be required, in accordance with the July 15 proposed rule, if commodities listed in paragraph .y were destined to the People’s Republic of China for a military end use as described in § 744.21 of the EAR.

Although including all military gas turbine engines transferred from the USML, or from an existing 018 ECCN, in a single 600 series ECCN (i.e., ECCN 9A619) would deviate slightly from the WAML numbering approach, BIS believes that it would be more efficient to list all 600 series controls for engines and related items in one ECCN. New ECCN 9A619 would correspond to a new USML Category XIX that the State Department is proposing, which would control USML-controlled engines and related articles. When BIS publishes this rule in final form, BIS will add cross references to proposed new ECCN 9A619 to the new military ground vehicle ECCN (i.e., ECCN 0A606) described in its July 15 proposed rule and to the new military aircraft ECCN (i.e., ECCN 9A610) described in its November 7 proposed rule. Subsequent rules in this series (e.g., the rules that would address military surface vessels, submersibles and related articles) would contain cross references to new ECCN 9A610, as appropriate. BIS encourages the submission of comments on its proposal to consolidate all military gas turbine engines that would be transferred from the USML to the CCL into a single ECCN (ECCN 9A619), as opposed to listing such engines in separate ECCNs that would control military vehicles, vessels (both surface and submersible), and aircraft, respectively, transferred from the USML to the CCL. Similarly, the State Department, in its proposed rule, asks for comments on whether it would be preferable for controls on USML aircraft engines to remain in USML Category VIII(b) or for such engines to be placed in a new USML Category XIX.

ECCN 9B619.a would control test, inspection, and production “equipment” “specially designed” for the “development,” “production,” repair, overhaul or refurbishment of

military gas turbine engines and related commodities enumerated in ECCN 9A619 (except for items in 9A619.y) or in USML Category XIX, and “parts,” “components,” “accessories and attachments” “specially designed” therefor. ECCN 9B619.b would control equipment, cells, or stands “specially designed” for testing, analysis and fault isolation of engines, systems, “parts,” “components,” “accessories and attachments” specified in ECCN 9A619 or in Category XIX on the USML. ECCN 9B619.y would control test, inspection and production “equipment” “specially designed” for the “development” or “production” of military gas turbine engines and related commodities in ECCN 9A619 (except for 9A619.y) or in USML Category XIX and “parts,” “components,” “accessories and attachments” “specially designed” therefor, as follows: bearing puller (see ECCN 9B619.y.1). Paragraphs .c through .x and paragraphs .y.2 through .y.98 would be reserved for possible future use.

ECCN 9C619.a would control materials “specially designed” for military gas turbine engines and related commodities enumerated in ECCN 9A619 (except 9A619.y) that are not specified elsewhere in the CCL, such as in Category 1, or on the USML. Paragraphs .b through .x of ECCN 9C619 would be reserved for possible future use. USML subcategory XIII(f) would continue to control structural materials “specifically designed, developed, configured, modified, or adapted for defense articles.” The State Department plans to publish a proposal that would make USML Category XIII(f) a positive list of controlled structural materials. BIS plans to then publish corresponding amendments to its controls on materials “specially designed” for articles in the relevant 600 series ECCN and corresponding USML category.

ECCN 9D619.a would control “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 9A619 (except 9A619.y), 9B619 (except 9B619.y), or 9C619 (except 9C619.y). Paragraphs .b through .x of ECCN 9D619 would be reserved for possible future use. ECCN 9D619.y would control specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 9A619, 9B619, or 9C619, as follows: specific “software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y (see ECCN

9D619.y.1). ECCN 9D619 also would contain a note indicating that it controls “software,” not specified elsewhere on the CCL, that is “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 9A619, 9B619, or 9C619, even if such “software” is also related to an article on the USML, as specified in USML Category XIX(g).

ECCN 9E619.a would control “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related items controlled by ECCN 9A619 (except 9A619.y), 9B619 (except 9B619.y), 9C619 (except 9C619.y), or 9D619 (except 9D619.y). Paragraphs .b through .x of ECCN 9E619 would be reserved for possible future use. ECCN 9E619.y would control specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related items controlled by ECCN 9A619, 9B619, 9C619, or 9D619, as follows: specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of items controlled by 9A619.y, 9B619.y, 9C619.y, or 9D619.y (see ECCN 9E619.y.1). ECCN 9E619 also would contain a note indicating that it controls “technology,” not specified elsewhere on the CCL, that is “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 9A619, 9B619, 9C619, or 9D619, even if such “technology” is also related to an article on the USML, as specified in Category XIX(g).

In addition, ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619 would each contain a special paragraph designated “.y.99.” Paragraph .y.99 would control any item that meets all of following criteria: (i) The item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these Category 9 (600 series) ECCNs because, for example, the item was “specially designed” for a military use. Items in these .y.99 paragraphs would be subject to antiterrorism controls.

