

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 738, 740, 744, and 774

[Docket No. 141027899-4899-01]

RIN 0694-AG34

Corrections and Clarifications to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is correcting certain provisions of the Export Administration Regulations (EAR) that were amended in past rulemakings appearing in the Federal Register between November 5, 2007 and October 14, 2014. This final rule makes corrections to certain provisions to ensure consistency and clarity in the regulations. In addition, this final rule makes other corrections to the EAR to fix typographical errors to ensure that the regulations accurately reflect the revisions intended by these past rulemakings.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is correcting certain provisions of the Export Administration Regulations (EAR) that were amended in past rulemakings appearing in the Federal Register between November 5, 2007 and October 14, 2014. In total, this final rule makes corrections and clarifications for thirteen final rules that amended the EAR during this time period. This final rule corrects these provisions to accurately reflect the revisions intended by these past rulemakings. These final rulemakings consist of the following: *Revisions to the Commerce Control List: Imposition of Controls on Integrated Circuits, Helicopter Landing System Radars, Seismic Detection Systems, and Technology for IR Up-Conversion Devices*, October 14, 2014 (79 FR 61571); *Russian Sanctions: Addition of Persons to the Entity List and Restrictions on Certain Military End Uses and Military End Users*, September 17, 2014 (79 FR 55608); *Corrections and Clarifications to the Export Administration Regulations; Correction*, August 18, 2014 (79 FR 48660); *Russian Oil Industry Sanctions and Addition of Person to the*

Entity List, August 6, 2014 (79 FR 45675); *Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls*, August 4, 2014 (79 FR 45288); *Corrections and Clarifications to the Export Administration Regulations; Conforming Changes to the EAR Based on Amendments to the International Traffic in Arms Regulations*, June 5, 2014 (79 FR 32612); *Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, May 13, 2014 (79 FR 27417); *Revisions to the Export Administration Regulations (EAR) To Make the Commerce Control List Clearer*, October 4, 2013 (78 FR 61874); *Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items That the President Determines No Longer Warrant Control Under the United States Munitions List*, July 8, 2013 (78 FR 40892); *Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions; Changes to Select Agent Controls*, June 5, 2013 (78 FR 33692); *Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform*, April 16, 2013 (78 FR 22660); *Export and Reexport Controls to Rwanda and United Nations Sanctions Under the Export Administration Regulations*, July 23, 2012 (77 FR 42973); and *December 2006 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 5 Part I, 6, 7, 8, and 9 of the Commerce Control List; Wassenaar Reporting Requirements; Definitions; and Statement of Understanding on Source Code*, November 5, 2007 (72 FR 62524).

The corrections and clarifications are described in the order in which they appear in the EAR.

Section 732.1(d)(1)(v). This final rule makes a correction for the steps overview in § 732.1(d)(1)(v)(General Prohibition Five (End-Use End-User)) to correct a typographical error. The final rule revises this paragraph to remove the phrase “end-user or end-users” and add in its place the intended phrase “end uses or end users.”

General Order No. 5 in Supplement No. 1 to part 736. In Supplement No. 1 to part 736 under General Order No. 5, this final rule makes a correction to paragraph (e)(3) (Prior commodity jurisdiction determinations) to add a reference to 9x515 ECCNs. The transition guidance described in General Order No. 5 also applies to 9x515 ECCNs, but paragraph (e)(3), because it includes a reference to the “600 series,” but omits a reference to the 9x515 ECCNs, could lead someone to make an incorrect inference that paragraph (e)(3) is not intended to apply to 9x515 ECCNs. Therefore, to make this paragraph (e)(3) clearer to the public, this final rule adds a reference to 9x515 ECCNs, which was inadvertently omitted in a past final rulemaking. This correction will also make the regulatory text of paragraph (e)(3) consistent with past regulatory guidance provided regarding the scope of General Order No. 5, including the applicability of paragraph (e)(3) of the general order.

Section 738.2(a). This final rule corrects an outdated reference in § 738.2(a) for Category 9 of the Commerce Control List in Supplement No. 1 to Part 774. The reference in § 738.2 paragraph (a) refers to the old name of Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), which was used in the EAR until November 4, 2007, but is no longer used.

