

the acceptable sediment content classification (No. 1 or No. 2), it shall be rejected.

Dated: December 14, 2011.

**David R. Shipman,**  
*Acting Administrator.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 742 and 774

[Docket No. 111020643-1642-01]

RIN 0694-AF42

#### **Revisions to the Export Administration Regulations (EAR): Control of Vessels of War and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Industry and Security publishes a proposed rule that describes how surface vessels of war and related articles that the President determines no longer warrant control under Category VI (surface vessels of war and special naval equipment) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 8A609, 8B609, 8C609, 8D609, and 8E609.

This rule is one of a planned series of proposed rules that are part of the Administration's Export Control Reform Initiative under which various types of articles presently controlled on the USML under the International Traffic in Arms Regulations (ITAR) would, instead, be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR), if and after the President determines that such articles no longer warrant control on the USML.

BIS is publishing this proposed rule, on December 23, 2011, in conjunction with another proposed rule that describes how submersible vessels, oceanographic and associated equipment the President determines no longer warrant control under USML Category VI or Category XX would be controlled under the CCL in new Export Control Classification Numbers (ECCNs) 8A620, 8B620, 8D620, and 8E620. This proposed rule also is being published in

conjunction with two proposed rules of the Department of State, Directorate of Defense Trade Controls, that would amend the list of articles controlled by USML Categories VI and XX, respectively.

**DATES:** Comments must be received by February 6, 2012.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2011-0044.
- By email directly to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include RIN 0694-AF42 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694-AF42.

**FOR FURTHER INFORMATION CONTACT:** Alexander Lopes, Director, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482-4875, Email: [Alexander.Lopes@bis.doc.gov](mailto:Alexander.Lopes@bis.doc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) ("the July 15 proposed rule") that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) and, instead, would be controlled on the Commerce Control List (CCL). The July 15 proposed rule also contained a proposal by BIS describing how military vehicles and related articles in USML Category VII that no longer warrant control under the USML would be controlled on the CCL—the military vehicles proposal was the first in a series of such proposed rules to be published by BIS.

On November 7, 2011 (76 FR 68675), and December 6, 2011 (76 FR 76072), BIS published proposed rules describing, respectively, how aircraft and related items, and gas turbine engines and related items, determined by the President to no longer warrant control under the USML would be controlled on the CCL. In the November 7 proposed rule, BIS also made several changes and additions to the framework proposed in the July 15 proposed rule.

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

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

Following the structure of the July 15 and November 7 proposed rules, which describe the "export control reform initiative framework" for controlling on the CCL articles that the President determines no longer warrant control on the USML, this proposed rule describes BIS's proposal for how another group of items—various surface vessels of war and related articles that are controlled by USML Category VI—would be controlled on the CCL. The changes described in this proposed rule and the State Department's proposed amendment to Category VI of the USML are based on a review of Category VI by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category VI that are either: (i) Inherently military and otherwise warrant control on the USML, or (ii) if they are a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies either or both of those criteria, the article would remain on the USML. If an article did not satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, "specially designed" for military applications, then it is identified in one of the new ECCNs in this proposed rule. Finally, if an article does not satisfy either of the two criteria and is not found to be "specially designed" for military applications, the article is not affected by this rule because such items already are not on the USML.

The licensing policies and other EAR-specific controls for such items that are also described in this proposed rule

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

Pursuant to section 38(f) of the AECA, the President shall review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “describe the nature of any controls to be imposed on that item under any other provision of law.” 22 U.S.C. 2778(f)(1). This proposed rule describes how certain surface vessels of war and related articles in USML Category VI would be controlled by the EAR and identified on the CCL, if the President determines that the articles no longer warrant control on the USML. The Department of Commerce is publishing, in conjunction with this proposed rule on December 23, 2011, a proposed rule that will describe how submersible vessels, oceanographic and associated equipment that the President determines no longer warrant control on the USML Category VI or XX would be controlled on the CCL under new ECCNs 8A620, 8B620, 8D620, and 8E620.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) Would be moved from the USML to the CCL or (ii) are listed on the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) and are already controlled elsewhere on the CCL. The proposed rule referred to this series as the “600 series” because the third character in each of the new ECCNs would be a “6.” The first two characters of the 600 series ECCNs serve the same function as

described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

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

#### *Modifications to Provisions in the July 15 Proposed Rule*

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

- Addition of the new Category 8 (600 series) ECCNs to § 742.6(a)(1).