This proposed rule also would move military trainer aircraft turbo prop

engines and parts and components therefor currently controlled under ECCN 9A018.a.2 or .a.3 to new 600 series ECCN 9A619. In addition, related software and technology currently controlled under ECCNs 9D018 and 9E018 would be moved to new 600 series ECCNs 9D619 and 9E619, respectively. Other items currently controlled under ECCN 9A018 (except ground transport vehicles controlled under ECCN 9A018.b) would be moved to new 600 series ECCN 9A610 by the military aircraft proposed rule that BIS published on November 7, 2011. The July 15 proposed rule published by BIS would move ground transport vehicles currently controlled under ECCN 9A018.b to new 600 series ECCN 0A606. In conjunction with the establishment of the new ECCN 9X619 entries, and consistent with the July 15 proposed rule’s statement that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule would amend ECCNs 9A018, 9D018, and 9E018 to remove all language except cross references to the new 600 series ECCNs that cover the items currently in those 018 ECCNs. ECCN 9A018 would refer to ECCN 0A606 for ground transport vehicles (for items currently controlled under ECCN 9A018.b), to ECCN 9A610 for aircraft related commodities (*i.e.*, for items currently controlled under ECCN 9A018.a.1, .a.3, .c, .d, .e, and .f), and to ECCN 9A619 gas turbine aircraft engines (for military trainer aircraft turbo prop engines and parts and components therefore currently controlled under ECCN 9A018.a.2 or .a.3). Similarly, ECCN 9D018 would refer to new ECCNs 0D606, 9D610, and 9D619 for related software, and ECCN 9E018 would refer to ECCNs 0E606, 9E610, and 9E619 for related technology.

#### *License Exception Restrictions (STA and GOV)*

Certain software and technology related to parts and components covered by .x items paragraphs of 600 series ECCNs warrant more restrictive license exception applicability than other software and technology currently on the CCL. The November 7 proposed rule published by BIS would create a new Supplement No. 4 to part 740 (600 Series Items Subject to Limits Regarding License Exceptions GOV and STA) that would identify 600 series items that may not be exported, reexported, or transferred (in-country) pursuant to License Exceptions STA (§ 740.20 of the EAR) or GOV (§ 740.11 of the EAR). The supplement would be structured to identify by CCL category the items for

which license exception applicability is limited.

This proposed rule would include in new Supplement No. 4 to part 740 nine types of parts and components that would be classified under new ECCN 9A619.x and would state that License Exception STA (§ 740.20 of the EAR) may not be used to export, reexport, or transfer (in-country) any software classified under ECCN 9D619 or technology classified under ECCN 9E619—other than “build-to-print technology”—for the production or development of any types of the listed ECCN 9A619.x parts and components. Further, the supplement would state that License Exception GOV, other than the paragraphs that authorize shipments to U.S. government agencies for official use or U.S. government personnel for personal use or official use (§ 740.11(b)(2)(i) and (b)(2)(ii) of the EAR), is not available for the export or reexport of software and technology (other than “build-to-print technology”) for the production or development of the ECCN 9A619.x parts and components listed in the supplement. Similar restrictions would apply to 9D619 software and 9E619 technology for seven additional types of parts and components classified under new ECCN 9A619.x; however, the scope of these restrictions would also apply to any affected “build-to-print” technology controlled under ECCN 9E619.

In this regard, note that the November 7 proposed rule published by BIS would add a new definition for “build-to-print technology” to § 772.1 that would define the term as it would be used in new Supplement No. 4 to part 740. Furthermore, the November 7 proposed rule would amend the License Exception STA provisions by adding a new note to § 740.20(c)(1) and revising § 740.2(a)(13) to clarify License Exception STA eligibility for end items and all other 600 series items. In the July 15 proposed rule, the export of a 600 series item is eligible for License Exception STA if, at the time of export, reexport or transfer (in-country), the item is destined for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, or search and rescue agencies of a government in one of the STA–36 countries. The November 7 proposed rule would make 600 series items eligible for License Exception STA for such uses and also when exported, reexported, or transferred for the production or development of an item for ultimate end use by an STA–36 country government agency, by the United States

Government, or by a person in the United States.

#### Corresponding Amendments

As discussed in further detail below, the July 15 proposed rule stated that one reason for control for items classified in the 600 series is Regional Stability (specifically, RS Column 1). Items classified under proposed ECCN 9A619, other than ECCN 9A619.y items, as well as related technology and software classified under ECCNs 9D619 and 9E619, would be controlled for this reason, among others. Correspondingly, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 9A619, 9B619, 9C619 (except paragraphs .y of those ECCNs), and to related software and technology classified under ECCNs 9D619 and 9E619. Note that the proposed rule on military aircraft and related items that BIS published on November 7, 2011, would amend the RS Column 1 licensing policy to impose a general policy of denial for “600 series” items if the destination is subject to a United States arms embargo.

#### Relationship to the July 15 Proposed Rule and Other Rules in This Series of Proposed Rules

As referenced above, the purpose of the July 15 proposed rule is to establish within the EAR the framework for controlling on the CCL articles that the President determines no longer warrant control on the USML. To facilitate that goal, the July 15 proposed rule contains definitions and concepts that are meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific types of articles from the USML to the CCL, if and after the President determines that such articles no longer warrant control under the USML, there may be unforeseen issues or complications that require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule will close on December 22, 2011.

To the extent that this rule’s proposals affect any provision in the July 15 proposed rule or the July 15 proposed rule’s provisions affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule. For example, BIS will consider comments on how the movement of military gas turbine

engines and related items from the USML to the CCL affects a definition, restriction, or provision that was contained in the July 15 proposed rule. BIS will also consider comments on the impact of a definition of a term in the July 15 proposed rule when that term is used in this proposed rule. BIS will not consider comments of a general nature regarding the July 15 proposed rule that are submitted in response to this rulemaking. BIS will follow a similar approach to comments received concerning the other proposed USML to CCL rules published in this series.

BIS believes that the following provisions of the July 15 proposed rule and the November 7 proposed rule on aircraft and related items are among those that could affect the items covered by this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Definitions of terms in § 772.1.

BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:

- Additional 600 series items identified in proposed Supplement No. 4 to part 740; and
- Additional 600 series items identified in the RS Column licensing policy described in § 742.6.