The final rule corrects the reference to use the current name of Category 9 (Aerospace and Propulsion).

Section 740.20(d)(2). BIS is correcting a provision of the EAR that was previously amended by two final rules appearing in the Federal Register on June 5, 2014 (79 FR 32612) and on May 13, 2014 (79 FR 27417), and was again amended in an August 18, 2014 (79 FR 48660) final rule that made correcting amendments to these two final rules. One instruction in the August 18, 2014 rule was incorrect because it did not specify that the two sentences at the end of paragraph (d)(2) to be revised were at the end of the introductory text of paragraph (d)(2), which resulted in the wrong two sentences being revised. Because of the incorrect instruction, the two sentences in paragraph (d)(2)(viii) were revised instead of the intended last two sentences of the introductory text of paragraph (d)(2). This final rule corrects paragraph (d)(2) to accurately reflect the revision intended by the August 18 rule and to add back into the EAR paragraph (d)(2)(viii) that was not intended to be revised or removed in the August 18 rule.

Section 744.1(a). In § 744.1 (General Provisions) under paragraph (a) that describes the scope of part 744, this final rule adds two sentences at the end of paragraph (a) to provide references to §§ 744.21 and 744.22, including providing brief descriptions regarding the scope of these two sections of part 744. This clarification was not in response to any particular rule, but rather was identified by BIS as a helpful conforming change to this section of part 744 to make the public better aware of the scope of this part of the EAR.

Section 744.21(e) (License review standards). This final rule removes the term “transfer” and adds in its place the more specific and intended term “transfer (in-country)” in three places in paragraph (e). The scope of the license requirements under this section extends to exports, reexports and transfers (in-country), so this change to paragraph (e) was needed to conform to the other parts of this section.

Section 744.21(f) (Military end use). This final rule reinserts text in § 744.21(f) that was inadvertently removed in an earlier rule. Specifically, the April 16, 2013 (78 FR 22660) rule inadvertently deleted the last sentence in paragraph (f), but BIS did not realize the sentence had been deleted until reviewing the incorporation for the September 17, 2014 (79 FR 55608) rule described in the last paragraph. This final rule corrects the deletion by adding the inadvertently deleted sentence back to the end of paragraph (f), which previously stated, “‘military end use’ also means deployment of items classified under ECCN 9A991 as set forth in Supplement No. 2 to Part 744.”

ECCN 0A617. This final rule revises ECCN 0A617 to remove the term “not” in the Related Controls paragraph (9) in the List of Items Controlled section because it is not needed and creates potential confusion. Related Control paragraph (9), which provides a related control reference for certain fuel cells includes a reference to defense articles “not” on the USML. However, because all defense articles are on the USML, the inclusion of the term “not” before the phrase “on the USML” was incorrect and caused confusion for certain members of the public because they were aware that all defense articles are on the USML, so the Related Controls paragraph was inconsistent with their understanding of the USML and CCL. These people, who

contacted BIS, correctly noted that the inclusion of the term “not” was not needed or intended under this Related Controls paragraph.

ECCN 0A919. This final rule corrects ECCN 0A919 to remove the “UN” control from the Reason for Control paragraph in the License Requirements section. An earlier rule published in July 23, 2012 (77 FR 42973) removed the UN Control from the “Control(s)” paragraph in the License Requirement section. Although the intent of the amendatory instruction pertaining to that ECCN entry was that all references to the UN control in the License Requirement section were to be removed, the instruction did not explicitly reference the Reasons for Control paragraph. Consequently, the reference to “UN” remained in the Reason for Control paragraph of the ECCN, notwithstanding the fact that the ECCN was not controlled for UN reasons as of July 23, 2012.

ECCNs 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999. To conform to the Reason for Control paragraph in new ECCN 0A998 that includes a reference to “Foreign policy,” this rule corrects the Reason for Control paragraph of these other seven ECCNs included in the August 6, 2014 (79 FR 45675) rule to adopt a common way of referencing the license requirements in § 746.5. The Reason for Control paragraph in 8D999 included the term “N/A,” so this rule also corrects that Reason for Control paragraph by removing “N/A” and adding in its place “Foreign policy,” so all eight of the ECCNs that reference § 746.5 will use the same way to reference that Reason for Control.

