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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 774

[Docket No. 120105019–5755–01]

RIN 0694–AF52

Commerce Control List: Addition of Items Determined To No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)

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

ACTION: Final rule.

SUMMARY: This final rule implements changes described in a proposed rule that the Bureau of Industry and Security (BIS) published on June 17, 2015. Specifically, this final rule describes how articles the President has determined no longer warrant control under Category XIV (Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment) or Category XVIII (Directed Energy Weapons) of the United States Munitions List (USML) are now controlled under the Commerce Control List (CCL). The affected Category XIV articles consist primarily of dissemination, detection, and protection “equipment” and related articles, such as production and test “equipment,” and are controlled under new Export Control Classification Numbers (ECCNs) 1A607, 1B607, 1C607, 1D607, and 1E607, as added to the CCL by this final rule. The affected Category XVIII articles consist primarily of tooling, production “equipment,” test and evaluation “equipment,” test models, and related articles and are controlled under new ECCNs 6B619, 6D619 and 6E619, as added to the CCL by this final rule.

This final rule is one in a series of rules describing how various types of articles that the President has determined no longer warrant control on the USML, as part of the Administration’s Export Control Reform Initiative, are controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR).

This final rule is being published by BIS in conjunction with a final rule from the Department of State, Directorate of Defense Trade Controls, which amends the list of articles controlled by USML Categories XIV and XVIII. The citations in this BIS rule to USML Categories XIV and XVIII reflect the amendments contained in the Department of State’s rule. The revisions made by BIS in this rule are part of Commerce’s retrospective regulatory review plan under Executive Order 13563 completed in August 2011. **DATES:** This rule is effective December 31, 2016.

ADDRESSES: The Department of Commerce’s full retrospective regulatory review plan can be accessed at: <http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

FOR FURTHER INFORMATION CONTACT: For questions regarding dissemination, detection and protection “equipment” and related items that are controlled under new ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607, contact Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, telephone: (202) 482–3343, email: Richard.Duncan@bis.doc.gov.

For questions regarding tooling, production “equipment,” test and evaluation “equipment,” test models, and related items that are controlled under new ECCNs 6B619, 6D619 and 6E619, contact Mark Jaso, Sensors and Aviation Division, Office of National Security & Technology Transfer Controls, Bureau of Industry and Security, telephone: (202) 482–0987, email: Mark.Jaso@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule is published by the Bureau of Industry and Security (BIS) as part of the Administration’s Export

Control Reform (ECR) Initiative, the object of which is to protect and enhance U.S. national security interests. The implementation of the ECR initiative includes amendment of the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML), so that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and amendment of the Export Administration Regulations (EAR) to control military items that do not warrant USML controls. This series of amendments to the ITAR and the EAR will reform the U.S. export control system to enhance our national security by: (i) Improving the interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services; and (iii) allowing export control officials to focus government resources on transactions that pose greater national security, foreign policy, or proliferation concerns than those involving our NATO allies and other multi-regime partners.

Following the structure set forth in the final rule titled “Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform” (78 FR 22660, April 16, 2013) (hereinafter the “April 16 (initial implementation) rule”), this final rule describes BIS’s implementation of controls, under the EAR’s CCL, on certain dissemination, detection and protection “equipment” and related articles previously controlled under USML Category XIV in the ITAR and certain tooling, production “equipment,” test and evaluation “equipment,” test models and related articles previously controlled under USML Category XVIII of the ITAR.

In the April 16 (initial implementation) rule, BIS created a series of new ECCNs to control items that would be removed from the USML and similar items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that were already controlled elsewhere on the CCL. That final rule referred to this series of new ECCNs as

the “600 series,” because the third character in each of these new ECCNs is the number “6.” The first two characters of the “600 series” ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a number, within the range of 0 through 9, that identifies the Category on the CCL in which the ECCN is located. The second character is a letter, within the range of A through E, that identifies the product group in a CCL Category. As indicated above, the third character in the “600 series” ECCNs is the number “6,” which distinguishes the items controlled under this series of ECCNs from items identified under other ECCNs on the CCL. 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.

Pursuant to section 38(f) of the Arms Export Control Act (AECA), the President is obligated to 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).

The changes made by this final rule and in the State Department’s companion rule to Categories XIV and XVIII of the USML are based on a review of these USML Categories by the Defense Department, which worked with the Departments of State and Commerce in preparing these amendments. Other agencies with expertise and equities in the items at issue in these rules were consulted as well. The review focused on identifying those types of articles that provide the United States with a critical military or intelligence capability and that are not currently in normal commercial use. Such items remain on the USML. Other items with less than a critical military or intelligence capability not in normal commercial use will transition to the “600 series” controls. It is the intent of the agencies that USML Categories XIV and XVIII, and the corresponding “600 series” ECCNs on the CCL, not control items in normal commercial use. Such items should be controlled under existing dual-use controls on the CCL, consistent with the Wassenaar Arrangement List of Dual-Use Goods and Technologies.

All references to the USML in this rule are to the list of defense articles that are controlled for purposes of

export, temporary import, or brokering pursuant to the ITAR, and not to the list of defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. Pursuant to section 38(a)(1) of the AECA, all defense articles controlled for export or import, or that are subject to brokering controls, are part of the “USML” under the AECA. For the sake of clarity, references to the USMIL are to the list of defense articles controlled by ATF for purposes of permanent import. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR’s USML to the EAR’s CCL, for purposes of export controls, does not affect the list of defense articles that are controlled on the USMIL under the AECA for purposes of permanent import.

On January 18, 2011, the President issued Executive Order 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. The revisions made by this rule are part of Commerce’s retrospective regulatory review plan under Executive Order 13563. Commerce’s full plan, completed in August 2011, can be accessed at: <http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

This final rule implements amendments to the EAR proposed in BIS’s rule titled “Commerce Control List: Addition of Items Determined to No Longer Warrant Control under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons),” which was published in the **Federal Register** on June 17, 2015 (RIN 0694–AF52) (80 FR 34562) (herein “the June 17 (toxicological agents and directed energy weapons) rule”).

Dissemination, Detection and Protection “Equipment” and Related Items

Public Comments and BIS Responses

BIS received comments from eight parties in response to the proposed amendments in the June 17 (toxicological agents and directed energy weapons) rule that addressed dissemination, detection and protection “equipment” and related items.

ECCN 1A607 (Military Dissemination, Detection, and Protection “Equipment”)

Comment: One commenter noted that tear gas and riot control agents were dropped from proposed USML Category XIV(d), but did not appear in proposed ECCN 1A607.

Response: The tear gas and riot control agents removed from USML Category XIV(d) are now controlled under ECCN 1C607.a.1 through a.6, as they were proposed to be controlled in BIS’s June 17 (toxicological agents and directed energy weapons) rule. Therefore, no further action is required.

ECCN 1A607.f (Protection “Equipment”)

Comment: One commenter noted that proposed ECCN 1A607.f included protection “equipment,” but did not specifically indicate that it controlled Chemical Agent Resistant Coatings (CARC). The commenter recommended that CARC be specifically identified in ECCN 1A607.f or that the word “material” be added so that companies would be more likely to interpret ECCN 1A607.f to include coatings, such as CARC. In addition, the commenter recommended that the export controls on CARC be changed to align more closely with export controls maintained by U.S. allies, who do not require an export license for CARC to most destinations. Specifically, the commenter felt that companies familiar with the European Union military list could become confused, because the controls in ECCN 1A607.f are similar to those described in ML.7.f, which does not control CARC. In the event that CARC continues to require a license to most destinations, the commenter recommended that all CARC be placed under the export licensing jurisdiction of a single U.S. Government agency to simplify jurisdictional and/or classification determinations.

Response: ECCN 1A607.f indicates that it controls protection “equipment” not controlled by USML Category XIV(f) that is “specially designed” for military use and for defense against materials specified by USML XIV(a) or (b) or riot control agents controlled by ECCN 1C607.a. BIS believes that this control language, as revised in this final rule to specify “protective coatings” (as well as air conditioning units and protective clothing), is now sufficiently clear as to leave no doubt that it applies to paintings/coatings such as CARC. Consequently, the control language used in the June 17 (toxicological agents and directed energy weapons) rule has been retained in this final rule with only the above-referenced change (*i.e.*, the

revision of the parenthetical phrase in the introductory text of ECCN 1A607.f to read, as follows: “including air conditioning units, protective coatings, and protective clothing.”