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

The comment period for the July 15 Proposed Rule closed on September 13, 2011. BIS will consider comments on the July 15 proposals only for the specific paragraph, note, and ECCNs referenced above, and only within the context of this proposed rule’s modifications to them.

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

This proposed rule would create five new 600 series ECCNs in CCL Category 8—8A609, 8B609, 8C609, 8D609, and 8E609—that would control articles the President determines no longer warrant control under USML Category VI. The proposed changes are discussed in more detail, below.

#### *New Category 8 (600 Series) ECCNs*

Certain surface vessels of war and related articles that the President determines no longer warrant control in USML Category VI would be controlled under proposed new ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609. These new ECCNs follow the 600 series construct identified in the July 15 proposed rule.

Paragraph .a of ECCN 8A609 would control surface vessels of war that are “specially designed” for military use, but not enumerated in the USML or elsewhere on the CCL. Paragraphs .b through .w would be reserved for possible future use. Paragraph .x would consist of parts, components, accessories and attachments (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are “specially designed” for a commodity in paragraph .a or a defense article in USML Category VI. Paragraph .y would consist of specific types of commodities that, if specially designed for a commodity subject to control in ECCN 8A609 or a defense article in USML Category VI, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y would be subject to antiterrorism (AT Column 1) controls, which currently impose a license requirement for five countries. A license also would be required, in accordance with the July 15 proposed rule, if commodities listed in paragraph .y were destined to the People’s Republic of China for a military end use as described in § 744.21 of the EAR.

This proposed rule does not add gas turbine engines for military vessels of war to the proposed new ECCN 8A609. Instead, the Administration issued a separate proposed rule, on December 6, describing the U.S. Government’s controls on gas turbine engines and related items for military aircraft, ships, and vehicles that no longer warrant control under the USML or an existing 018 ECCN on the CCL. Similarly, this proposed rule does not address military submersible vessels of war, submarines, and related articles that no longer warrant control under the USML—BIS will address controls on these items in a separate proposed rule.

ECCN 8B609.a would control test, inspection, and production “equipment” “specially designed” for the “development” or “production” of surface vessels of war and related commodities enumerated in ECCN 8A609 (except for items in 8A609.y) or in USML Category VI. Paragraphs .b through .x and paragraphs .y.1 through .y.98 would be reserved for possible future use.

ECCN 8C609.a would control materials “specially designed” for the “development” or “production” of surface vessels of war and related commodities enumerated in ECCN 8A609 that are not specified elsewhere on the CCL, such as in Category 1, or on the USML. Paragraphs .b through .x of

ECCN 8C609 would be reserved for possible future use. USML subcategory XIII(f) would continue to control structural materials “specifically designed, developed, configured, modified, or adapted for defense articles,” such as warships and vessels of war controlled by USML subcategory VI(a). The State Department plans to publish a proposed rule that would make USML Category XIII(f) a more positive list of controlled structural materials. Commerce will publish a corresponding proposed rule under which ECCN 8C609 would control any materials “specially designed” for USML Category VI or ECCN 8A609 that would no longer be controlled by the revised XIII(f).

ECCN 8D609.a would control “software” “required” for the “development,” “production,” operation, or maintenance of commodities enumerated in 8A609, 8B609, or 8C609. Paragraphs .b through .x of ECCN 8D609 would be reserved for possible future use. ECCN 8D609.y would control specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 8A609.y, 8B609.y, or 8C609.y.

ECCN 8E609.a would control “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of items enumerated in ECCN 8A609, 8B609, 8C609, or 8D609, except for items enumerated in 8A609.y, 8B609.y, 8C609.y, or 8D609.y. Paragraphs .b through .x of ECCN 8E609 would be reserved for possible future use. ECCN 8E609.y would control specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of items enumerated in ECCN 8A609.y, 8B609.y, 8C609.y, or 8D609.y.

In addition, ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609 would each contain a special paragraph designated “.y.99.” Paragraph .y.99 would control any item that meets all of following criteria: (i) The item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these Category 8, 600 series, ECCNs because, for example, the item was “specially designed” for a military use. Items in these .y.99 paragraphs would be subject to antiterrorism controls.