#### Effects of This Proposed Rule

BIS believes that the principal effect of this rule will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the United States Munitions List. This greater flexibility will be in the form of: Application of the EAR’s *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions RPL and STA; elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration

fees. Some of these specific effects are discussed in more detail below.

#### De Minimis

Section 734.3 of the EAR provides, *inter alia*, that under certain conditions items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a “*de minimis*” percentage of controlled U.S.-origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule’s amendments at § 734.4 of the EAR are adopted, the new ECCNs 9A619, 9B619, 9C619, 9D619 and 9E619 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule, because they would be “600 series” ECCNs. Foreign-made items incorporating items controlled under the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (*i.e.*, a foreign-made item is not subject to the EAR, for *de minimis* purposes, if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item’s value). The AECA does not permit the ITAR to have a *de minimis* treatment for these USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (*i.e.*, USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors). In addition, foreign-made items that incorporate *any* items that are currently classified under an 018 ECCN and that are moved to a new 600 series ECCN would be subject to the EAR if those foreign-made items contained more than 10 percent U.S.-origin controlled content, regardless of the destination and regardless of the proportion of the U.S.-origin controlled content accounted for by the former 018 ECCN items.

Based on the July 15 rule’s proposals, foreign-made items that contain controlled U.S.-origin content classified under non-600 series ECCNs, as well as 600 series ECCNs, would potentially have to be evaluated in two stages to determine whether they would qualify for *de minimis* treatment. First, the value of the 600 series ECCN content would have to be calculated. If the value of the 600 series ECCN content exceeds 10 percent of the value of the foreign-made item, the item would not qualify for *de minimis* treatment and would be subject to the EAR. However, if the value of the 600 series ECCN content does not exceed 10 percent of the value

of the foreign-made item, then the value of all of the controlled U.S. origin content (including both non-600 series and 600 series ECCN content) would have to be calculated to determine whether the foreign-made item's total U.S. origin controlled content exceeds the *de minimis* percentage (either 10 percent or 25 percent) applicable to the country of destination. BIS is reviewing comments the public submitted with respect to this proposal and plans to publish another proposed rule that addresses these comments and other related issues.

#### *Use of License Exceptions*

The July 15 proposed rule would impose certain limits for 600 series items moving from existing 018 controls on the CCL. BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for 600 series items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 9A619. BIS also believes that, in practice, the movement of items from 018 ECCNs to the 600 series ECCNs would have little effect on license exception availability for those items because existing restrictions on the terms of the license exceptions themselves already preclude most transactions that would be precluded by the July 15 and November 7 proposed amendments to § 740.2 of the EAR. However, BIS is aware of two situations (the use of License Exceptions GOV and STA) in which the movement of items from an 018 ECCN to a new 600 series ECCN could, in practice, impose greater limits on the use of license exceptions than currently is the case.

First, the July 15 proposed rule would limit the use of License Exception GOV for 600 series commodities to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in § 740.20(c)(1). Currently, commodities classified under an 018 ECCN may be exported under any provision of License Exception GOV to any destination authorized by that provision if all of the conditions of that provision are met and nothing else in the EAR precludes such shipment.

Second, the July 15 proposed rule would (i) Limit the use of License Exception STA for "end items" in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in

conjunction with a license application) has been approved and (ii) require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. In this regard, note that, for the purpose of this proposed rule, military gas turbine engines and related items enumerated in proposed ECCN 9A619 are "components," rather than "end items." The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users. Neither restriction currently applies to the use of License Exception STA for commodities classified under an 018 ECCN. In addition, the July 15 proposed rule would limit the shipment of 600 series ECCN items under License Exception STA to destinations listed in § 740.20(c)(1). Currently, commodities classified under an 018 ECCN may be shipped under License Exception STA to destinations listed in § 740.20(c)(1) or (c)(2).

#### *Making U.S. Export Controls More Consistent With the Wassenaar Arrangement Munitions List Controls*

The Administration has stated, since the beginning of the Export Control Reform Initiative, that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. Although including all military gas turbine engines transferred from the USML, or from an existing 018 ECCN, in a single 600 series ECCN (*i.e.*, ECCN 9A619) would deviate slightly from the WAML numbering approach, BIS believes that it would be more efficient to list all 600 series controls for engines and related items in one ECCN. If, however, the commenters disagree and would prefer that controls on engines be in the same USML, or CCL, Category as the "end-item" (such as an aircraft, vehicle, or vessel) for which they were designed or modified, BIS would consider any comments submitted to that effect, along with any comments submitted in favor of consolidating all 600 series controls for gas turbine engines and related items in a single CCL Category. In addition, proposed ECCN 9A619 would correspond to a new USML Category XIX that the State Department would propose, which would control USML-controlled engines and related articles. The proposed ECCN

9A619 tracks, to the extent possible, the wording of the WAML pertaining to military gas turbine engines and related items not subject to the ITAR. It also implements in 9A619.x the controls in WAML category 16 for forgings, castings, and other unfinished products; in 9B619.a the controls in WAML category 18 for production equipment; in 9D619 the applicable controls in WAML category 21 for software; and in 9E619 the applicable controls in WAML category 22 for technology.

#### *Other Effects*

Pursuant to the framework identified in the July 15 proposed rule, commodities classified under ECCN 9A619 (other than ECCN 9A619.y), along with related test inspection and production equipment, materials, software, and technology classified under ECCN 9B619, 9C619, 9D619 or 9E619 (except items classified under the .y paragraphs of these ECCNs), would be subject to the licensing policies that apply to items controlled for national security reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. All commodities in ECCN 9A619 (other than those identified in 9A619.y, which are controlled for AT Column 1 anti-terrorism reasons only and may also be subject to the prohibitions described in Part 744), along with related test, inspection and production equipment, materials, software and technology classified under ECCN 9B619, 9C619, 9D619 or 9E619 (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1)—specifically, RS Column 1.