As for the scope of the license requirements that apply to CARC, all items in ECCN 1A607, including CARC, are subject to NS Column 1 and RS Column 1 license requirements, which apply to all destinations, except Canada. While the scope of the EAR license requirements on CARC is considerably broader than that maintained by some of our allies, exports of CARC are authorized without a license, under License Exception STA, for destinations in, or nationals of, Country Group A:5 in Supplement No. 1 to part 740 of the EAR, which currently contains 36 countries. Furthermore, the EAR requirements that apply to the CARC that were previously controlled under USML Category XIV and are now controlled under new ECCN 1A607.f represent a significant easing of the regulatory burden on exporters of such CARC 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. With respect to the commenter’s recommendation that all CARC be placed under the export licensing jurisdiction of a single U.S. Government agency, BIS notes that the only CARC that continue to be controlled under USML Category XIV (specifically, in paragraph (f)(7) of USML Category XIV) are those that have been qualified to one of the following four military specifications: MIL-PRF-32348, MIL-DTL-64159, MIL-C-46168, or MIL-DTL-53039. In light of the anticipated benefits of moving certain CARC from USML Category XIV to new ECCN 1A607 on the EAR’s CCL, as described above, there would appear to be little practical upside to continuing to control all CARC under the export licensing jurisdiction of a single U.S. Government agency.

Comment: One commenter recommended that all items identified in USML Category XIV(f)(4) for individual protection against chemical and biological agents specified in USML Category XIV(a) or (b) should be controlled under new ECCN 1A607.f on the CCL. In addition, the commenter recommended that all individual protection “equipment” and clothing controlled under new ECCN 1A607.f should be authorized for export under License Exception BAG under special provisions similar to those currently applicable to “personal protective equipment” (*i.e.*, ECCN 1A613.c or .d)

in accordance with Section 740.14(h) of the EAR.

Response: USML Category XIV(f)(4), as set forth in the State Department’s companion rule to this final rule, controls equipment or items that offer individual or collective protection against items specified in USML Category XIV(a) or (b), as follows: (1) M53 Chemical Biological Protective Mask or M50 Joint Service General Purpose Mask (JSGPM); (2) filter cartridges containing sorbents controlled in USML Category XIV(f)(4)(iii); (3) ASZM-TEDA carbon; and (4) ensembles, garments, suits, jackets, pants, boots or socks for individual protection, and liners for collective protection, that allow no more than 1% breakthrough of GD, or no more than 2% breakthrough of any other chemical specified in USML Category XIV(a), when evaluated by executing the applicable method(s) of testing described in the current version of Test Operations Procedure (TOP) 08–2–201 (Collective Protection Novel Closures Testing) or 08–2–501 (Permeation Testing of Materials with Chemical Agents or Simulants—Swatch Testing) and using the defined DoD-specific requirements described therein.

The control criteria in USML Category XIV(f)(4), as described above, are the result of a review of USML Category XIV, as part of the Administration’s Export Control Reform (ECR) Initiative, to ensure that it controls only those items that are inherently military, provide the United States with a critical military or intelligence advantage, or otherwise warrant control on the USML. In the absence of any compelling evidence contrary to the results of this review, no change is contemplated, with respect to these USML Category XIV criteria, at this time. New ECCN 1A607.f controls “equipment” previously controlled under USML Category XIV(f)(4) or (f)(5) that the President has determined no longer warrants control on the USML (*i.e.*, protection “equipment,” including “equipment” for individual protection, not controlled by USML Category XIV(f) that is “specially designed” for military use and for defense against materials specified by USML XIV(a) or (b) or riot control agents controlled by ECCN 1C607.a). This final rule does not expand the scope of new ECCN 1A607.f to control all “equipment” for individual protection against chemical and biological agents specified in USML Category XIV(a) or (b), because this change would be contrary to the President’s determination, based on the results of the aforementioned review of USML Category XIV (*i.e.*, it would result

in the transfer to the CCL of items that are inherently military, provide the United States with a critical military or intelligence advantage, or otherwise warrant control on the USML).

With respect to the commenter’s recommendation that all individual protection “equipment” and clothing controlled under new ECCN 1A607.f should be authorized for export under License Exception BAG (under special provisions similar to those currently applicable to “personal protective equipment”), this final rule amends the License Exception BAG provisions in Section 740.14(h) of the EAR to authorize exports, reexports, or in-country transfers of chemical or biological agent protective gear consistent with the requirements and restrictions described therein. In a corresponding change, this final rule also amends the License Exception TMP provisions in Section 740.9(a)(11) of the EAR to authorize temporary exports, reexports, or in-country transfers of chemical or biological agent protective gear consistent with the requirements and restrictions described therein. These changes are also intended to make the scope of these license exceptions, as they apply to chemical or biological agent protective gear controlled under new ECCN 1A607.f, conform with the scope of the ITAR exemption for personal protective equipment in Section 123.17 of the ITAR.

Comment: One commenter noted that neither BIS’s June 17 (toxicological agents and directed energy weapons) rule nor State’s companion proposed rule clearly indicated whether filter cartridges containing sorbents funded by the Department of Defense via contract or other funding authorization, as proposed to be controlled under USML Category XIV(n), would be controlled under new ECCN 1A607.f on the CCL or under USML Category XIV(f) or (n). In addition, the commenter noted that neither of these proposed rules clearly indicated whether filter cartridges that meet the requirements of specifications PRF-EA-2251 for the M61 filter cartridge, but do not contain ASZM-TEDA carbon, would be controlled under new ECCN 1A605.f or under USML Category XIV(f) or (n).

Response: Neither of the observations made by the commenter requires any modification to new ECCN 1A607.f. Filter cartridges containing developmental sorbents are controlled under USML Category XIV(f)(4)(ii) if the sorbents were funded by the Department of Defense via contract or other funding authorization, as specified in USML Category XIV(n), and none of the

elements in Note 1 to paragraph (n) apply (*i.e.*, the sorbents are determined to be subject to the EAR via a commodity jurisdiction determination or they are identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications). The commenter's question concerning the export licensing jurisdiction status of filter cartridges reflects the fact that State's companion Category XIV/XVIII proposed rule did not specifically enumerate (in Category XIV) filter cartridges containing sorbents controlled under USML Category XIV(n). USML Category XIV(f)(ii), in State's proposed rule, specified that it controlled filter cartridges containing sorbents controlled under USML Category XIV(f)(iii), but the control status of filter cartridges containing sorbents enumerated in proposed USML Category XIV(n) was not specifically indicated. Consequently, State's companion Category XIV/XVIII final rule corrects this oversight by clarifying USML Category XIV to indicate that it applies to filter cartridges that contain any of the sorbents specified under USML Category XIV(f)(iii) or (n) and, in so doing, eliminates the possibility that such filter cartridges could be controlled under new ECCN 1A607.f on the CCL (except to the limited extent that sorbents funded by the Department of Defense via contract or other funding authorization are excluded from USML Category XIV(n) for a specified period of time, as indicated in Note 3 thereto).

In response to the commenter's request for clarification concerning controls on filter cartridges that meet the requirements of specifications PRF-EA-2251 for the M61 filter cartridge, but do not contain ASZM-TEDA carbon, their control status also would depend upon the sorbents that they contain. As indicated above, filter cartridges that contain any of the sorbents controlled by USML Category XIV (*i.e.*, sorbents specified under paragraph (f)(iii) or (n) of Category XIV) are controlled under USML Category XIV. Otherwise, they are controlled under new ECCN 1A607.f.

ECCN 1A607.h (Detection/Identification "Equipment")

Comment: One commenter interpreted BIS's June 17 (toxicological agents and directed energy weapons) rule and State's companion USML Category XIV/XVIII proposed rule as transferring to new ECCN 1A607.h on the CCL all detection equipment, previously controlled under USML Category XIV(f)(2), that is "specially

designed" for military use for the detection of agents identified in proposed USML Category XIV(a) or (b), except for: (1) Detection equipment that is classified or that relates to classified information; and (2) military detection equipment developed under a DoD contract or other funding authorization, as described in proposed USML Category XIV(f)(2) and subject to the restriction in Note 3 thereto, which indicated that the controls in paragraph (f)(2) would apply only to controls dated one year (or later) after the date of publication of State's USML Category XIV final rule. Note 3 to paragraph (f)(2) was mistakenly included in USML Category XIV, as described in State's proposed rule; consequently, it does not appear in State's final rule.