### Corresponding Amendments

As discussed in further detail below, the July 15 proposed rule stated that one reason for control for items classified in the 600 series is Regional Stability (specifically, RS Column 1). Items classified under proposed ECCN 8A609, ECCN 8B609, or ECCN 8C609, other than ECCN 8A609.y, 8B609.y, or 8C609.y items, as well as related technology and software classified under ECCNs 8D609 and 8E609, would be controlled for this reason, among others. Correspondingly, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 8A609, 8B609, 8C609 (except paragraphs .y of those ECCNs), and to related software and technology classified under ECCNs 8D609 and 8E609. Note that the proposed rule on military aircraft and related items that BIS published on November 7 would amend the RS Column 1 licensing policy to impose a general policy of denial for “600 series” items if the destination is subject to a United States arms embargo.

### Relationship to the July 15 Proposed Rule

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

To the extent that this rule’s proposals affect any provision in the July 15 proposed rule or the July 15 proposed rule’s provisions affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule. For example, BIS will consider comments on how the movement of Category VI items from the USML to the CCL affects a definition,

restriction, or provision that was contained in the July 15 proposed rule. BIS will also consider comments on the impact of a definition of a term in the July 15 proposed rule when that term is used in this proposed rule. BIS will not consider comments of a general nature regarding the July 15 proposed rule that are submitted in response to this rulemaking.

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

- *De minimis* provisions in § 734.4;
  - Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
  - Change to national security licensing policy in § 742.4;
  - Requirement to request authorization to use License Exception STA (strategic trade authorization) for end items in 600 series ECCNs and procedures for submitting such requests in §§ 740.2, 740.20, 748.8 and Supp. No. 2 to part 748;
  - Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
  - Definitions of terms in § 772.1.
- BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:
- Additional 600 series items identified in the RS Column licensing policy described in § 742.6.

### Effects of This Proposed Rule

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

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

#### *De minimis*

Section 734.3 of the EAR provides, *inter alia*, that under certain conditions items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a “*de minimis*” percentage of controlled U.S. origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule’s amendments at § 734.4 of the EAR are adopted, the new ECCNs 8A609, 8B609, 8C609, 8D609 and 8E609 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule, because they would be “600 series” ECCNs. Foreign-made items incorporating items controlled under the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (*i.e.*, a foreign-made item is not subject to the EAR if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item’s value). The AECA does not permit the ITAR to have a *de minimis* treatment for these USML-listed items, regardless of the significance or insignificance of the item, meaning that items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of the percentage of U.S. origin content in the foreign-made item. In addition, foreign-made items that incorporate any items that are currently classified under an 018 ECCN and that are moved to a new 600 series ECCN would be subject to the EAR if those foreign-made items contained more than 10 percent U.S.-origin controlled content, regardless of the destination and regardless of the proportion of the U.S.-origin controlled content accounted for by the former 018 ECCN items.

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

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

#### *Use of License Exceptions*

The July 15 proposed rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new 600 series ECCNs on the CCL. For example, proposed § 740.2(a)(12) would make 600 series items that are destined for a country subject to a United States arms embargo ineligible for shipment under a license exception, except where authorized by License Exception GOV under § 740.11(b)(2)(ii) of the EAR. In addition, the use of License Exception GOV for 600 series commodities would be limited to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in § 740.20(c)(1). With respect to License Exception STA, the July 15 proposed rule would (i) limit eligibility for “end items” in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved and (ii) require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users and limit the shipment of 600 series items under License Exception STA to destinations listed in § 740.20(c)(1).

BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for 600 series items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 8A609.

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

The Administration has stated, since the beginning of the Export Control Reform Initiative, that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. For example, the proposed ECCN 8A609 tracks, to the extent possible, the numbering structure and text of WAML category 9 pertaining to surface vessels of war not subject to the ITAR. It also implements in 8A609.x the controls in WAML category 16 for forgings, castings, and other unfinished products; in 8B609.a the controls in WAML category 18 for production equipment; in 8D609 the applicable controls in WAML category 21 for software; and in 8E609 the applicable controls in WAML category 22 for technology.