The July 15 proposed rule would change § 742.4 to apply a general policy of denial to 600 series items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that general policy of denial to include 600 series items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1)—specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any 600 series items that are controlled for missile technology (MT) and regional stability (RS) reasons, but not for national security (NS) reasons (as would be the case for certain items affected by the aircraft rule).

### *Jurisdictional and Classification Status of Items Subject to Previous Commodity Jurisdiction Determinations*

The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not. (See 22 CFR 120.3 and 120.4). Under this proposed rule, items that the State Department determined to be not subject to the ITAR and that are not described on the CCL would be subject to the AT-only controls of the “.y99” paragraph of a 600 series ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 9A619.x would control any part, component, accessory, or attachment not specifically identified in the USML or elsewhere in the ECCN if it was “specially designed” for a gas turbine engine controlled by either ECCN 9A619 or USML Category XIX. However, any part, component, accessory or attachment that was determined by commodity jurisdiction determination not to have been subject to the ITAR and is (as defined) “specially designed” for a gas turbine engine controlled under ECCN 9A619 or USML Category XIX would be controlled under 9A619.y.99 if it is not identified elsewhere on the CCL. If the item was identified or, as a matter of law or the result of a subsequent commodity classification (“CCATS”) determination by Commerce, controlled by another legacy ECCN, such as 9A991.c, that ECCN would continue to apply to the item. This general approach will, pending public comment, be repeated in subsequent proposed rules pertaining to other categories of items.

If, however, the State Department had made a commodity jurisdiction determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new commodity jurisdiction determination would not be required unless there is doubt about the application of the new USML category to the item. (See 22 CFR 120.4). Thus, unless there are doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past commodity jurisdiction determinations that, under the previous version of the USML, the item was ITAR controlled.

Finally, if the State Department had made a commodity jurisdiction determination that a particular article was subject to the jurisdiction of the ITAR and that article remains in the revised USML, then the article would remain subject to the jurisdiction of the ITAR.

### **Section-by-Section Description of the Proposed Changes**

- *Supplement No. 4 to Part 740*—Addition of new Category 9 (600 series) ECCNs listed.
- *Section 742.6*—ECCNs 9A619, 9B619, 9C619, 9D619 and 9E619 are added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1) for applications to export or reexport “600 series” items to destinations that are subject to a United States arms embargo.
- *Supplement No. 1 to part 774*—Adds ECCNs 9A619, 9B619, 9C619, 9D619 and 9E619.

### **Request for Comments**

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before January 20, 2012. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via <http://www.Regulations.gov>, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

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, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

### **Regulatory 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, distribute 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 (OMB).

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 OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the proposed rules published at 76 FR 41958 (July 15, 2011) and 76 FR 68675 (November 7, 2011), BIS believes that the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration’s Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 and November 7 proposed rules, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration’s Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on military gas turbine engines

and related parts, components, production equipment, materials, software, and technology. The largest impact of the proposed rule would be with respect to exporters of parts and components because, under the proposed rule, most U.S. and foreign military gas turbine engines currently in service would continue to be subject to the ITAR. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports to integrators for U.S. government equipment and most exports of routine maintenance parts and components for our NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 9E619 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.*, Manufacturing License Agreements and Technical Assistance Agreements.

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

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

#### *Number of Small Entities*

The Bureau of Industry and Security (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 affected by this rule, it acknowledges that this rule would affect some unknown number.

#### *Economic Impact*

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, would be identified in specific Export Control Classification Numbers (ECCNs) known as the "600 series" ECCNs. In addition,

some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. This rule focuses on military gas turbine engines and related articles currently controlled under USML Categories VI, VII, and VIII. Most operational military gas turbine engines currently in active inventory would remain on the USML. However, parts and components, which are more likely to be produced by small businesses than are complete engines, would in many cases become subject to the EAR. In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles review by that department. Changing the jurisdictional status of USML items would reduce the burden on small entities (and other entities as well) through: (i) Elimination of some license requirements, (ii) greater availability of license exceptions, (iii) simpler license application procedures, and (iv) reduced, or eliminated, registration fees.

In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR may reduce the incentive for foreign manufacturers to refrain from purchasing U.S.-origin parts and components.

Eight types of parts and components, identified in ECCN 9A619.y, would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance. These parts and components, which under the ITAR require a license to nearly all destinations, would, under the EAR, require a license to only five destinations and, if destined for a military end use, to the People's Republic of China.

Many exports and reexports of the USML articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than \$1,500, parts and components being exported for use as replacement parts, temporary exports, and License

Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the United States government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process would be simpler and less costly under the EAR. When a USML article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but maybe longer if circumstances warrant a longer period), thus reducing

the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at \$2,500 per year, increase to \$2,750 for organizations applying for one to ten licenses per year and further increases to \$2,750 plus \$250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items listed on the CCL. Once the ITAR-controlled items that are the subject to this rulemaking become subject to the EAR, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of ITAR licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirement would be eliminated entirely.

*De minimis* treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product, regardless of the percentage of U.S. content in that foreign-made product. Foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, BIS believes that increased burden imposed

by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

#### Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

#### List of Subjects

##### 15 CFR Part 740

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

##### 15 CFR Part 742

Exports, Terrorism.