ECCN 2B352. This final rule revises the introductory text of items paragraph f in the List of Items Controlled section of ECCN 2B352 to correct a misspelled term. This final rule removes the incorrect term “flowing” and adds in its place the correct term “following.”

Category 5 Part 2 – “Information Security”. Category 5 Part 2 is amended by revising paragraph b of Note 3. This amendment was inadvertently omitted from the 2013 Wassenaar Arrangement Implementation rule published on August 4, 2014 (79 FR 45302), although the amendment was described in the preamble. ‘Executable software’ is added to Note 3, as well as a Technical Note to define ‘executable software’ as “software” in executable form, from an existing hardware component excluded from 5A002 by the Cryptography Note. A Note is also added after the Technical Note that states, “‘Executable software’ does not include complete binary images of the “software” running on an end-item.”

ECCN 5A002. This final rule revises the Related Controls paragraph (1) in the List of Items Controlled section to remove redundant text in paragraph (1) that repeats the text of Related Controls paragraph (2) and (3) in the regulations, but is not intended in ECCN 5A002. Therefore, this final rule removes that redundant text from Related Controls paragraph (1). This final rule also revises the “items” paragraph in the List of Items Controlled section of ECCN 5A002 to reinsert paragraph (a)(1) a. to 5A002 Note (a). This paragraph (a)(1) a. to 5A002 Note (a) was not intended to be removed from the EAR. However, the paragraph no longer appears in the regulations, so this final rule adds this paragraph back into the 5A002 Note (a). This final rule also makes two other revisions to the “items” paragraph of 5A002 to make corrections to the regulations for inconsistencies that BIS identified between the regulations and past EAR

rulemakings. Specifically, this final rule revises 5A002 Note (d) Technical Note to delete the phrase “the term,” capitalize the term “Money transactions” and add the phrase “in 5A002 Note (d).” This final rule also revises “items” paragraph (b) in the List of Items Controlled section by reinserting the text of “items” paragraph (b) that was not intended to be revised in the regulations, but was inadvertently revised when the text for another ECCN was revised. Specifically, when “items” paragraph (b) was revised in ECCN 5A992 in the October 4, 2013 rule (78 FR 61874) the same revision was made in the regulations to ECCN 5A002.b, although the October 4, 2013 rule did not revise ECCN 5A002.b.

ECCN 5E002. This final rule makes a correction to the placement of the Related Definitions paragraph in ECCN 5E002 to ensure consistency between the regulations and past rulemakings. This final rule removes the Related Definitions paragraph in the License Requirements section of 5E002 and adds that same Related Definitions paragraph after the Related Controls paragraph in the List of Items Controlled section. The text of the Related Controls paragraph is not changed, only the paragraph’s location in the ECCN is changed for consistency with where Related Controls paragraphs appear in ECCNs on the CCL.

ECCN 6A998. This final rule revises the heading of ECCN 6A998 to remove the word major and add quotation marks around the defined term “component.” This change is made for consistency with a past rulemaking that had made this same change to 6A998.

ECCN 8A992. This final rule removes the UN control that was inadvertently added back into 8A992 in a rule published August 6, 2014 (79 FR 45675). The UN control had been recently

removed in a rulemaking published on June 4, 2014 (79 FR 32612), but the August 6, 2014 rule did not take the removal into account and added the UN control back into this ECCN.

ECCN 9A012. This final rule makes a correction to List of Items Controlled section of ECCN 9A012 to add an “*items*” paragraph heading. The “*items*” paragraph heading was inadvertently removed in a previous rulemaking, so this rule corrects this error by adding in the intended “*items*” paragraph heading in the List of Items Controlled section.

ECCN 9A610. This final rule revises the items paragraph y.30 in the List of Items Controlled section of ECCN 9A610 to clarify the meaning of the exclusion from this paragraph.

Specifically, this final rule moves the placement of the phrase “other than electronic items or navigation equipment” and sets these exclusion criteria from 9A610.y.30 off with commas to make it clearer that commodities described in this phrase are not classified under 9A610.y.30, but rather most likely under 9A610.x.