#### *Other Effects*

Pursuant to the framework identified in the July 15 proposed rule, commodities classified under ECCN 8A609 (other than ECCN 8A609.y), along with related test inspection and production equipment, materials, software, and technology classified under ECCN 8B609, 8C609, 8D609 or 8E609 (except items classified under the .y paragraphs of these ECCNs) would be subject to the licensing policies that apply to items controlled for national security reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. All commodities in ECCN 8A609 (other than those identified in 8A609.y, which are controlled for AT Column 1 anti-terrorism reasons only and may also be subject to the prohibitions described in Part 744), along with related test, inspection and production equipment, materials, software and technology classified under ECCN 8B609, 8C609, 8D609 or 8E609 (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1)—specifically, RS Column 1.

The July 15 proposed rule would change § 742.4 to apply a general policy of denial to 600 series items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that

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

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

The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not. (See 22 CFR §§ 120.3 and 120.4). Under this proposed rule, items that the State Department determined to be not subject to the ITAR and that are not described on the CCL would be subject to the AT-only controls of the “y.99” paragraph of a 600 series ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 8A609.x would control any part, component, accessory, or attachment not specifically identified in the USML or elsewhere in the ECCN if it was “specially designed” for a surface vessel of war. However, any part, component, accessory or attachment, which is determined by CJ not to be subject to the ITAR and is (as defined) “specially designed” for a surface vessel of war, would be controlled under 8A609.y.99 if it is not identified elsewhere on the CCL. If the item is controlled, either as a matter of law or as the result of a subsequent commodity classification (“CCATS”) determination by Commerce, under an ECCN that is currently on the CCL (e.g., ECCN 8A992.f), that ECCN would continue to apply to the item. This general approach will, pending public comment, be repeated in subsequent proposed rules pertaining to other categories of items.

If, however, the State Department had made a CJ determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new CJ determination would not be required unless there is doubt about the

application of the new USML category to the item. (See 22 CFR 120.4). Thus, unless there are doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past CJ determinations that, under the previous version of the USML, the item was ITAR controlled.

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

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

- Section 742.6—ECCNs 8A609, 8B609, 8C609, 8D609 and 8E609 are added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1) for applications to export or reexport “600 series” items to destinations that are subject to a United States arms embargo.

- Supplement No. 1 to part 774—Adds ECCNs 8A609, 8B609, 8C609, 8D609 and 8E609.

**Request for Comments**

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before February 6, 2012. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

**Regulatory Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the proposed rules published at 76 FR 41958 (July 15, 2011), 76 FR 68675 (November 7, 2011), 76 FR 76072 (December 6, 2011), and 76 FR 76085 (December 6, 2011) and in the proposed rule on submersible vessels, oceanographic and associated equipment that is being published in conjunction with this proposed rule on December 23, 2011, BIS believes that the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration’s Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 and November 7 proposed

rules published by BIS, in the two proposed rules that BIS published on December 6, and in the proposed rule on submersible vessels, oceanographic and associated equipment that BIS is publishing in conjunction with this proposed rule on December 23, 2011, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694-0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on surface vessels of war and related parts, components, production equipment, materials, software, and technology. The largest impact of the proposed rule would be with respect to exporters of parts and components because, under the proposed rule, most U.S. and foreign military vessels of war currently in service would continue to be subject to the ITAR. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports to integrators for U.S government equipment and most exports of routine maintenance parts and components for our NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an

unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 8E609 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.*, Manufacturing License Agreements and Technical Assistance Agreements.

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

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

#### *Number of Small Entities*

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

#### *Economic Impact*

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the "600 series" ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. This rule focuses on Category VI articles, which are surface vessels of war and related parts, components, production equipment, software, and technology. Most operational military vessels of war currently in active inventory would remain on the USML. However, parts and components, which are more likely to be produced by small businesses than are complete military vessels of war, would in many cases become subject to the EAR. In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles review by that department. Changing the jurisdictional status of Category VI items would reduce the burden on small entities (and other entities as well) through: (i) Elimination of some license requirements, (ii) greater availability of license exceptions, (iii) simpler license application procedures, and (iv) reduced, or eliminated, registration fees.

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

purchasing U.S.-origin parts and components.

Parts and components identified in ECCN 8A609.y would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance. These parts and components, which under the ITAR require a license to nearly all destinations, would, under the EAR, require a license to only five destinations and, if destined for a military end use, to the People's Republic of China.

