

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 742 and 774**

[Docket No. 200824–0224]

RIN 0694–AH80

Identification and Review of Controls for Certain Foundational Technologies**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Bureau of Industry and Security (BIS) controls the export, reexport, and transfer (in-country) of dual-use and certain military items through the Export Administration Regulations (EAR), including the Commerce Control List (CCL). Many items (commodities, software, and technology) subject to the jurisdiction of the EAR are listed on the CCL. Pursuant to the Export Control Reform Act of 2018, BIS and its interagency partners are engaged in a process to identify emerging and foundational technologies that are essential to the national security of the United States. Foundational technologies essential to the national security are those that may warrant stricter controls if a present or potential application or capability of that technology poses a national security threat to the United States. In order to determine if technologies are foundational, BIS will evaluate specific items, including items currently subject only to anti-terrorism (AT) controls on the CCL or those designated as EAR99. This ANPRM seeks public comment on the definition of, and criteria for, identifying foundational technologies. Comments on this ANPRM will help inform the interagency process to identify and describe such foundational technologies.

DATES: Submit comments on or before October 26, 2020.**ADDRESSES:** You may submit comments through either of the following:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS–2020–0029.

- *Address:* By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AH80.

FOR FURTHER INFORMATION CONTACT: Tongele Tongele, Office of Nonproliferation and TreatyCompliance, Bureau of Industry and Security, Department of Commerce by: phone (202) 482–0092; fax (202) 482–3355; or email Tongele.Tongele@bis.doc.gov.**SUPPLEMENTARY INFORMATION:****Background**

Section 1758 (50 U.S.C. 4801) of the Export Control Reform Act of 2018 (ECRA) requires the Department of Commerce to establish appropriate controls on the export, reexport, or transfer (in country) of emerging and foundational technologies. Under ECRA, emerging and foundational technologies are those technologies that are essential to the national security of the United States and are not critical technologies described in Section 721(a)(6)(A)(i)–(v) of the Defense Production Act of 1950, as amended (DPA). ECRA notes the national security importance of U.S. leadership in science, technology, engineering, and manufacturing, including foundational technology that is essential to innovation. Items subject to the Export Administration Regulations (EAR) (15 CFR parts 730–774) that are not covered by the DPA’s definition of critical technologies are items controlled only for anti-terrorism (AT), crime control (CC), or short supply (SS) reasons, subject to United Nations (UN) embargoes, or designated as EAR99.

Section 1758 of ECRA requires that foundational technologies be identified, and that BIS establish appropriate controls for that technology under the EAR. At a minimum, such controls would apply to countries subject to an embargo, including an arms embargo, imposed by the United States.

ECRA also requires that the interagency process is to take into account:

- The development of foundational technologies in foreign countries;
- The effect export controls may have on the development of such technologies in the United States; and
- The effectiveness of export controls imposed pursuant to ECRA on limiting the proliferation of foundational technologies to foreign countries.

For purposes of this ANPRM, the term foundational technologies includes not only “technology” but also “commodities” and “software” as used in the EAR.

BIS now seeks public comment to inform the interagency process to identify and describe foundational technologies. For example, foundational technologies could include items that are currently subject to control for military end use or military end user

reasons under Supplement No. 2 to part 744 of the EAR. Many of these items, including semiconductor manufacturing equipment and associated software tools, lasers, sensors, and underwater systems, can be tied to indigenous military innovation efforts in China, Russia or Venezuela. Accordingly, they may pose a national security threat.

There may be additional items, classified on the CCL at the AT level or as EAR99 for which an export license is not required for countries subject to a U.S. arms embargo that also warrant review to determine if they are foundational technologies essential to the national security. For example, such controls may be reviewed if the items are being utilized or required for innovation in developing conventional weapons, enabling foreign intelligence collection activities, or weapons of mass destruction applications.

BIS, through an interagency process, seeks to determine whether there are specific foundational technologies that warrant more restrictive controls, including technologies that have been the subject of illicit procurement attempts which may demonstrate some level of dependency on U.S. technologies to further foreign military or intelligence capabilities in countries of concern or development of weapons of mass destruction.

BIS welcomes comments on: (1) How to further define foundational technology to assist in identification of such items; (2) sources to identify such items; (3) criteria to determine whether controlled items identified in AT level Export Control Classification Numbers (ECCNs), in whole or in part, or covered by EAR99 categories, for which a license is not required to countries subject to a U.S. arms embargo, are essential to U.S. national security; (4) the status of development of foundational technologies in the United States and other countries; (5) the impact specific foundational technology controls may have on the development of such technologies in the U.S.; (6) examples of implementing controls based on end-use and/or end-user rather than, or in addition to, technology based controls; (7) any enabling technologies, including tooling, testing, and certification equipment, that should be included within the scope of a foundational technology; and (8) any other approaches to the issue of identifying foundational technologies important to U.S. national security, including the stage of development or maturity level of an foundational technology that would warrant consideration for export control.

BIS does not seek to expand jurisdiction over technologies that are not currently subject to the EAR, such as “fundamental research” described in § 734.8 of the EAR.

BIS will review public comments submitted in response to this ANPRM to help inform BIS and its interagency partners’ efforts to identify, reevaluate and subsequently control foundational technologies. This interagency process is expected to result in rules and comment periods with new control levels for items currently controlled for AT reasons on the CCL or new ECCNs on the CCL for technologies currently classified as EAR99.

OMB has determined that this action is significant under Executive Order 12866.

Submission of Comments

Comments should be submitted to BIS as described in the **ADDRESSES** section of this ANPRM by October 26, 2020.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–482]

Schedules of Controlled Substances: Placement of N-Ethylpentylone in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (N-ethylpentylone, ephylone) and its optical, positional, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the Controlled Substances Act. If finalized, this action would make permanent the existing regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle N-ethylpentylone.

DATES: Comments must be submitted electronically or postmarked on or before September 28, 2020.

Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before September 28, 2020.

ADDRESSES: To ensure proper handling of comments, please reference “Docket No. DEA–482” on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration (DEA) encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

- *Hearing requests:* All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/ALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2)

Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this