ECCN 9A991. This final rule revises ECCN 9A991.d to remove the phrase “subject to the controls of 9A991.a or .b.” This clarification is made because 9A991.d is intended to be a “specially designed” catch-all for any “parts” or “components” “specially designed” for aircraft, not elsewhere specified (n.e.s.) and is not intended to be limited to those “aircraft” identified in 9A991.d (i.e., 9A991.a or .b). Prior to reviewing 9A991, the analysis of the CCL must include reviewing the “600 series,” which includes an analysis of ECCN 9A610 (See Commerce Control List Order of Review in Supplement No. 4 to part 774). This clarification in the text of 9A991.d in no way changes the scope of any other ECCN on the CCL and is only intended to clarify that

when reviewing the CCL for an aircraft part or component n.e.s on the CCL, an analysis of 9A991 must be conducted before determining an aircraft part or component is designated as EAR99.

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, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. 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.

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 final rule, which is a consolidation of corrections and clarifications of final rules published between November 5, 2007 and October 14, 2014, as well other corrections and clarifications to the EAR to ensure consistency between the regulations and past EAR rulemakings, has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K_Seehra@omb.eop.gov, or by fax to (202) 395-7285.

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

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are either unnecessary or contrary to the public interest. The following revisions are non-substantive or are limited to ensure consistency with past rulemakings, and thus prior notice and the opportunity for public comment is unnecessary. Sections 740.20(d)(2), 744.21(f), Category 5 Part 2 – “Information Security” for paragraph b of

Note 3, and ECCNs 0A919, 5A002, 5E002 and 9A012 were revised to make corrections to the EAR that resulted from mistakes or other ambiguity in amendatory instructions in past rulemakings. Section 738.2(a) was revised to correct an outdated EAR cross reference, and ECCNs 6A998 and 8A992 were revised to reinsert text that was inadvertently removed or revised in a subsequent rulemaking. Section 732.1(d)(1)(v) and ECCNs 0A617, 1C992, 2B352, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999 were revised to correct typographical errors or to make other non-substantive corrections or clarifications to the EAR text. In addition to the revisions above, BIS makes changes to its regulations to provide guidance on existing interpretations of current EAR provisions, and thus prior notice and the opportunity for public comment is contrary to the public interest. These changes include the revisions to General Order No. 5 in Supplement No. 1 to part 736, §§ 744.1(a) and 744.21(e) and ECCNs 9A610 and 9A991. These revisions are important to get in place as soon as possible so the public will be aware of the correct text and meaning of current EAR provisions.

BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). As mentioned previously, the revisions made by this rule consist of both technical corrections and clarifications that need to be in place as soon as possible to avoid confusion by the public regarding the intent and meaning of changes to the EAR.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for these amendments by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects

15 CFR Parts 732 and 740

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

15 CFR Parts 736 and 738

Exports.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 732, 736, 738, 740, 744, 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are revised to read as follows:

PART 732 – [AMENDED]

1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *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, 2014, 79 FR 46959 (August 11, 2014).

§732.1 [Amended]

2. Section 732.1 is amended in paragraph (d)(1)(v) by removing the phrase “end-user or end-users” and adding in its place the phrase “end uses or end users”.

PART 736 – [AMENDED]

3. The authority citation for 15 CFR part 736 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. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 7, 2014, 79 FR 26589 (May 9, 2014); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

4. Supplement No. 1 to part 736 is amended by revising paragraph (e)(3) to read as follows:

SUPPLEMENT NO. 1 TO PART 736 -- GENERAL ORDERS

(e) * * *

(3) *Prior commodity jurisdiction determinations.* If the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was not listed in a then existing “018” series ECCN (for purposes of the “600 series” ECCNs) or in a then existing ECCN 9A004.b or related software or technology ECCN (for purposes of the 9x515 ECCNs), then the item is per se not within the scope of a “600 series” ECCN or a 9x515 ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (i.e., the item

was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDTC in an amendment to the CCL or to the USML, respectively.