Many exports and reexports of the Category VI articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than \$1,500, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the United States government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

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

Under the USML licensing procedure, an applicant must include a purchase

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

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

*De minimis* treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a

foreign-made product regardless of the percentage of U.S. content in that foreign made product. Foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, BIS believes that increased burden imposed by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

### Conclusion

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

### List of Subjects

15 CFR Part 742

Exports, Terrorism.



## 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

**PART 742—[AMENDED]**

1. The authority citation for 15 CFR part 742 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; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

**§ 742.6 Regional stability.**

(a) \* \* \*

**(1) RS Column 1 License**

**Requirements in General.** As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and .y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only “software” for the “development” or “production” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only “software” for the “use” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only “software” for the “development,” “production,” or “use” of equipment classified under 6A002.e or 6A998.b); 6E001 (only “technology” for “development” of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only “technology” for “production” of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only “technology” for the “development,” “production,” or “use” of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–

00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only “software” for “development” or “production” of items in 7A001, 7A002, or 7A003); 7E001 (only “technology” for the “development” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only “technology” for the “production” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only “technology” for the “use” of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8B609 (except 8B609.y); 8C609 (except 8C609.y); 8D609 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E609 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except “technology” for the “development,” “production” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

\* \* \* \* \*

**PART 774—[AMENDED]**

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

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001

Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8A609 between ECCNs 8A018 and 8A992 to read as follows:

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

\* \* \* \* \*

**8A609 Surface vessels of war and related commodities.****License Requirements**

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

Control(s)	Country chart
NS applies to entire entry except 8A609.y.	NS Column 1.
RS applies to entire entry except 8A609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

**License Exceptions**

*LVS:* \$1,500.

*GBS:* N/A.

*CIV:* N/A.

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8A609. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any “end item” in 8A609, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). See § 740.20(g) for the procedures to follow if you wish to request new STA eligibility for “end items” under this ECCN 8A609 as part of an export, reexport, or transfer (in-country) license application. “End items” under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS Web site at [www.bis.doc.gov](http://www.bis.doc.gov). Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 8A609.x without the need for a determination described in § 740.20(g).

**List of Items Controlled**

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

*Related Controls:* (1) Surface vessels of war and special naval equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category VI, Surface Vessels of War and Special Naval Equipment are subject to the



jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items. (3) For controls on diesel engines and electric motors for surface vessels of war subject to the EAR, see ECCN 8A992.g. (4) For controls on military gas turbine engines and related items for vessels of war, see ECCN 9A619 (as published on December 6, 2011, at 76 FR 76072, in a separate proposed rule that addresses gas turbine engines for military vehicles, vessels of war, and aircraft).

*Related Definitions:* N/A.

*Items:*

a. Surface Vessels of war “specially designed” for a military use and not enumerated in the USML.

**Note:** 8A609.a includes: (i) underway replenishment ships, (ii) surface vessel and submarine tender and repair ships, (iii) non-submersible submarine rescue ships, (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT), (v) amphibious warfare craft except those that are armed; or (vi) unarmored, and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.

b. through w. [RESERVED]

x. “Parts,” “components,” “accessories and attachments” that are “specially designed” for a commodity enumerated in ECCN 8A609 or a defense article enumerated in USML Category VI and not specified elsewhere in the CCL or the USML.

**Note 1:** Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.

**Note 2:** “Parts,” “components,” “accessories and attachments” specified in USML subcategory VI(g) are subject to the controls of that paragraph. “Parts,” “components,” “accessories and attachments” specified in ECCN 8A609.y are subject to the controls of that paragraph.

y. Specific “parts,” “components,” “accessories and attachments” “specially designed” for a commodity subject to control in this ECCN or for a defense article in USML Category VI and not elsewhere specified in the USML or the CCL, as follows:

- y.1. Ship service hydraulic and pneumatic systems;
- y.2. Internal communications systems;
- y.3. Filters and filter assemblies for hydraulic, oil and fuel systems;
- y.4. Galleys and related equipment;

y.5. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, and brackets;

y.6. Lavatories and sanitary systems;

y.7. Magnetic compass, magnetic azimuth detector;

y.8. Medical facilities and related equipment;

y.9. Potable water storage systems;

y.10. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;

y.11. Emergency lighting;

y.12. Analog gauges and indicators;

y.13. Audio selector panels.

y.14. to y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8A609.