##### 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740, 742, and 774 of the Export Administration Regulations (15 CFR parts 740–774) are proposed to be amended as follows:

#### 15 CFR PART 740—[AMENDED]

1. 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, 2011, 76 FR 50661 (August 16, 2011).

2. Part 740 is amended by adding a Supplement No. 4 to read as follows:

**Supplement No. 4 to Part 740—600 Series Items Subject to Limits Regarding License Exceptions GOV and STA**

This supplement lists certain parts and components that are classified under the .x paragraphs of “600 series” ECCNs and imposes limitations on the use of License Exceptions GOV (§ 740.11 of the EAR) and STA (§ 740.20 of the EAR) with respect to exports, reexports, and transfers (in-country) of “development” and “production” software or technology related to those parts and components. The restrictions and the parts and components are listed by Commerce Control List category.

(a) *Restrictions applicable to Category 9 (ECCNs 9D610 and 9E610).* License Exception STA may not be used to export, reexport, or transfer (in-country) ECCN 9D610 “software” or ECCN 9E610 “technology” (other than “build-to-print technology”) for the “development” or “production” of any of the types of “parts” or “components” listed below. In addition, License Exception GOV may not be used to export or reexport ECCN 9D610 “software” or ECCN 9E610 “technology” (other than “build-to-print technology”) for the “development” or “production” of any of the types of “parts” or “components” listed below, except with respect to exports, reexports, and transfers (in-country) to U.S. government agencies and personnel identified in § 740.11(b)(2)(i) and (ii).

- (1) Static structural members;
- (2) Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;
- (3) Control surfaces, leading edges, trailing edges, and leading edge flap seals;
- (4) Leading edge flap actuation system commodities (*i.e.*, power drive units, rotary geared actuators, torque tubes, asymmetry brakes, position sensors, and angle gearboxes) “specially designed” for fighter, attack, or bomber aircraft controlled in USML Category VIII;
- (5) Engine inlets and ducting;
- (6) Fatigue life monitoring systems “specially designed” to relate actual usage to the analytical or design spectrum and to compute amount of fatigue life “specially designed” for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;
- (7) Landing gear, and “parts” and “components” “specially designed” therefor, “specially designed” for use in aircraft weighing more than 21,000 pounds controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;
- (8) Conformal fuel tanks and “parts” and “components” “specially designed” therefor;
- (9) Electrical “equipment,” “parts,” and “components” “specially designed” for electro-magnetic interference (EMI)—*i.e.*, conducted emissions, radiated emissions, conducted susceptibility and radiated susceptibility—protection of aircraft that conform to the requirements of MIL-STD-461;
- (10) HOTAS (Hand-on Throttle and Stick) controls, HOCAS (Hands on Collective and

Stick), Active Inceptor Systems (*i.e.*, a combination of Active Side Stick Control Assembly, Active Throttle Quadrant Assembly, and Inceptor Control Unit), rudder pedal assemblies for digital flight control systems, and parts and components “specially designed” therefor;

(11) Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;

(12) Equipment “specially designed” for system prognostic and health management of aircraft;

(13) Active Vibration Control Systems;

(14) Fuel Cells “specially designed” for use in UAV or Lighter-than-Air-Vehicles; or

(15) Self-sealing fuel bladders “specially designed” to pass a .50 caliber or larger gunfire test (MIL-DTL-5578, MIL-DTL-27422).

(b) *Restrictions applicable to CCL Category 9 (ECCNs 9D619 and 9E619).*

(1) *Restrictions applicable to 9D619 and 9E619, other than to “build-to-print technology.”* License Exception STA may not be used to export, reexport, or transfer (in-country) ECCN 9D619 “software” or ECCN 9E619 “technology” (other than “build-to-print technology”) for the “development” or “production” of any of the types of “parts” or “components” listed below. In addition, License Exception GOV may not be used to export or reexport ECCN 9D619 “software” or ECCN 9E619 “technology” (other than “build-to-print technology”) for the “development” or “production” of any of the types of “parts” or “components” listed below, except with respect to exports, reexports, and transfers (in-country) to U.S. government agencies and personnel identified in § 740.11(b)(2)(i) and (b)(2)(ii).

- (i) Front, turbine center, and exhaust frames;
- (ii) Low pressure compressor (*i.e.*, fan) “components” and “parts” as follows: nose cones and casings;
- (iii) High pressure compressor “components” and “parts” as follows: casings;
- (iv) Combustor “components” and “parts” as follows: casings, fuel nozzles, swirlers, swirler cups, deswirlers, valve injectors, and ignitors;
- (v) High pressure turbine “components” and “parts” as follows: casings;
- (vi) Low pressure turbine “components” and “parts” as follows: casings;
- (vii) Augmentor “components” and “parts” as follows: casings, flame holders, spray bars, pilot burners, augmentor fuel controls, flaps (external, convergent, and divergent), guide and synchronization rings, and flame detectors and sensors;
- (viii) Mechanical “components” and “parts” as follows: fuel metering units and fuel pump metering units, valves (fuel throttle, main metering, oil flow management), heat exchangers (air/air, fuel/air, fuel/oil), debris monitoring (inlet and exhaust), seals (carbon, labyrinth, brush, balance piston, and “knife-edge”), permanent magnetic alternator and generator, eddy current sensors; or
- (ix) Torquemeter assembly (*i.e.*, housing, shaft, reference shaft, and sleeve).