Response: New ECCN 1A607.h controls "equipment" not controlled by USML Category XIV(f) that is "specially designed" for military use and for the detection or identification of materials specified by USML Category XIV(a) or (b) or riot control agents controlled by ECCN 1C607.a on the CCL. Because new ECCN 1A607.h indicates that it does not include any detection equipment that is controlled by USML Category XIV(f), the scope of the ECCN is necessarily dependent upon the scope of Category XIV(f), which, in turn, is subject to interpretation by the U.S. Department of State. Therefore, the Department of State, and not BIS, is the appropriate U.S. Government agency to confirm whether the commenter's statement is correct (in whole or in part), as it applies to the scope of new ECCN 1A607.h and the "equipment" previously controlled under USML Category XIV(f)(2). Consequently, this question should be addressed, with respect to specific detection "equipment," through the submission of one or more commodity jurisdiction (CJ) requests to the State Department's Directorate of Defense Trade Controls (DDTC), consistent with the requirements in the ITAR.

ECCN 1A607.k (Medical Countermeasures)

Comment: One commenter noted that items controlled under proposed new ECCN 1A607.k (military medical countermeasures "equipment"), and related "technology" controlled under proposed new ECCN 1E607.a, would not be eligible for export/reexport under the License Exception GOV provisions in Section 740.11(d), International Inspections under the Chemical Weapons Convention (CWC), to destinations located outside of Country Group A:5 in Supplement No. 1 to part 740 of the EAR.

Response: The commenter is correct in noting that "equipment" in new ECCN 1A607.k and related "technology" in new ECCN 1E607.a are not eligible for export under the License Exception GOV provisions in Section 740.11(d) of the EAR, except to destinations located in Country Group A:5. This restriction, which is described in Section 740.11(d)(2)(iii) of the EAR, was implemented as part of BIS's April 16 (initial implementation) rule in which the License Exception GOV provisions in Section 740.11 of the EAR were revised. Among the License Exception GOV provisions that were affected by these revisions were those authorizing exports and reexports to the Organization for the Prohibition of Chemical Weapons (OPCW) and exports and reexports by the OPCW for official international inspection and verification use under the terms of the CWC. Under the OPCW authorization, as revised, Section 740.11(d)(2)(iii) of the EAR prohibits exports and reexports of items controlled under "600 series" ECCNs on the CCL to countries not listed in Country Group A:5. Country Group A:5 currently consists of 36 countries, as established by BIS's April 16 (initial implementation) rule, which became effective on October 15, 2013. The scope of the OPCW authorization in License Exception GOV was the result of extensive U.S. Government interagency review and discussion. Furthermore, the scope of eligible countries for the OPCW authorization (*i.e.*, 36 countries), as established by BIS's April 16 (initial implementation) rule, was initially broader than the country scope that was authorized under the License Exception GOV provisions for cooperating governments, as described in Section 740.11(c) of the EAR, which then authorized exports and reexports to 27 cooperating governments and agencies of the North Atlantic Treaty Organization (NATO). The country scope of the cooperating governments authorization under License Exception GOV was subsequently expanded, by BIS's Wassenaar Arrangement (WA) 2014 Plenary final rule (98 FR 29432, May 21, 2015), to include 41 cooperating governments and agencies of NATO. Currently, the country scope of the cooperating governments and OPCW authorizations under License Exception GOV are roughly equivalent (*i.e.*, the former applies to four more countries than the latter—two of those countries are CWC States Parties and one is a special administrative region of a State Party). In light of the recent changes to the License Exception GOV provisions described above, BIS does

not have any immediate plans to address possible revisions to the country scope of the OPCW authorization. BIS also considers any such action to be outside the scope of this rulemaking, which does not specifically address EAR requirements involving the CWC and the OPCW.

ECCN 1A607.x (“Parts,” “Components,” “Accessories,” and “Attachments”)

Comment: One commenter noted that proposed new ECCN 1A607.x indicated that it controlled “parts,” “components,” “accessories,” and “attachments” “specially designed” for the “equipment” described in proposed ECCN 1A607.e, .f, .g, or .j. However, the commenter also noted that “parts,” “components,” “accessories,” and “attachments” “specially designed” for the detection/identification “equipment” described in proposed ECCN 1A607.h were not included in proposed ECCN 1A607.x. As a result, the commenter questioned whether any “parts,” “components,” “accessories,” and “attachments” “specially designed” for detection/identification “equipment” that might be removed from the USML, as a result of the proposed revisions to USML Category XIV(f), would be controlled under proposed new ECCN 1A607 on the CCL (e.g., under proposed ECCN 1A607.x).

Response: The commenter is correct in noting that proposed new ECCN 1A607.x specified only those “parts,” “components,” “accessories,” and “attachments” “specially designed” for the “equipment” described in ECCN 1A607.e, .f, .g, or .j, and not those “parts,” “components,” “accessories,” and “attachments” “specially designed” for detection/identification “equipment” described in ECCN 1A607.h. This final rule corrects that oversight. New ECCN 1A607.x, as added to the CCL by this final rule, indicates that it controls “parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity controlled by ECCN 1A607.e, .f, .g, .h, or .j or for a defense article controlled by USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

General Comments on Dissemination, Detection and Protection “Equipment”

Comment: One commenter noted that the BIS and State Category XIV/XVIII proposed rules omitted coverage of the Wassenaar Munitions List (WAML) items in WAML 7.a (Biological agents or radioactive materials adapted for use in war to produce casualties in humans

and animals, degrade equipment, or damage crops or the environment).

Response: The items noted by the commenter are not identified in any of the new “600 series” ECCNs described in BIS’s June 17 (toxicological agents and directed energy weapons) rule, but they are clearly enumerated under USML Category XIV in State’s companion proposed rule. Proposed USML Category XIV(b)(1)(ii) identifies specific biological agents that have been militarized, as described in USML Category XIV(b)(1)(i), and proposed USML Category XIV(b)(2) describes biological agents identified under ECCN 1C351, 1C353, or 1C354 on the EAR’s CCL that have been militarized, as described in USML Category XIV(b)(2)(i) and (b)(2)(ii). These defense articles are identified in the USML Category XIV amendments contained in State’s companion rule to this final rule.

Comment: One commenter noted that the following two Australia Group (AG) controlled items were not identified in either the BIS or State Category XIV/XVIII proposed rules:

(1) Valves with a closure element designed to be interchangeable, as listed under 6.b on the AG Control List of Dual-Use Chemical Manufacturing Facilities and Equipment); and (2) nose-only exposure apparatus, as listed under 8.b on the AG Control List of Dual-Use Biological Equipment.

Response: The commenter accurately noted that neither of the two items were identified in the BIS and State Category XIV/XVIII proposed rules. However, because these items are identified as dual-use items on the AG common control lists indicated above, neither item is within the scope of this rulemaking. The valves, described under 6.b on the AG chemical manufacturing facilities and equipment control list, are currently controlled under ECCN 2B350.g.2 on the CCL. The nose-only exposure apparatus, described under 8.b on the AG biological equipment common control list, was recently added to this AG control list and is currently controlled under ECCN 2B352.h based on a recent update of AG listed items on the CCL (see 81 FR 36458, June 7, 2016).

Comment: One commenter indicated that some of the proposed new “600 series” ECCNs in BIS’s June 17 (toxicological agents and directed energy weapons) rule maintained unilateral controls on certain items that were proposed to be transferred to the CCL from USML Category XIV.

Response: All the items described in the new “600 series” ECCNs created by this final rule were previously controlled on the USML under the ITAR

and were added to these new ECCNs on the CCL only after the President determined that these items no longer warrant control on the USML for the reasons set forth above.