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8B609 immediately following ECCN 8B001 to read as follows:

**8B609 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A609 or USML Category VI, as follows.**

**License Requirements**

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

Control(s)	Country chart
NS applies to entire entry except 8B609.y.	NS Column 1.
RS applies to entire entry except 8B609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

**License Exceptions**

*LVS:* \$1,500.

*GBS:* N/A.

*CIV:* N/A.

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8B609.

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 8A609 (except for 8A609.y) or in USML

Category VI, and “parts,” “components,” “accessories and attachments” “specially designed” therefor.

b. through x. [RESERVED]

y. Specific test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 8A609 (except for 8A609.y) or USML Category VI and “parts,” “components,” “accessories and attachments” “specially designed” therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8B609.

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8C609 immediately following ECCN 8C001 to read as follows:

**8C609 Materials “specially designed” for the “development” or “production” of commodities controlled by 8A609 not elsewhere specified in the CCL or in the USML.**

**License Requirements**

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

Control(s)	Country chart
NS applies to entire entry except 8C609.y.	NS Column 1.
RS applies to entire entry except 8C609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

**License Exceptions**

*LVS:* \$1,500.

*GBS:* N/A.

*CIV:* N/A.

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8C609.

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* (1) See USML Categories VI and XIII(f) for controls on materials specially designed for vessels of war enumerated in USML Category VI. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

*Related Definitions:* N/A.

*Items:*

a. Materials “specially designed” for commodities enumerated in ECCN 8A609 (except for 8A609.y) not elsewhere specified in the USML or the CCL.

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

b. to .x. [RESERVED]

y. Specific materials “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A609 (except for 8A609.y), and “parts,” “components,” “accessories and attachments” “specially designed” therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Materials not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8C609.

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8D609 between ECCN 8D002 and 8D992 to read as follows:

**8D609 Software “specially designed” for the “development,” “production,” operation or maintenance of surface vessels of war and related commodities controlled by 8A609, equipment controlled by 8B609, or materials controlled by 8C609.**

#### License Requirements

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

Control(s)	Country chart
NS applies to entire entry except 8D609.y.	NS Column 1.
RS applies to entire entry except 8D609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

#### License Exceptions

*CIV:* N/A.

*TSR:* N/A.

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any software in 8D609.

#### List of Items Controlled

*Unit:* \$ value.

*Related Controls:* (1) Software directly related to articles enumerated in USML Category VI is controlled under USML Category VI(g). (2) See ECCN 0A919 for foreign made “military commodities”

that incorporate more than 10% U.S.-origin “600 series” items.

*Related Definitions:* N/A.

*Items:*

a. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 8A609, ECCN 8B609, or ECCN 8C609 (except for ECCN 8A609.y, 8B609.y, or 8C609.y).

b. to x. [RESERVED]

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 8A609.y, 8B609.y, or 8C609.y, as follows:

y.1. through y.98 [RESERVED]

y.99. Software not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8D609.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8E609 between ECCN 8E002 and 8E992 to read as follows:

**8E609 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of surface vessels of war and related commodities controlled by 8A609, equipment controlled by 8B609, materials controlled by 8C609, or software controlled by 8D609.**

#### License Requirements

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

Control(s)	Country chart
NS applies to entire entry except 8E609.y.	NS Column 1.
RS applies to entire entry except 8E609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

#### License Exceptions

*CIV:* N/A.

*TSR:* N/A.

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 8E609.

#### List of Items Controlled

*Unit:* N/A.

*Related Controls:* (1) Technical data directly related to articles enumerated in USML Category VI are controlled under USML Category VI(g). (2) See

ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

*Related Definitions:* N/A.

*Items:*

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 8A609, 8B609, or 8C609, or “software” controlled by ECCN 8D609, except for ECCN 8A609.y, 8B609.y, 8C609.y, or 8D609.y.

b. through x. [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 8A609.y, 8B609.y or 8C609.y, or “software” controlled by ECCN 8D609.y, as follows:

y.1. through y.98 [RESERVED]

y.99. “Technology” not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8E609.

Dated: December 16, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 742 and 774

[Docket No. 110928603–1605–02]

RIN 0694–AF39

### Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

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

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) publishes this proposed rule that describes how submersible vessels, oceanographic equipment and related articles that the President determines no longer warrant control under Category VI (Vessels of War and Special Naval Equipment) or Category XX (Submersible Vessels, Oceanographic and Associated