(2) *Restrictions applicable to Category 9D619 and 9E619, including “build-to-print technology.”* License Exception STA may not be used to export, reexport, or transfer (in-country) ECCN 9D619 “software” or ECCN 9E619 “technology” for the “development” or “production” of any of the types of “parts” or “components” listed below. In addition, License Exception GOV may not be used to export or reexport ECCN 9D619 “software” or ECCN 9E619 “technology” for the “development” or “production” of any of the types of “parts” or “components” listed below, except with respect to exports, reexports, and transfers (in-country) to U.S. government agencies and personnel identified in § 740.11(b)(2)(i) and (b)(2)(ii).

- (i) Low pressure compressor (*i.e.*, fan) “components” and “parts” as follows: blades, vanes, spools, shrouds, blisks, shafts and disks;
- (ii) High pressure compressor “components” and “parts” as follows: blades, vanes, spools, shrouds, blisks, shafts, disks, and impellers;
- (iii) Combustor “components” and “parts” as follows: diffusers, liners, chambers, cowlings, domes and shells;
- (iv) High pressure turbine “components” and “parts” as follows: shafts and disks, blades, vanes, nozzles, shrouds;
- (v) Low pressure turbine “components” and “parts” as follows: shafts and disks, blades, vanes, nozzles, shrouds;
- (vi) Digital engine controls (*e.g.*, Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) “specially designed” for gas turbine engines controlled in this ECCN; or
- (vii) Engine monitoring systems (*i.e.*, prognostics, diagnostics, and health) “specially designed” for gas turbine engines and components controlled in this ECCN.

**15 CFR PART 742—[AMENDED]**

3. The authority citation for 15 CFR part 742 is revised 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. 108-111, 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, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

4. Section 742.6 is amended by revising paragraph (a)(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.b and .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); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and

9E619 (except “technology” for the “development,” “production” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).  
\* \* \* \* \*

**PART 774—[AMENDED]**

5. 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, 2011, 76 FR 50661 (August 16, 2011).

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9A018 is revised to read as follows:

**Supplement No. 1 to Part 774—the Commerce Control List**

\* \* \* \* \*

**9A018 Equipment on the Wassenaar Arrangement Munitions List.**

No items currently are in this ECCN. See ECCN 0A606.b.4 for the ground transport vehicles and unarmed all-wheel drive vehicles that, immediately prior to [Insert effective date of final rule that moves these vehicles], were classified under 9A018.b. See ECCN 9A610 for the aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that, immediately prior to [Insert effective date of final rule that moves these items], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. See ECCN 9A619 for military trainer aircraft turbo prop engines and parts and components therefor that, immediately prior to [Insert effective date of final rule that moves these aircraft engines], were classified under ECCN 9A018.a.2 or .a.3.

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9A619 between ECCNs 9A120 and 9A980 to read as follows:

**Supplement No. 1 to Part 774—the Commerce Control List**

\* \* \* \* \*

**9A619 Military gas turbine engines and related commodities.**

**License Requirements**

*Reason for Control:* NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 9A619.y.	NS Column 1.

Control(s)	Country chart
RS applies to entire entry except 9A619.y. AT applies to entire entry.	RS Column 1. AT Column 1.

**License Exceptions**

*LVS:* \$1,500.

*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 ECCN 9A619.

**List of Items Controlled**

*Unit:* End items in number; parts, components, accessories and attachments in \$ value.

*Related Controls:* (1) Military gas turbine engines and related articles that are enumerated in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). (2) 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. “Military Gas Turbine Engines” “specially designed” for a military use that are not controlled in USML Category XIX, paragraphs (a), (b) or (d).

**Note:** For purposes of ECCN 9A619.a, the term “military gas turbine engines” means gas turbine engines “specially designed” for “end items” enumerated in USML Category VI, VII, or VIII or on the CCL under ECCN 9A610, ECCN 0A606, or the 600-series ECCN that would control vessels transferred from the USML to Category 8 of the CCL by a proposed rule that BIS plans to publish.

b. Digital engine controls (*e.g.*, Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) “specially designed” for gas turbine engines controlled in this ECCN 9A619.

c. Hot Section components (*i.e.*, combustors, turbine blades, vanes, nozzles, disks and shrouds) and related cooled components (*i.e.*, cooled low pressure turbine blades, vanes, disks; cooled augmenters; and cooled nozzles) “specially designed” for gas turbine engines controlled in this ECCN 9A619. The cowl, diffuser, dome, chamber and liners for the combustors are also controlled by this paragraph .c.

**Note:** Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 9A619.c are controlled by ECCN 9A619.c.

d. Engine monitoring systems (*i.e.*, prognostics, diagnostics, and health) “specially designed” for gas turbine engines and components controlled in this ECCN 9A619.

e. through w. [RESERVED]

x. "Parts," "components," "accessories and attachments" that are "specially designed" for a commodity controlled by this ECCN 9A619 (other than ECCN 9A619.c) or a defense article enumerated in USML Category XIX and not specified elsewhere in the CCL or on the USML.

**Note 1:** Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 9A619.x are controlled by ECCN 9A619.x.

**Note 2:** "Parts," "components," "accessories and attachments" specified in USML subcategory XIX(f) are subject to the controls of that paragraph. "Parts," "components," "accessories and attachments" specified in ECCN 9A619.y are subject to the controls of that paragraph.

y. Specific "parts," "components," "accessories and attachments" "specially designed" for a commodity subject to control in this ECCN 9A619 or for a defense article in USML Category XIX and not elsewhere specified on the USML or in the CCL, and other aircraft commodities, as follows:

- y.1. Oil tank and reservoirs;
- y.2. Oil lines and tubes;
- y.3. Fuel lines and hoses;
- y.4. Fuel and oil filters;
- y.5. V-Band, cushion, "broomstick," hinged, and loop clamps;
- y.6. Shims;
- y.7. Identification plates;
- y.8. Air, fuel, and oil manifolds
- y.9. to y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) Have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9A619.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9B619 between ECCNs 9B117 and 9B990 to read as follows:

**9B619 Test, inspection, and production "equipment" and related commodities "specially designed" for the "development" or "production" of commodities enumerated in ECCN 9A619 or USML Category XIX.**

**License Requirements**

*Reason for Control:* NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 9B619.y.	NS Column 1.
RS applies to entire entry except 9B619.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

**License Exceptions**

LVS: \$1,500.

