

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

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

b. through x. [RESERVED]

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

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

y.2. through y.98 [RESERVED]

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

Dated: November 28, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

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

[Docket No. 110310188–1621–02]

RIN 0694–AF17

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

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

**ACTION:** Proposed rule.

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

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

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

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

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

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

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

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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

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

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

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

AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “describe the nature of any controls to be imposed on that item under any other provision of law.” 22 U.S.C. 2778(f)(1). This proposed rule describes how certain military vehicles and related articles in USML Category VII would be controlled by the EAR and its CCL if the President determines that the articles no longer warrant control on the USML.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control articles that would be moved from the USML to the CCL or that are Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (WAML) items 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 any other ECCN as described 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.

The July 15 proposed rule specifically proposed creating five new “600 series” ECCNs (0A606, 0B606, 0C606, 0D606 and 0E606). This proposed rule re-proposes, with certain changes, those ECCNs based on review of the public comments on the July 15 proposed rule and on further deliberations by BIS, the Department of Defense and the Department of State.

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.

### Comments Regarding ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606 in the July 15 Proposed Rule

The comment period for the July 15 proposed rule ended on September 13, 2011. Some of the comments that BIS received concerned exclusively the text of the proposed new ECCN 0A606, 0B606, 0C606, 0D606 and 0E606. BIS has adopted some of the recommendations in those comments and incorporated them into this proposed rule. BIS will continue to consider some of those comments and will make a decision whether or not to adopt their recommendations in any final rule concerning those new ECCNs.

#### Comment 1

Two commenters recommended removing the modifier “non-combat” from the description of military support vehicles in 0A606.b.5 so that any combat vehicles that are not described in the USML will not inadvertently become EAR99. One commenter offered the additional rationale that that the distinction between combat and non-combat military vehicles is not always clear. Some vehicles such as tow trucks and ambulances may have armor and be used in combat zones.

#### Response

BIS has not adopted this recommendation exactly as proposed, but has modified proposed ECCN 0A606 in a way that it believes would address the concerns of these commenters. As modified, ECCN 0A606 would apply explicitly to military vehicles not listed in Category VII of the USML. BIS believes that the explicit requirement that a military vehicle not be on the USML in order to be classified under 0A606 reduces the likelihood that a reader would conclude that vehicles not classified under 0A606 are EAR99. The modified ECCN 0A606 also does not use the phrase “non-combat,” which eliminates the need to make decisions as to whether a particular military vehicle is also a combat vehicle.

#### Comment 2

These same commenters in Comment 1 recommending adding the phrase “not on the USML” to 0A606.x and .y because, absent such a statement, unwary readers might conclude that parts and components not elsewhere in paragraphs .x or .y are EAR99 when they might in fact be listed on the ITAR. Another commenter noted that exclusions in some of the items listed in paragraph .y might lead readers to conclude that the excluded item is EAR99. This commenter also recommended language making clear

that items in paragraph .y are not those that are not listed on the ITAR.

#### Response

BIS agrees and has included the phrase “not elsewhere specified on the USML or CCL” in both paragraphs .x and .y.

#### Comment 3

Two commenters recommended listing the ECCN paragraphs to which a control applies (or does not apply) in the “Control(s)” column within an ECCN rather than in the “Country Chart” column.

#### Response

The structure that these commenters recommended is already used throughout the CCL. BIS has used it for this proposed rule and expects to use for other proposed rules relating to control of items that the President determines no longer warrant control on the United States Munitions List.

#### Comment 4

One commenter noted that a number of parts and components currently controlled by 9A018 would, under the proposed text of ECCN 0A606 and the proposed definition of “specially designed,” move to new ECCN 0A606.x, which would make them ineligible for License Exception LVS because proposed ECCN 0A606 allows that license exception for 0A606.a, .b and .c only. This commenter also stated that the new definition of specially designed would require it to obtain licenses for exports to Country Group B countries.

#### Response

BIS acknowledges that this is an unintentional consequence of ECCN 0A606 and has revised this ECCN to make License Exception LVS, which allows limited value shipments to Country Group B, available for all commodities classified under proposed ECCN 0A606 including those currently found in ECCN 9A018. BIS notes that License Exception GBS, which authorizes shipments to Country Group B without value limits, currently is not available for commodities classified under ECCN 9A018. Thus the movement of items from ECCN 9A018 to 0A606 does not affect eligibility for exports under License Exception GBS.

#### Comment 5

One commenter recommended that regional stability controls not apply to ECCN 0A606.a. The commenter noted that the items that would be classified under that proposed paragraph currently are classified under 0A018.a

and not subject to any regional stability reason for control. The commenter stated that it is not aware of any compelling reason for a change in policy for these items.