Changes Made by This Rule to Controls on Certain Dissemination, Detection and Protection “Equipment” and Related Items Previously Controlled Under USML Category XIV

This final rule creates five new “600 series” ECCNs in CCL Category 1 (ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607) that clarify the EAR controls applicable to certain dissemination, detection and protection “equipment” and related items that the President has determined no longer warrant control under USML Category XIV. Terms such as “part,” “component” “accessories,” “attachments,” and “specially designed” are applied in the same manner in this rule as those terms are defined in Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a “Specially Designed” Decision Tool and a CCL Order of Review Decision Tool are available on the BIS Web site at: <http://www.bis.doc.gov/index.php/decision-tree-tools>.

New ECCN 1A607 Military dissemination “equipment” for riot control agents, military detection and protection “equipment” for toxicological agents (including chemical, biological, and riot control agents), and related commodities.

In new ECCN 1A607, paragraphs .a through .d, paragraph .i, and paragraphs .l through .w are reserved. Paragraph .e of ECCN 1A607 controls “equipment” “specially designed” for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a. Paragraph .f of ECCN 1A607 controls protection “equipment” “specially designed” for military use and for defense against either materials controlled by USML Category XIV(a) or (b) or any of the riot control agents in new ECCN 1C607.a. Paragraph .g of ECCN 1A607 controls decontamination “equipment” not controlled by USML Category XIV(f) that is “specially designed” for military use and for the decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b). Paragraph .h controls “equipment” not controlled by USML Category XIV(f) that is “specially designed” for military use and for the detection or identification of either materials specified by USML Category XIV(a) or (b) or riot control agents controlled by new ECCN 1C607.a. Paragraph .j controls “equipment” “specially

designed” to: (i) Interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a “600 series” ECCN; and (ii) collect and process samples of articles controlled in USML Category XIV(a) or (b). Paragraph .k controls medical countermeasures that are “specially designed” for military use (including pre- and post-treatments, antidotes, and medical diagnostics) and “specially designed” to counter chemical agents controlled by USML Category XIV(a). Paragraph .x controls “parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity controlled under ECCN 1A607.e, .f, .g, .h, or .j or a defense article controlled in USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

New ECCN 1B607 Military test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV.

In new ECCN 1B607, paragraph .a controls “equipment,” not including incinerators, that is “specially designed” for the destruction of chemical agents controlled by USML Category XIV(a). Paragraph .b of ECCN 1B607 controls test facilities and “equipment” that are “specially designed” for military certification, qualification, or testing of commodities controlled by new ECCN 1A607.e, .f, .g, .h, or .j or by USML Category XIV(f), except for XIV(f)(1). Paragraph .c of ECCN 1B607 controls tooling and “equipment” “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities controlled under new ECCN 1A607.e, .f, .g, .h, or .j or USML Category XIV(f). Paragraphs .d through .w are reserved. Paragraph .x controls “parts,” “components,” “accessories,” and “attachments,” not enumerated or otherwise described elsewhere in the USML, that are “specially designed” for a commodity controlled by ECCN 1B607.b or .c or for a defense article controlled by USML Category XIV(f).

As indicated above, ECCN 1B607.b does not control test facilities and “equipment” that are “specially designed” for military certification, qualification, or testing of commodities and are enumerated or otherwise described in USML Category XIV(f)(1), as set forth in State’s companion rule to this final rule (e.g., see the equipment in USML Category XIV(f)(1)(ii) that is

“specially designed” for testing the articles controlled in paragraph (a), (b), (c), (e), or (f)(4) of USML Category XIV). In addition to the test facilities and “equipment” controlled by ECCN 1B607.b, see the tooling and “equipment” classified under ECCN 2B350 or 2B352 for producing the chemical/biological agents, precursors, or defoliants described in USML Category XIV(a), (b), (c), or (e). The EAR also control tooling and “equipment” to produce the antibodies/polynucleotides and vaccines described in USML Category XIV(g) and (h), respectively, as follows: lab “equipment” designated as EAR99 under the EAR; biological dual-use “equipment” (including protective “equipment”) classified under ECCN 2B352; and EAR-controlled biological systems for making vaccines (involving the use of mice, rabbits, etc.).

New ECCN 1C607 Tear gases, riot control agents and materials for the detection and decontamination of chemical warfare agents.

New ECCN 1C607.a controls specified tear gases and riot control agents. Paragraph .b of ECCN 1C607 controls “biopolymers” not controlled by USML Category XIV(g) that are “specially designed” or processed for the detection or identification of chemical warfare (CW) agents specified by USML Category XIV(a) and the cultures of specific cells used to produce them. Paragraph .c controls specified “biocatalysts” and biological systems that are not controlled by USML Category XIV(g) and are “specially designed” for the decontamination or degradation of CW agents specified by USML Category XIV(a). Paragraph .d controls chemical mixtures not controlled by USML Category XIV(f) that are “specially designed” for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

New ECCN 1D607 “Software” “specially designed” for the “development,” “production,” operation, or maintenance of items controlled by 1A607, 1B607 or 1C607.

New ECCN 1D607.a controls “software” “specially designed” for the “development,” “production,” operation, or maintenance of items controlled by ECCN 1A607, 1B607 or 1C607. Paragraph .b of ECCN 1D607 is reserved.

New ECCN 1E607 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607.

New ECCN 1E607.a controls “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607. Paragraph .b of ECCN 1E607 is reserved.

Amendments to License Exceptions BAG and TMP related to Individual Protection “Equipment” in ECCN 1A607.f.

In response to public comments recommending that all individual protection “equipment” and clothing controlled under new ECCN 1A607.f should be authorized for export under License Exception BAG (under special provisions similar to those currently applicable to “personal protective equipment”), this final rule amends the License Exception BAG provisions in Section 740.14(h) of the EAR to authorize exports, reexports, or in-country transfers of chemical or biological agent protective gear consistent with the requirements and restrictions described therein. In a corresponding change, this final rule also amends the License Exception TMP provisions in Section 740.9(a)(11) of the EAR to authorize temporary exports, reexports, or in-country transfers of chemical or biological agent protective gear consistent with the requirements and restrictions described therein. The amendments to License Exceptions BAG and TMP also change the requirements for Afghanistan to be consistent with those of the majority of other Country Group D:5 destinations (i.e., the U.S. person authorized to use the license exception must be affiliated with the U.S. Government and be traveling on official business or traveling in support of a U.S. Government contract). The same requirement applies to the use of these license exception provisions for Iraq, also a D:5 country, with the additional option that the U.S. person must be traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq. These amendments are also intended to ensure that the scope of these license exceptions, as they apply to chemical or biological agent protective gear controlled under new ECCN 1A607.f, conforms with the scope of the ITAR exemption for personal protective equipment in Section 123.17 of the ITAR (e.g., by correcting the provisions for Afghanistan, as described above, to be consistent with those of the majority of other Country Group D:5 destinations).

Tooling, Production “Equipment,” Test and Evaluation “Equipment,” Test Models and Other Articles Related to Directed Energy Weapons

Public Comments and BIS Responses

BIS received comments from two parties in response to the proposed amendments in the June 17 (toxicological agents and directed energy weapons) rule related to tooling, production “equipment,” test, and evaluation “equipment,” test models and other articles related to directed energy weapons.

General Comments on Items Related to Directed Energy Weapons

Comment: One commenter noted that the BIS and State Category XIV/XVIII proposed rules omitted coverage of the Wassenaar Munitions List (WAML) items in WAML 19.f (“Laser” systems “specially designed” to cause permanent blindness to unenhanced vision).

Response: The items noted by the commenter are not identified in any of the new “600 series” ECCNs described in BIS’s June 17 (toxicological agents and directed energy weapons) rule, but they are clearly enumerated under USML Category XVIII in State’s companion proposed rule. Proposed USML Category XVIII(a) identifies directed energy weapons (DEW) systems or “equipment” that, as their sole or primary purpose, cause permanent or flash blindness. These articles are identified in the USML Category XVIII amendments contained in State’s companion rule to this final rule.

Comment: One commenter indicated that some of the proposed new “600 series” ECCNs in BIS’s June 17 (toxicological agents and directed energy weapons) rule maintained unilateral controls on certain items that were proposed to be transferred to the CCL from the USML Category XVIII.