PART 738 – [AMENDED]

5. The authority citation for 15 CFR part 738 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, 2014, 79 FR 46959 (August 11, 2014).

§738.2 [Amended]

6. Section 738.2 is amended in paragraph (a) by removing the phrase “Propulsion Systems, Space Vehicles and Related Equipment” and adding in its place the phrase “Aerospace and Propulsion”.

PART 740 – [AMENDED]

7. 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, 2014, 79 FR 46959 (August 11, 2014).

8. Section 740.20 is amended:

a. By revising the last two sentences of the introductory text of paragraph (d)(2) and transferring the bracketed text between those two sentences to the end of the introductory text;

b. By removing the last sentence of paragraph (d)(2)(vii)(C) and the bracketed text that follows it; and

c. By adding paragraph (d)(2)(viii).

The revisions and additions read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

(d) * * *

(2) *Prior Consignee Statement.* *** In addition, paragraph (d)(2)(vii) is required for all transactions in “600 series” items and paragraph (viii) of this section is required for transactions in “600 series” items if the consignee is not the government of a country listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR). Paragraph (d)(2)(viii) is also required for transactions including 9x515 items.

[INSERT NAME OF CONSIGNEE]:

(viii) Agrees to permit a U.S. Government end-use check with respect to the items.

[INSERT NAME AND TITLE OF PERSON SIGNING THIS DOCUMENT, AND DATE DOCUMENT IS SIGNED].

PART 744—[AMENDED]

9. The authority citation for 15 CFR part 744 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. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786;; Notice of January 21, 2014, 79 FR 3721 (January 22, 2014); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of September 17, 2014, 79 FR 56475 (September 19, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

10. Section 744.1 is amended by adding two sentences to the end of paragraph (a)(1) to read as follows:

§ 744.1 General provisions.

(a)(1) *** Section 744.21 imposes restrictions for exports, reexports and transfers (in-country) of specified items for certain ‘military end uses’ in the People's Republic of China (PRC) or for a

‘military end use’ or ‘military end user’ in Russia or Venezuela. Section 744.22 imposes restrictions on exports, reexports and transfers to persons whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448, or 13464.

11. Section 744.21 is amended:

a. By removing the term “transfer” wherever it appears and adding in its place the term “transfer (in-country)” in paragraph (e)(1); and

b. By adding a sentence to the end of paragraph (f).

The addition reads as follows:

§ 744.21 Restrictions on Certain ‘Military end uses’ in the People’s Republic of China (PRC) or for a ‘Military end use’ or ‘Military end user’ in Russia or Venezuela.

(f) *** ‘Military end use’ also means deployment of items classified under ECCN 9A991 as set forth in Supplement No. 2 to Part 744.

PART 774—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O.

13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

Supplement No. 1 to Part 774 [Amended]

13. In Supplement No. 1 to part 774:

a. Category 0, Export Control Classification Number (ECCN) 0A617 is amended by removing the term “not” from Related Controls paragraph (9) in the List of Items Controlled section.

b. Category 0, Export Control Classification Number (ECCN) 0A919 is amended by removing the term “UN” from the Reason for Control paragraph in the License Requirements section.

c. Export Control Classification Numbers (ECCN) 1C992, 3A229, 3A231, 3A232, and 6A991 are amended by adding the term “Foreign policy” at the end of the Reason for Control paragraphs in the License Requirements sections.

d. Category 2, Export Control Classification Number (ECCN) 2B352 is amended by removing the term “flowing” and adding in its place the term “following” in the introductory text of Items paragraph f in the List of Items Controlled section.

14. In Supplement No. 1 to Part 774, Category 5, Part 2 – “Information Security”, is amended by revising paragraph b. of Note 3 to read as follows:

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

CATEGORY 5 – TELECOMMUNICATIONS AND “INFORMATION SECURITY”

Part 2 – “INFORMATION SECURITY”

Note 3: * * *

b. Hardware components or ‘executable software’, of existing items described in paragraph a. of this Note, that have been designed for these existing items, and meeting all of the following:

1. “Information security” is not the primary function or set of functions of the component or ‘executable software’;

2. The component or ‘executable software’ does not change any cryptographic functionality of the existing items, or add new cryptographic functionality to the existing items;

3. The feature set of the component or ‘executable software’ is fixed and is not designed or modified to customer specification; and

4. When necessary, as determined by the appropriate authority in the exporter’s country, details of the component or ‘executable software’, and details of relevant end-items are accessible and will be provided to the authority upon request, in order to ascertain compliance with conditions described above.