#### Response

BIS acknowledges that some commodities currently classified under 0A018.a (therefore not subject to a regional stability reason for control) and other commodities currently classified under 9A018.b (therefore subject to the regional stability column 2 reason for control) would, under the July 15 rule, be classified under ECCN 0A606 and therefore would be subject to the regional stability column 1 (RS 1) reason for control. However, BIS believes that the impact of this change on the public would be both reasonable and justified in light of the nature of the commodities that would be affected, and is not proposing any changes to ECCN 0A606 as proposed in the July 15 rule.

Currently ECCN 0A018.a and 9A018.b are subject to the national security column 1 (NS 1) reason for control. Both the NS1 and RS 1 reasons for control impose a license requirement for all destinations other than Canada. However, licensing policy for the two reasons are different. The national security licensing policy is focused on risk of diversion to Country Group D:1 destinations. The RS 1 licensing policy is focused on preventing enhancement of military capabilities that would alter or destabilize a region's stability contrary to the interests of the United States. All commodities that would be subject to the RS 1 reason for control in proposed ECCN 0A606 are inherently military and, therefore, any export of these items can be expected to enhance some country's military capability. Because of this inherently military nature, BIS believes that application of the more comprehensive RS 1 licensing policy in addition to the more traditional NS 1 licensing policy is justified.

#### Comment 6

One commenter recommended that 0A606.x be limited to specific "parts," "components," "accessories and attachments" that are "specially designed" for a commodity subject to control in this ECCN or a defense article in USML Category VII that has military application with no civil equivalent. That commenter provided an illustrative list of items that, in its opinion, have military application with no civil equivalent. That list consisted of:

- Weapon systems (including mounting, targeting, and stabilization systems);

- Sensor systems (other than collision avoidance or parking sensors systems); and
- Communication systems (other than communication systems designed to work with civil communication systems).

This commenter also recommended that paragraph .y be made into an illustrative list of items that have little or no military significance or no civil equivalent and that the list in paragraph .y should include only items with military significance. Items with no military significance should be EAR99.

#### Response

The purpose of the controls in a .y paragraph is to create a specific, clear, and exclusive list of parts and components that are so militarily insignificant that they do not warrant NS1 or RS1 controls, even if those parts or components are "specially designed" for a defense article on the USML or for an item in another paragraph of the ECCN that includes that .y paragraph. Turning such a list into an illustrative list would create significant doubts among exporters and government officials regarding precisely which items were subject to its controls. Thus, BIS did not accept this recommendation.

#### Comment 7

One commenter recommended that paragraph .x be either a positive list of parts and components that are militarily significant or a list of the characteristics that make a part militarily significant.

#### Response

As described in the State Department's proposed rule amending USML Category VII (which is being published simultaneously with this proposed rule), paragraph (g) for Category VII, which has historically contained a catch-all control for all parts, components, accessories, or attachments "specifically designed or modified" in any way for a defense article in Category VII, would be replaced by a positive list of parts, components, accessories, and attachments that would be controlled by the proposed revised paragraph VII(g). Thus, this proposed amendment is consistent with the Administration's goal of creating, to the extent possible, positive lists of controlled items—*i.e.*, controlling items without using broad, design-intent based catch-all controls over generic types of items such as "parts" and "components." However, another Administration objective is to make sure that items "specially designed" for defense articles that are now USML controlled items but that

would not be USML controlled items after any proposed jurisdictional changes not fall out of export controls completely. This is why the proposed .x controls in each of the new 600 series ECCNs control all parts, components, accessories, and attachments "specially designed" for a defense article in the corresponding USML category or that ECCN. Thus, BIS rejected this recommendation.

#### Comment 8

Three commenters proposed function tests for identifying items to be included in 0A606 paragraph .y as follows:

The same commenter in Comment 7 recommended that if paragraph .x cannot be made into a positive list, certain items should be added to paragraph .y. These items are common (in function) to items widely used in civilian vehicles. They include gauges such as speedometers; instrument panels/clusters; vehicle/engine sensors; vehicle engine monitoring sensors and displays such as check engine lights and their associated sensors; electronic braking systems; multiplexing systems to limit vehicle wiring; tire pressure monitoring systems; and data relating to tires (not including run-flats). Although these items might have to be modified for a particular military vehicle, such modifications typically relate fit and are similar to the types of modifications that are made for civilian vehicles.

This commenter also stated that the proposed rule did not set forth any criteria by which BIS selected items for paragraph .y and the selection was arbitrary. The commenter noted five possible characteristics that the BIS proposed 0A606.y items appeared to have in common. Those characteristics are: (1) The items are widely used in civilian and military vehicles alike; (2) without these products, many military and civilian vehicles could not function at all; (3) they do not include offensive weaponry, armor, threat detection systems, or military command, control, and communications systems; (4) they do not include items that control or monitor offensive weaponry, armor, threat detection systems, or military command control and communications systems; and (5) they are available from foreign sources in many locations around the world. The commenter stated that it thinks such would be good criteria for limiting the reason for control to antiterrorism.