Response: All the items described in the new “600 series” ECCNs created by this final rule were previously controlled on the USML under the ITAR and were added to these new ECCNs on the CCL only after the President determined that these items no longer warrant control on the USML for the reasons set forth above.

Changes Made by This Rule to Controls on Certain Tooling, Production “Equipment,” Test and Evaluation “Equipment” and Test Models Previously Controlled Under USML Category XVIII

This rule creates three new “600 series” ECCNs in CCL Category 6 (ECCNs 6B619, 6D619 and 6E619) that

clarify the EAR controls applicable to certain tooling, production “equipment,” test and evaluation “equipment,” test models, and related articles for Directed Energy Weapons (DEWs) that the President has determined no longer warrant control under USML Category XVIII. Terms such as “part,” “component” “accessories,” “attachments,” and “specially designed” are applied in the same manner in this rule as those terms are defined in Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a “Specially Designed” Decision Tool and a CCL Order of Review Decision Tool are available on the BIS Web site at: <http://www.bis.doc.gov/index.php/decision-tree-tools>.

New ECCN 6B619 Test, inspection and production “equipment,” and related commodities, “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII.

New ECCN 6B619.a controls tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test “equipment” not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML that are “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII. The commodities that are controlled under new ECCN 6B619.a are used to produce directed energy weapons (including non-lethal directed energy weapons, such as active denial systems) and are similar to commodities that are in operation in a number of other countries, some of which are not allies of the United States or members of multinational export control regimes. Research and development is currently underway to determine the possible uses of such commodities (e.g., to protect the Earth from asteroids, or for perimeter security and crowd control). Possession of such commodities does not confer a significant military advantage on the United States and, therefore, the inclusion of such commodities on the CCL would be appropriate.

Paragraphs .b through .w of ECCN 6B619 are reserved. Paragraph .x controls “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

New ECCN 6D619 “Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by 6B619.

New ECCN 6D619 controls “software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 6B619. Inclusion of this “software” on the CCL is appropriate, because it is limited to “software” “specially designed” for ECCN 6B619 commodities and does not include any “software” for items specifically enumerated or otherwise described on the USML.

New ECCN 6E619 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6B619 or “software” controlled by 6D619.

New ECCN 6E619 controls “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 6B619, or “software” controlled by 6D619. Inclusion of this “technology” on the CCL is appropriate, because it is limited to “technology” “required” for ECCN 6B619 commodities and does not include any “technology” for items specifically enumerated or otherwise described on the USML.

Applicable Controls for the New “600 Series” ECCNs Created by This Rule

Pursuant to the framework established in the April 16 (initial implementation) rule, detection and protection “equipment” and related commodities classified under ECCN 1A607; related test, inspection and production “equipment” classified under ECCN 1B607; tear gases, riot control agents and related commodities classified under ECCN 1C607 (except for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14, all of which are specifically excluded from WAML Category 7 by Note 1 thereto); related “software” classified under ECCN 1D607 (except “software” for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14); and related “technology” classified under ECCN 1E607 (except “technology” for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14 and 1D607 “software” therefor) are subject to the licensing policies that apply to items controlled for national security (NS) reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. The same level of NS controls and licensing policies also apply to the directed energy weapons items that are controlled under the three new ECCNs (*i.e.*, test,

inspection, and production “equipment” classified under ECCN 6B619; related “software” classified under ECCN 6D619; and related “technology” classified under ECCN 6E619) that this rule adds to Category 6 of the CCL. In addition, all the items that are controlled under the new ECCNs created by this rule are subject to the regional stability (RS) licensing policies set forth in § 742.6(a)(1), *i.e.*, RS Column 1, as well as antiterrorism (AT Column 1) and United Nations (UN) controls.

Also, in accordance with §§ 742.4(b)(1) and 742.6(b)(1) of the EAR, exports and reexports of “600 series” items controlled for NS or RS reasons will be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR, if destined to a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. All items controlled for NS or RS reasons, as set forth in this final rule, are subject to this licensing policy.

Effects of This Final Rule

BIS believes that the principal effect of this final rule, when considered in the context of similar rules being published as part of the ECR, 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 USML. This greater flexibility is in the form of: the 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; the availability of license exceptions, particularly License Exceptions “Servicing and Replacement of Parts and Equipment” (RPL) and “Strategic Trade Authorization” (STA); the elimination of requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or the elimination of, exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail, below.

De Minimis

The April 16 (initial implementation) rule imposed certain unique *de minimis* requirements on items controlled under the new “600 series” ECCNs. 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. Under Section 734.4 of the EAR, as amended by the April 16 (initial implementation) rule, there is no eligibility for *de minimis* treatment for a foreign-made item that incorporates U.S.-origin “600 series” items when the foreign-made item is destined for a country that is subject to a U.S. arms embargo, *i.e.*, a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. Items controlled under the new “600 series” ECCNs created by this rule are eligible for *de minimis* treatment under the EAR, provided that the foreign-made items into which they are incorporated are not destined for a country listed in Country Group D:5. In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for 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).

Use of License Exceptions

The April 16 (initial implementation) rule imposed certain restrictions on the use of license exceptions for items controlled under “600 series” ECCNs on the CCL. The general restrictions that apply to the use of license exceptions for such items are described in § 740.2(a)(13) of the EAR. The EAR provisions that describe the requirements specific to individual license exceptions contain additional restrictions on the use of license exceptions for such items.

For example, this rule authorizes limited License Exception STA availability for the new “600 series” ECCNs contained herein. None of the items controlled under these new ECCNs are eligible for the STA “controls of lesser sensitivity” described in § 740.20(c)(2) of the EAR. Instead, STA eligibility for all such items is limited to the destinations listed in § 740.20(c)(1) of the EAR (*i.e.*, Country Group A:5 destinations indicated in Supplement No. 1 to part 740 of the EAR). In addition, such items must be for: (1) ultimate end-use by a person of a type specified in § 740.20(b)(3)(ii) of the EAR (*i.e.*, the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government); or (2) the “development,” “production,” operation installation, maintenance,

repair, overhaul, or refurbishing of an item, in one of the countries listed in Country Group A:5 or the United States, that will ultimately be used by any such government agencies, the United States Government, or by a person in the United States. The use of License Exception STA also may be authorized, under certain circumstances described in § 740.20(b)(3)(ii)(C), where the U.S. Government has otherwise authorized the ultimate end-use under a license.

None of the items controlled under the new “600 series” ECCNs created by this rule are treated as “end items” for purposes of License Exception STA and, therefore, such items are not subject to the License Exception STA eligibility request requirements in § 740.20(g) of the EAR.

Items controlled under new ECCN 1B607 or 6B619 are also eligible for License Exception LVS (limited value shipments) up to a value of \$1,500, TMP (temporary exports), and RPL (servicing and replacement parts). License Exceptions TMP and RPL also are available for items controlled under new ECCN 1A607. In addition, special provisions in License Exception TMP (see § 740.9(a)(11) of the EAR) and License Exception BAG (baggage) (see § 740.14(h) of the EAR), as amended by this final rule, authorize exports, reexports, or in-country transfers of certain protection “equipment” described in ECCN 1A607.f.

BIS believes that the restrictions that apply to the use of license exceptions for the items in the new “600 series” ECCNs represents an overall reduction from the level of restrictions that previously applied to such items on the USML. This is particularly true with respect to exports of such items to NATO members and multiple-regime member countries.

Alignment With the Wassenaar Arrangement Munitions List

Since the beginning of ECR, the Administration has stated that the reforms will be consistent with the United States’ obligations to the multilateral export control regimes. Accordingly, the Administration has, in this final rule, exercised its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. In this rule, new ECCNs 1A607 and 1C607 implement, to the extent possible, the controls in WAML Category 7; new ECCNs 1B607 and 6B619 implement, to the extent possible, the controls in WAML Category 18 for production “equipment;” new ECCNs 1D607 and 6D619 implement, to the extent possible, the controls in WAML

Category 21 for “software;” and new ECCNs 1E607 and 6E619 implement, to the extent possible, the controls in WAML Category 22 for “technology.”