Technical Note: For the purpose of the Cryptography Note, ‘executable software’ means “software” in executable form, from an existing hardware component excluded from 5A002 by the Cryptography Note.

Note: ‘Executable software’ does not include complete binary images of the “software” running on an end-item.

15. In Supplement No. 1 to Part 774, Category 5, Part 2 – “Information Security”, Export

Control Classification Number (ECCN) 5A002 is amended:

- a. By revising Related Controls paragraph (1) in the List of Items Controlled section;
- b. By adding paragraph (a) (1) a. to 5A002 Note (a);
- c. By revising 5A002 Note (d) Technical Note; and
- d. By revising Items paragraph b. in the List of Items Controlled section.

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5A002 “Information security” systems, equipment and “components” therefor, as follows (see List of Items Controlled).

List of Items Controlled

Related Controls: (1) ECCN 5A002.a controls “components” providing the means or functions necessary for “information security.” All such “components” are presumptively “specially designed” and controlled by 5A002.a.***

Items:

Note: ***

(a) ***

(1) ***

a. The cryptographic capability is restricted for use in equipment or systems excluded from 5A002 by Note 4 in Category 5 - Part 2 or entries (b) to (i) of this Note, and cannot be reprogrammed for any other use; or

(d) ***

Technical Note: ‘Money transactions’ in 5A002 Note (d) includes the collection and settlement of fares or credit functions.

b. Systems, equipment, application specific “electronic assemblies”, modules and integrated

circuits, designed or modified to enable an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

16. In Supplement No. 1 to Part 774, Category 5, Part 2 – “Information Security”, Export Control Classification Number (ECCN) 5E002 is amended by removing the Related Definitions paragraph in the License Requirements section and adding a Related Definitions paragraph after the Related Controls paragraph in the List of Items Controlled section to read as follows:

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5E002 “Technology” as follows (see List of Items Controlled).

List of Items Controlled

Related Controls: * * *

Related Definitions: N/A

17. In Supplement No. 1 to part 774, Category 6 – Sensors and Lasers, Export Control Classification Number (ECCN) 6A998 is amended by revising the heading to read as follows:

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6A998 Radar systems, equipment and major “components,” n.e.s., and “specially designed” “components” therefor, as follows (see List of Items Controlled).

Supplement No. 1 to Part 774 [Amended]

18. In Supplement No. 1 to part 774, Category 8—Marine, Export Control Classification Number (ECCN) 8A992 is amended:

- a. By removing the term “UN” from the Reason for Control paragraph and removing the UN entry in the License Requirements table; and
- b. By adding the term “Foreign policy” at the end of the Reason for Control paragraph in the License Requirements section.

Supplement No. 1 to Part 774 [Amended]

19. In Supplement No. 1 to part 774, Category 8—Marine, Export Control Classification Number (ECCN) 8D999 is amended by removing the term “N/A” adding in its place the term “Foreign policy” at the end of the Reason for Control paragraph in the License Requirements section.

Supplement No. 1 to Part 774 [Amended]

20. In Supplement No. 1 to part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A012 is amended by adding undesignated paragraph heading “*Items:*” between the Related Definitions paragraph and paragraph a. in the List of Items Controlled section.

21. In Supplement No. 1 to part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A610 is amended by revising Items paragraph y.30 in the List of Items Controlled section to read as follows:

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9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

List of Items Controlled

Items:

y.30. “Parts,” “components,” “accessories,” and “attachments,” other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h.

22. In Supplement No. 1 to part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A991 is amended by revising Items paragraph d. in the List of Items Controlled section to read as follows:

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9A991 “Aircraft,” n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

List of Items Controlled

Items:

d. “Parts” and “components,” “specially designed” for “aircraft,” n.e.s.

Dated: December 18, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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