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 ECCN 9B619.

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Test, inspection, and production "equipment" "specially designed" for the "production," "development," repair, overhaul, or refurbishment of commodities enumerated in ECCN 9A619 (except for 9A619.y) or in USML Category XIX, and "parts," "components," "accessories and attachments" "specially designed" therefor.

b. Equipment, cells, or stands "specially designed" for testing, analysis and fault isolation of engines, systems, components, parts, accessories and attachments specified in ECCN 9A619 on the CCL or in Category XIX on the USML.

c. through x. [RESERVED]

y. Specific test, inspection, and production "equipment" "specially designed" for the "production" or "development" of commodities enumerated in ECCN 9A619 (except for 9A619.y) or USML Category XIX and "parts," "components," "accessories and attachments" "specially designed" therefor, as follows:

- y.1. Bearing puller.
- y.2. through y.98 [RESERVED]
- y.99. Commodities not identified on the CCL that (i) Have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9B619.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9C619 immediately following ECCN 9C110 to read as follows:

**9C619 MATERIALS "SPECIALLY DESIGNED" FOR COMMODITIES CONTROLLED BY 9A619 NOT ELSEWHERE SPECIFIED IN THE CCL OR ON THE USML.**

**License Requirements**

*Reason for Control:* NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 9C619.y.	NS Column 1.
RS applies to entire entry except 9C619.y.	RS Column 1.
AT applies to entire entry ..	AT Column 1.

**License Exceptions**

LVS: \$1,500.

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 ECCN 9C619.

**List of Items Controlled**

*Unit:* N/A

*Related Controls:* (1) See USML subcategory XIII(f) for controls on structural materials specifically designed, developed, configured, modified, or adapted for defense articles, such as USML Category XIX engines. (2) 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. Materials "specially designed" for commodities enumerated in ECCN 9A619 (except for 9A619.y) not elsewhere specified in the CCL or on the USML.

**Note 1:** Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to the controls of the applicable ECCN.

**Note 2:** Materials "specially designed" for both an engine enumerated in USML Category XIX and an engine enumerated in ECCN 9A619 are subject to the controls of this ECCN 9C619.

b. to .x. [RESERVED]

y. Specific materials "specially designed" for commodities enumerated in ECCN 9A619 (except for 9A619.y), and "parts," "components," "accessories and attachments" "specially designed" therefor, as follows:

- y.1. through y.98 [RESERVED]
- y.99. Materials not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9C619.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9D018 is revised to read as follows:

**9D018 "Software" for the "use" of equipment controlled by 9A018.**

No items currently are in this ECCN. See ECCN 0D606 for software related to ground transport vehicles and unarmed all-wheel drive vehicles that, immediately prior to [Insert effective date of final rule that moves these vehicles], were classified under 9A018.b. See ECCN 9D610 for software related to aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that, immediately prior to [Insert effective date of final rule that moves these items], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. See ECCN 9D619 for software related to military trainer aircraft turbo prop engines and parts and components therefor that, immediately prior to [Insert effective date of final rule that moves these aircraft engines], were classified under ECCN 9A018.a.2 or .a.3.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9D619 between ECCN 9D105 and 9D990 to read as follows:

**9D619 Software "specially designed" for the "development," "production,"**

operation or maintenance of military gas turbine engines and related commodities controlled by 9A619,	equipment controlled by 9B619, or materials controlled by 9C619.	License Requirements <i>Reason for Control:</i> NS, RS, AT.
Control(s)		Country chart
NS applies to entire entry except for software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y.		NS Column 1.
RS applies to entire entry except for software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y.		RS Column 1.
AT applies to entire entry .....		AT Column 1.

**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 ECCN 9D619.

**License Exceptions Note:** Supplement No. 4 to part 740 of the EAR precludes the use of License Exception GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the U.S. government) and License Exception STA with respect to “development” and “production” “software” for specific types of “parts” and “components” controlled by ECCN 9A619.x. and identified in the Supplement.

**List of Items Controlled**

*Unit:* \$ value.

*Related Controls:* (1) Software directly related to articles enumerated in USML Category XIX is subject to the control of USML paragraph XIX(g). (2) See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

*Related Definitions:* N/A.

*Items:*

**Note:** “Software” described in this ECCN 9D619 that is not specified elsewhere on the CCL is controlled by this ECCN, even if it is also related to an article controlled on the USML, as specified in Category XIX(g).

a. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), or ECCN 9C619 (except 9C619.y).

b. to x. [RESERVED]

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 9A619, 9B619, or 9C619, as follows:

y.1. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 9A619.y, 9B619.y, or 9C619.y.

y.2. through y.98 [RESERVED]

y.99. Software not identified on the CCL that (i) Has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9D619.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9E018 is revised to read as follows:

**9E018 “Technology” for the “development,” “production,” or “use” of equipment controlled by 9A018.**

No items currently are in this ECCN. See ECCN 0E606 for technology related to ground transport vehicles and unarmed all-wheel drive vehicles that, immediately prior to

[Insert effective date of final rule that moves these vehicles], were classified under 9A018.b. See ECCN 9E610 for technology related to aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that, immediately prior to [Insert effective date of final rule that moves these items], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. See ECCN 9E619 for technology related to military trainer aircraft turbo prop engines and parts and components therefor that, immediately prior to [Insert effective date of final rule that moves these aircraft engines], were classified under ECCN 9A018.a.2 or .a.3.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9E619 between ECCN 9E102 and 9E990 to read as follows:

**9E619 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619.**

**License Requirements**

*Reason for Control:* NS, RS, AT.