Export Administration Act

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 amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015 (80 FR 48233 (Aug. 11, 2015)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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 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 any person 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 final rule affects the following approved collections: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications; License Exceptions and Exclusions (0694–0137); recordkeeping (0694–0096); export clearance (0694–0122); and the Automated Export System (0607–0152). The discussion, below, is intended to provide a general overview of possible burden changes as

a result of all the ECR rules published by BIS, and not just this final rule, which affects items previously controlled under USML Category XIV or XVIII. No changes in burden for any of these collections is anticipated at this time, other than as indicated in the discussion, below.

As stated in the proposed rule published on July 15, 2011 (76 FR 41958) (the “July 15 proposed rule”), BIS initially estimated that the combined effect of all rules to be published, adding items to the 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. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that would come under BIS jurisdiction and whether those items would be eligible for export under license exception. As of June 21, 2012, BIS revised its estimate to reflect an increase in license applications of 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694–0088. BIS continues to believe that its revised estimate is accurate. Notwithstanding this increase in license applications under the EAR, the net burden that U.S. export controls impose on U.S. exporters is expected to go down, as described below, as a result of the transfer of less sensitive military items to the jurisdiction of the Department of Commerce, under the EAR, and the application of the license exceptions and other provisions in the EAR that are described in this final rule.

As implemented by this rule, certain dissemination, detection and protection “equipment” and related articles currently controlled under USML Category XIV in the ITAR and certain tooling, production “equipment,” test and evaluation “equipment,” test models and related articles currently controlled under USML Category XVIII of the ITAR are now subject to the licensing jurisdiction of the Department of Commerce under the EAR and its CCL, and also are eligible for certain license exceptions, including License Exception STA. For example, items controlled under new ECCN 1A607, 1B607, 1C607, 1D607, 1E607, 6B619, 6D619, or 6E619 are now eligible under certain provisions of License Exception STA and do not need a determination of

eligibility as described in § 740.20(g) of the EAR. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published, adding items to the 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 at 1 hour and 10 minutes each).

BIS expects that this increase in burden hours under the EAR will be more than offset by a reduction in the burden hours associated with currently approved collections related to the ITAR. With few exceptions, most exports of the dissemination, detection and protection “equipment” and related articles and the tooling, production “equipment,” test and evaluation “equipment,” test models and related articles that this rule adds to the CCL previously required State Department authorization, even when destined to NATO member states and other close allies. In addition, the exports of “technology” necessary to produce such items in the inventories of the United States and its NATO and other close allies previously required State Department authorization. Under the EAR, as implemented by this rule, such “technology” is now eligible for export to NATO member states and other close allies under License Exception STA, unless otherwise specifically excluded.

The anticipated reduction in burden hours will particularly impact exporters of “parts” and “components” that are no longer be subject to the ITAR, because, with few exceptions, the ITAR exempt from license requirements only exports to Canada. Most exports of such “parts” and “components,” even when destined to NATO and other close allies, previously required State Department authorization. Under the EAR, as implemented by this rule, a small number of low-level “parts” and “components” do not require a license to most destinations, while most other “parts” and “components” identified under the new “600 series” ECCNs are 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 that is being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the requirements of the EAR. However, the Administration believes 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 is required under the EAR, the burden likely will be reduced, compared to the previous license requirement under the ITAR. In particular, license applications for exports of “technology” controlled by ECCN 1E607 or 6E619 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 an initial regulatory flexibility analysis (IRFA) for 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 RFA does not require the agency to prepare a regulatory flexibility analysis. Accordingly, pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, has 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. The rationale for this certification is as follows.

Number of Small Entities

Although BIS does not collect data on the size of entities that apply for, and are issued, export licenses and is, therefore, unable to estimate the exact number of small entities—as defined by the Small Business Administration’s

regulations implementing the RFA—BIS acknowledges that some small entities may be affected by this proposed rule.

Economic Impact

The amendments set forth in this rule are part of the Administration’s ECR initiative, which seeks to revise the USML to be a positive control list—one that does not use generic, catch-all control text to describe items subject to the ITAR—and to move some items that the President has determined no longer warrant control under the ITAR to control under the EAR and its CCL. Such items, along with certain military items currently identified on the CCL (most of which are identified on the WAML), will be controlled under new “600 series” ECCNs on the CCL. In addition, certain other items currently on the CCL will move from existing ECCNs to the new “600 series” ECCNs.

This rule addresses certain dissemination, detection and protection “equipment” and related articles previously enumerated or otherwise described in USML Category XIV (Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment) and certain tooling, production “equipment,” test and evaluation “equipment,” test models and related articles previously enumerated or otherwise described in USML Category XVIII (Directed Energy Weapons). Most toxicological agents (*i.e.*, chemical and biological agents) and associated equipment and all Directed Energy Weapons (DEWs) systems “specially designed” or modified for military applications, equipment “specially designed” or modified to detect, identify or defend against such systems, and “specially designed” “parts,” “components,” “accessories” and “attachments” for such systems or equipment remain on the USML. However, many other “parts” and “components” are now subject to the EAR (as items described in ECCN 1A607.x, 1B607.x, or 6B619.x), unless specifically enumerated or otherwise described on the USML. Many of these “parts” and “components” are more likely, than the USML articles described above, to be produced by small businesses. In addition, officials of the Department of State have informed BIS that license applications for such “parts” and “components” represent a high percentage of the license applications for USML articles reviewed by that department. Changing the jurisdictional status of certain Category XIV and Category XVIII items will 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.

Moreover, “parts” and “components” that are 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, for those items that are no longer controlled under the ITAR, may reduce the disincentive for foreign manufacturers to purchase U.S.-origin “parts” and “components,” a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Many exports and reexports of the Category XIV or Category XVIII articles that are added to the CCL by this rule (particularly, the “parts” and “components” that are controlled under new ECCN 1A607.x, 1B607.x, or 6B619.x) are now eligible for license exceptions that apply to exports to U.S. Government agencies, exports of “parts” and “components” for use as replacement parts, temporary exports and limited value exports (for ECCN 1B607 and 6B619 items, only), as well as License Exception STA, thereby reducing the number of licenses that exporters will need to obtain for these items. License exceptions under the EAR 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 U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter needs to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, will 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 will result in a net reduction in burden on transactions routinely approved by the government through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license will be required, the process for obtaining a license is simpler and less costly under the EAR. When a USML Category XIV or Category

XVIII article is moved to the CCL, the number of destinations for which a license is required remains unchanged. However, the burden on the license applicant decreases because the licensing procedure for CCL items is simpler and more flexible than the licensing 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 to determine 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 four 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 transfers from the USML to the CCL will realize cost savings through the elimination of some or all registration fees 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 \$2,250 per year, increase to \$2,750 for organizations applying for one to ten licenses per year and further increase 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. Conversely, there are no registration or application processing fees for applications to export items listed on the CCL. Entities who applied for licenses from the Department of State, for the Category XIV or Category XVIII items subject to this rulemaking that are removed from the USML and added to the CCL, will find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product

line moves to the CCL, its ITAR registration and registration fee requirement will be eliminated.

Conclusion

BIS expects that the changes to the EAR implemented by this rule will have a positive effect on all affected entities, including small entities. While BIS acknowledges that this rule may have some cost impacts on small (and other) entities, those costs are more than offset by the benefits to the entities from the licensing procedures under the EAR, which are much less costly and less time consuming than the procedures under the ITAR. As noted above, any new burdens created by this rule will be offset by a reduction in the number of items that will 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, all of which will reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. Accordingly, the Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if implemented, would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects

15 CFR Part 740

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

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

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 7, 2015, 80 FR 48233 (August 11, 2015).

■ 2. Section 740.9 is amended by revising paragraph (a)(11) to read as follows:

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

* * * * *

(a) * * *

(11) *Personal protective “equipment” classified under ECCN 1A613.c or .d and individual protection “equipment” classified under ECCN 1A607.f—(i) Temporary exports, reexports, or in-country transfers to countries not identified in Country Group D:5.* U.S. persons may temporarily export or reexport one set of body armor classified under ECCN 1A613.d (which may include one helmet classified under ECCN 1A613.c) or one set of chemical or biological agent protective gear classified under ECCN 1A607.f (which may include one additional filter canister classified under ECCN 1A607.x) to countries not identified in Country Group D:5, provided that:

(A) The items are with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); *and*

(B) The items are for that U.S. person's exclusive use and not for transfer of ownership unless reexported or transferred (in-country) to another U.S. person.

(ii) *Temporary exports, reexports, or transfers (in-country) to countries identified in Country Group D:5—(A) Iraq.* U.S. persons may temporarily export or reexport one set of body armor classified under ECCN 1A613.d (which may include one helmet classified under ECCN 1A613.c) or one set of chemical or biological agent protective gear classified under ECCN 1A607.f (which may include one additional filter canister classified under ECCN 1A607.x) to Iraq, for personal use, provided that the requirements in paragraph (a)(11)(i) of this section are met. In addition, the U.S. person must be affiliated with the U.S. Government and traveling on official business or traveling in support of a U.S. Government contract, or the U.S. person must be traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq.

Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(B) *Other countries in Country Group D:5.* U.S. persons may temporarily export or reexport one set of body armor classified under ECCN 1A613.d (which may include one helmet classified under ECCN 1A613.c) or one set of chemical or biological agent protective

gear classified under ECCN 1A607.f (which may include one additional filter canister classified under ECCN 1A607.x) to countries in Country Group D:5 (except Iraq), for personal use, provided that the requirements in paragraph (a)(11)(i) of this section are met, and the U.S. person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract.

(iii) Items exported, reexported, or transferred (in-country) under this paragraph (a)(11), if not consumed or destroyed in the normal course of authorized temporary use abroad, must be returned to the United States or other country from which the items were so transferred as soon as practicable but no later than four years after the date of export, reexport or transfer (in-country).

* * * * *

■ 3. Section 740.14 is amended by revising paragraphs (h)(1) and (2) to read as follows:

§ 740.14 Baggage (BAG).

* * * * *

(h) *Special provisions: personal protective "equipment" classified under ECCN 1A613.c or .d and individual protection "equipment" classified under ECCN 1A607.f*—(1) *Exports, reexports, or in-country transfers to countries not identified in Country Group D:5.* U.S. persons may export, reexport, or transfer (in-country) one set of body armor classified under ECCN 1A613.d (which may include one helmet classified under ECCN 1A613.c) or one set of chemical or biological agent protective gear classified under ECCN 1A607.f (which may include one additional filter canister classified under ECCN 1A607.x) to countries not identified in Country Group D:5, provided that:

(i) The items are with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(ii) The items are for that person's exclusive use and not for transfer of ownership unless reexported or transferred (in-country) to another U.S. person.

(2) *Exports, reexports, or in-country transfers to countries identified in Country Group D:5*—(i) *Iraq.* U.S. persons may export, reexport, or transfer (in-country) one set of body armor classified under ECCN 1A613.d (which may include one helmet classified under ECCN 1A613.c) or one set of chemical or biological agent protective gear classified under ECCN 1A607.f (which may include one additional filter canister classified under ECCN 1A607.x) to Iraq, for personal use, provided that

the requirements in paragraph (h)(1) of this section are met. In addition, the U.S. person must be affiliated with the U.S. Government and traveling on official business or traveling in support of a U.S. Government contract, or the U.S. person must be traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq. Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(ii) *Other countries in Country Group D:5.* U.S. persons may export, reexport, or transfer (in-country) one set of body armor classified under ECCN 1A613.d (which may include one helmet classified under ECCN 1A613.c) or one set of chemical or biological agent protective gear classified under ECCN 1A607.f (which may include one additional filter canister classified under ECCN 1A607.x) to countries in Country Group D:5 (except Iraq), for personal use, provided that the requirements in paragraph (h)(1) of this section are met, and the U.S. person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract.

* * * * *

PART 774—[AMENDED]

■ 4. The authority citation for 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 7, 2015, 80 FR 48233 (August 11, 2015).

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add ECCN 1A607 between ECCNs 1A290 and 1A613 to read as follows:

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

* * * * *

1A607 Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

| Control(s) | Country chart (see Supp. No. 1 to Part 738) |
|-----------------------------|---------------------------------------------|
| NS applies to entire entry. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A
CIV: N/A
Special Conditions for STA
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1A607.

List of Items Controlled

Related Controls: (1) Vaccines identified in ECCN 1C991 are not controlled by this ECCN. (2) See 22 CFR 121.1 (USML), Category XIV(h), for vaccines that are subject to the ITAR. (3) Protection and detection equipment and related items identified in ECCN 1A004, 1A995, or 2B351 are not controlled by this ECCN. (4) See 22 CFR 121.1 (USML), Category XIV(f), for dissemination, detection and protection equipment that is subject to the ITAR. (5) See ECCN 0A919 for "military commodities" located and produced outside the United States that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.

Related Definitions: N/A

Items:

- a. through d. [Reserved]
- e. "Equipment" "specially designed" for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a.
- f. Protection "equipment" (including air conditioning units, protective coatings, and protective clothing):
 - f.1. Not controlled by USML Category XIV(f); and
 - f.2. "Specially designed" for military use and for defense against:
 - f.2.1. Materials specified by USML Category XIV (a) or (b); or
 - f.2.2. Riot control agents controlled in 1C607.a.
 - g. Decontamination "equipment":
 - g.1. Not controlled by USML Category XIV(f); and
 - g.2. "Specially designed" for military use and for decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b).
 - h. "Equipment":
 - h.1. Not controlled by USML Category XIV(f); and
 - h.2. "Specially designed" for military use and for the detection or identification of:
 - h.2.1. Materials specified by USML Category XIV(a) or (b); or
 - h.2.2. Riot control agents controlled by ECCN 1C607.a.

- i. [Reserved]
- j. "Equipment" "specially designed" to:
 - j.1. Interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a "600 series" ECCN; and
 - j.2. Collect and process samples of articles controlled in USML Category XIV(a) or (b).
- k. Medical countermeasures that are "specially designed" for military use (including pre- and post-treatments, antidotes, and medical diagnostics) and "specially designed" to counter chemical agents controlled by the USML Category XIV(a).

Note: Examples of "equipment" controlled by this entry are barrier and non-barrier creams and filled autoinjectors (e.g., compoens where one injector contains 2-PAM and the other atropine) if "specially designed" to counter such agents.

l. through w. [Reserved]

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled by ECCN 1A607.e, .f, .g, .h, or .j or for a defense article controlled by USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add ECCN 1B607 between ECCNs 1B234 and 1B608 to read as follows:

1B607 Military test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

| <i>Control(s)</i> | <i>Country chart (see Supp. No. 1 to Part 738)</i> |
|-----------------------------|----------------------------------------------------|
| NS applies to entire entry. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: \$1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1B607.

List of Items Controlled

Related Controls: (1) See ECCN 2B350 for controls on certain incinerators. (2) See

ECCN 0A919 for "military commodities" located and produced outside the United States that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.

Related Definitions: N/A

Items:

a. "Equipment" "specially designed" for the destruction of the chemical agents controlled by USML Category XIV(a).

Note to 1B607.a: ECCN 1B607.a includes controls over facilities "specially designed" for destruction operations. This paragraph .a does not control incinerators and "specially designed" handling facilities or "specially designed" waste supply systems therefor.

b. Test facilities and "equipment" "specially designed" for military certification, qualification, or testing of commodities controlled by ECCN 1A607.e, .f, .g, .h, or .j or by USML Category XIV(f), except for XIV(f)(1).

c. Tooling and "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by ECCN 1A607.e, .f, .g, .h, or .j or USML Category XIV(f).

d. through w. [RESERVED]

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled by ECCN 1B607.b or .c, or for a defense article controlled by USML Category XIV(f), and that are not enumerated or otherwise described elsewhere in the USML.

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1C607 between ECCNs 1C395 and 1C608 to read as follows:

1C607 Tear Gases, Riot Control Agents and materials for the detection and decontamination of chemical warfare agents (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

| <i>Control(s)</i> | <i>Country chart (see Supp. No. 1 to Part 738)</i> |
|-------------------------------------------------------------------------|----------------------------------------------------|
| NS applies to entire entry, except 1C607.a.10, .a.11, .a.12, and .a.14. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1C607.