Control(s)		Country chart
NS applies to entire entry except “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y.		NS Column 1.
RS applies to entire entry except “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y.		RS Column 1.
AT applies to entire entry .....		AT Column 1.

**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 ECCN 9E619.

**License Exceptions Note:** Supplement No. 4 to part 740 of the EAR limits the use of License Exception GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the U.S. government) and License Exception STA with respect to “development” and “production” “technology” (other than “build to print technology”) for specific

types of “parts” and “components” controlled by ECCN 9A619.x. and identified in the Supplement. In addition, Supplement No. 4 to part 740 precludes the use of License Exception GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the U.S. government) or License Exception STA with respect to “development” and “production” “technology” (including “build to print technology” and hot section “technology”) for certain types of “parts” and “components” controlled by ECCN 9A619.x, as specified in the Supplement.

**List of Items Controlled**

*Unit:* \$ value.

*Related Controls:* (1) Technical data directly related to articles enumerated in USML Category XIX are subject to the control of USML Category XIX(g). (2) See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items. (3) Technology described in ECCN 9E003 is controlled by that ECCN.

*Related Definitions:* N/A.

*Items:*

**Note:** “Technology” described in this ECCN 9E619 that is not specified elsewhere

on the CCL is controlled by this ECCN, even if it is also related to an article controlled on the USML, as specified in Category XIX(g).

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of items controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), ECCN 9C619 (except 9C619.y), or ECCN 9D619 (except 9D619.y).

b. through x. [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619, 9B619, or 9C619, or “software” controlled by ECCN 9D619, as follows:

y.1. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 9A619.y, 9B619.y, or 9C619.y, or “software” controlled by ECCN 9D619.y.

y.2. through y.98 [RESERVED]

y.99. “Technology” not identified on the CCL that (i) Has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9E619.

Dated: November 28, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2011–30978 Filed 12–5–11; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 742, 770 and 774

[Docket No. 110310188–1621–02]

RIN 0694–AF17

#### Revisions to the Export Administration Regulations (EAR): Control of Military Vehicles and Related Items That the President Determines No Longer Warrant Control on the United States Munitions List

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

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Industry and Security publishes a third proposed rule that describes how articles the President determines no longer warrant control under Category VII (military vehicles and related articles) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL). This proposed rule would re-propose, with certain changes, five new Export Control Classification Numbers (ECCNs) on the Commerce Control List

(CCL) that were proposed in a proposed rule published on July 15, 2011 (76 FR 41958). The revised ECCNs in this proposed rule are the result of continued deliberations of the Bureau of Industry and Security, the Department of Defense and the Department of State and recommendations of commenters on the July 15 proposed rule. This proposed rule is being published in conjunction with a proposed rule by the Department of State, Directorate of Defense Trade Controls to remove from Category VII of the USML (22 CFR 121.1, Category VII) articles that the President determines no longer warrant control on the USML.

**DATES:** Comments must be received by January 20, 2012.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS–2011–0040.

- *By email directly to:* [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include RIN 0694–AF17 in the subject line.

- *By mail or delivery to:* Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF17.

**FOR FURTHER INFORMATION CONTACT:** Gene Christiansen, Office of National Security and Technology Transfer Controls, 202 482 2984, [gene.christiansen@bis.doc.gov](mailto:gene.christiansen@bis.doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 15, 2011, as part of the Administration’s ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) would be controlled on the Commerce Control List (CCL). In that proposed rule, BIS also described its proposal for how military vehicles and related articles in USML Category VII that no longer warrant controls under the USML would be controlled on the CCL. On November 7, 2011, BIS published a proposed rule (76 FR 68675) that sets forth how aircraft and related items the President determines to no longer warrant control on the USML would be controlled on the CCL (herein, the aircraft proposed rule). In that proposed rule, BIS made several changes and

additions to the framework proposed in the July 15 proposed rule. Following the structure of the July 15 proposed rule, as modified by the rule published on November 7, this proposed rule describes BIS’s revised proposal for how various military vehicles and related articles that are controlled by USML Category VII would be controlled on the CCL.

The changes described in this proposed rule and the State Department’s proposed amendment to Category VII of the USML are based on a review of Category VII by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category VII that either (i) Are inherently military and otherwise warrant control on the USML, or (ii) if of a type common to civil vehicles, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States and that are almost exclusively available from the United States. For articles that satisfy one or both of those criteria, the review resulted in the article’s remaining on the USML. An article that did not satisfy either standard but was nonetheless a type of article that is, as a result of differences in form and fit, “specially designed” for military applications, would be identified in the new ECCNs proposed in this notice.

The license requirements and other EAR-specific controls for such items also described in this notice would enhance national security by (i) Allowing for greater interoperability with our NATO and other allies while still maintaining and expanding robust controls and, in some cases, prohibitions on exports or reexports to other countries and for proscribed end users and end uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end uses, and end users of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML “to determine what items, if any, no longer warrant export controls under” the