List of Items Controlled

Related Controls: (1) See ECCN 1A984 for controls on other riot control agents. (2) See 22 CFR 121.1 (USML), Category XIV(b), for modified biological agents and biologically derived substances that are subject to the ITAR. (3) See 22 CFR 121.1 (USML), Category XIV(g), for ITAR controls on antibodies, recombinant protective antigens, polynucleotides, biopolymers or biocatalysts (including the expression vectors, viruses, plasmids, or cultures of specific cells used to produce them) that are "specially designed" for use with articles controlled under USML Category XIV(f). (4) See ECCN 0A919 for "military commodities" located and produced outside the United States that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.

Related Definitions: N/A

Items:

- a. Tear gases and riot control agents including:
 - a.1. CA (Bromobenzyl cyanide) (CAS 5798-79-8);
 - a.2. CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698-41-1);
 - a.3. CN (Phenylacetyl chloride or w-Chloroacetophenone) (CAS 532-27-4);
 - a.4. CR (Dibenz-(b,f)-1,4-oxazepine) (CAS 257-07-8);
 - a.5. Adamsite (Diphenylamine chloroarsine or DM) (CAS 578-94-9);
 - a.6. N-Nonanoylmorpholine, (MPA) (CAS 5299-64-9);
 - a.7. Dibromodimethyl ether (CAS 4497-29-4);
 - a.8. Dichlorodimethyl ether (ClCi) (CAS 542-88-1);
 - a.9. Ethyldibromoarsine (CAS 683-43-2);
 - a.10. Bromo acetone (CAS 598-31-2);
 - a.11. Bromo methylethylketone (CAS 816-40-0);
 - a.12. Iodo acetone (CAS 3019-04-3);
 - a.13. Phenylcarbylamine chloride (CAS 622-44-6);
 - a.14. Ethyl iodoacetate (CAS 623-48-3);

Note to 1C607.a: ECCN 1C607.a. does not control the following: formulations containing 1% or less of CN or CS; individually packaged tear gases or riot control agents for personal self-defense purposes that are controlled by ECCN 1A984; or active constituent chemicals, and combinations thereof, identified and packaged for food production or medical purposes.

b. "Biopolymers," not controlled by USML Category XIV(g) "specially designed" or processed for the detection or identification of chemical warfare agents specified by USML Category XIV(a), and the cultures of specific cells used to produce them.

c. "Biocatalysts," and biological systems therefor, not controlled by USML Category XIV(g) "specially designed" for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV (a), as follows:

c.1. “Biocatalysts” “specially designed” for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV(a) resulting from directed laboratory selection or genetic manipulation of biological systems;

c.2. Biological systems containing the genetic information specific to the production of “biocatalysts” specified by 1C607.c.1, as follows:

- c.2.a. “Expression vectors;”
- c.2.b. Viruses; or
- c.2.c. Cultures of cells.

Note to 1C607.b and .c: *The cultures of cells and biological systems are exclusive and these sub-items do not apply to cells or biological systems for civil purposes, such as agricultural, pharmaceutical, medical, veterinary, environmental, waste management, or in the food industry.*

d. Chemical mixtures not controlled by USML Category XIV(f) “specially designed” for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, “Microorganisms,” and “Toxins,” add ECCN 1D607 between ECCNs 1D390 and 1D608 to read as follows:

1D607 “Software” “specially designed” for the “development,” “production,” operation, or maintenance of items controlled by 1A607, 1B607 or 1C607 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

| <i>Control(s)</i> | <i>Country chart (see Supp. No. 1 to Part 738)</i> |
|----------------------------------------------------------------------------------------|----------------------------------------------------|
| NS applies to entire entry, except “software” for 1C607.a.10, .a.11, .a.12, and .a.14. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1D607.

List of Items Controlled

Related Controls: (1) “Software” directly related to articles enumerated or otherwise described in USML Category XIV is subject to the ITAR (see 22 CFR § 121.1, Category XIV(m)). “Software” controlled by USML Category XIV(m) includes “software” directly related to any equipment

containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract. (2) See ECCN 0A919 for “military commodities” located and produced outside the United States that incorporate more than a *de minimis* amount of US-origin “600 series” controlled content.

Related Definitions: N/A
Items:

a. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 1A607, 1B607, or 1C607.

b. [RESERVED]

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, “Microorganisms,” and “Toxins,” add a new ECCN 1E607 between ECCNs 1E355 and 1E608 to read as follows:

1E607 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

| <i>Control(s)</i> | <i>Country chart (see Supp. No. 1 to Part 738)</i> |
|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| NS applies to entire entry, except “technology” for 1C607.a.10, .a.11, .a.12, and .a.14 and for 1D607 “software” therefor. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1E607.

List of Items Controlled

Related Controls: Technical data directly related to defense articles enumerated or otherwise described in USML Category XIV are subject to the ITAR (see 22 CFR § 121.1, Category XIV(m)). Technical data

controlled by USML Category XIV(m) include technical data directly related to any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract.

Related Definitions: N/A
Items:

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607 or 1D607.

Note to 1E607.a: ECCN 1E607.a includes “technology” “required” exclusively for the incorporation of “biocatalysts” controlled by ECCN 1C607.c.1 into military carrier substances or military material.

b. [RESERVED]

■ 10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers,” add a new ECCN 6B619 between ECCNs 6B108 and 6B995 to read as follows:

6B619 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII (see List of Items Controlled)

License Requirements

Reason for Control: NS, RS, AT, UN

| <i>Control(s)</i> | <i>Country chart (see Supp. No. 1 to Part 738)</i> |
|-----------------------------|----------------------------------------------------|
| NS applies to entire entry. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

License Exceptions

LVS: \$1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6B619.

List of Items Controlled

Related Controls: “Parts,” “components,” “accessories,” “attachments,” and associated systems or “equipment” “specially designed” for defense articles enumerated or otherwise described in paragraphs (a) or (b) of USML Category XVIII are subject to the ITAR (see 22 CFR 121.1, Category XVIII(e)).

Related Definitions: N/A

Items:

a. Tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test “equipment” not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML that are “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII.

b. through w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers,” add a new ECCN 6D619 between ECCNs 6D201 and 6D991 to read as follows:

6D619 “Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by 6B619.

License Requirements

Reason for Control: NS, RS, AT, UN

| <i>Control(s)</i> | <i>Country chart (see Supp. No. 1 to Part 738)</i> |
|-----------------------------|------------------------------------------------------------|
| NS applies to entire entry. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

License Exceptions

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6D619.

List of Items Controlled

Related Controls: “Software” directly related to articles enumerated or otherwise described in USML Category XVIII is subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).

Related Definitions: N/A

Items:

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

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers,” add ECCN 6E619 between ECCNs 6E202 and 6E990 to read as follows:

6E619 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of

commodities controlled by 6B619 or “software” controlled by 6D619.

License Requirements

Reason for Control: NS, RS, AT, UN

| <i>Control(s)</i> | <i>Country chart (see Supp. No. 1 to Part 738)</i> |
|-----------------------------|------------------------------------------------------------|
| NS applies to entire entry. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

License Exceptions

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6E619.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category XVIII are subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).

Related Definitions: N/A

Items:

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

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 9466]

RIN 1400–AD03

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories XIV and XVIII

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: As part of the President’s Export Control Reform effort, the Department of State amends the International Traffic in Arms Regulations (ITAR) to revise Categories XIV (toxicological agents, including chemical agents, biological agents, and associated equipment) and XVIII (directed energy weapons) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The revisions contained in this rule are part of the Department of State’s retrospective plan under E.O.

13563, completed on August 17, 2011. The Department of State’s full plan can be accessed at <http://www.state.gov/documents/organization/181028.pdf>.

DATES: This Final rule is effective on December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email DDTCPublicComments@state.gov. ATTN: ITAR Amendment—USML Categories XIV and XVIII.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.*, “defense articles,” are identified on the ITAR’s U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (“EAR,” 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

All references to the USML in this rule are to the list of defense articles controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) for the purpose of permanent import under its regulations. See 27 CFR part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. The list of defense articles controlled by ATFE for the purpose of permanent import is the U.S. Munitions Import List (USMIL). The transfer of defense articles from the ITAR’s USML to the EAR’s CCL does not affect the list of defense articles controlled on the USMIL.

Revision of Category XIV

This final rule revises USML Category XIV, covering toxicological agents, including chemical agents, biological agents, and associated equipment. The revisions are undertaken in order to more accurately describe the articles