This commenter also suggested that BIS's selection of items for paragraph .y appears to equate complexity and the age of a technology with military significance. The commenter pointed out that no electronic parts are in

paragraph .y. This commenter also noted that multilateral regimes do not require that the United States control non-significant parts and the end-use and end-user license requirements provide adequate control for parts that have no military significance.

One commenter asked why 0A606.y did not include exhaust pipes. This commenter stated that exhaust pipes consist mainly of metal tubing that is bent to fit a particular model of vehicle. As such, they appear to be classified under 0A606.x. However, exhaust pipes serve the function of keeping poisonous gases away from the passenger compartment on both civilian and military vehicles.

One commenter recommended that wheels be added to 0A606.y, stating that wheels have no more military significance than bearings, axles and blackout lights, all of which were in 0A606.y of the proposed rule.

#### Response

These commenters are, in effect, proposing a function test for inclusion in paragraph 0A606.y, *i.e.*, items that differ only in form or fit from items that perform a function that is common to both military and civilian vehicles but that must be adapted in form or fit to a military vehicle should be controlled at no more than the antiterrorism reason for control. BIS believes that this recommendation is relevant to all ECCNs that would become part of this phase of the Export Control Reform Initiative. BIS will continue to review the concept underlying this recommendation and encourages further comment on appropriate criteria for determining which items classified under 600 series ECCNs should be limited to the AT reason for control. BIS will also continue to review the specific items proposed for inclusion in 0A606.y by these commenters. BIS also notes that, at least in some instances, exhaust systems for military vehicles perform additional functions than those typically performed by civilian vehicle exhaust systems. Some military exhaust systems are designed and built to facilitate deep water fording or to reduce emission of thermal radiation, thereby making the vehicle less detectable by opposing forces. Thus, exhaust systems are not *per se* items that, even if specially designed for a military application would have little or no military significance.

#### Comment 9

One commenter stated that bearings should be EAR99 rather than 0A606.y. This same commenter also stated that gears have about the same level of

military significance as bearings and that gears should be in 0A606.y

#### Response

Bearings that are not otherwise identified in the CCL, such as in ECCN 2A001, and that are not “specially designed” for a military vehicle controlled on the USML or CCL would be EAR99 bearings. The fact that there are significant controls on some types of bearings in the CCL indicates that bearings are not *per se* the types of items that would have little or no military significance even if specially designed for a military end item. With respect to “gears,” BIS proposed excluding from controls in its definition of “specially designed” single unassembled parts that are commonly used in civil applications. As indicated above, BIS is reviewing the public comments on this aspect of the proposed definition and will address this point in a second proposed rule pertaining to the definition of specially designed.

#### Comment 10

One commenter questioned why blackout lights were included in proposed ECCN 0A606.y, which applies to items of little or no military significance and also in proposed Interpretation 8, which, among other things, identifies features that give a vehicle military characteristics.

#### Response

This proposed rule would amend proposed 0A606.y to remove blackout lights and would remove Interpretation 8 in its entirety. Controls on blackout lights are currently the subject of deliberations by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies. Changing controls on blackout lights at this time would be premature. Therefore this proposed rule would not include blackout lights in paragraph .y of ECCN 0A606. Blackout lights that are specially designed parts, components, accessories or attachments for a commodity enumerated in ECCN 0A606 (other than 0A606.b) or a defense article enumerated in USML Category VII classified under ECCN 0A606.x unless specified elsewhere on the CCL or the USML.

#### Comment 11

Some commenters recommended that a paragraph .y (or a note) be included in ECCNs 0B606, 0C606, 0D606 and 0E606 to cover test, inspection and production equipment; materials; software; and technology that applies to commodities in 0A606.y

#### Response

BIS agrees with this comment. This proposed rule would apply this limitation to proposed ECCNs 0B606, 0C606, 0D606 and 0E606.

#### Comment 12

Two commenters noted that software for the development, production or use of 0A606.y commodity item should be controlled at the AT level.

#### Response

BIS agrees with this comment and proposes to apply AT controls for development, production, operation or maintenance software.

#### Comment 13

One commenter recommended that to promote the adaption of commercial products for use in U.S. military vehicles, the Department of Commerce should limit the controls on form, fit and function data that is necessary to provide military insignificant items for military vehicles to the antiterrorism reason for control only unless that information relates to certain sensitive items. Specifically this commenter recommended adding a note to ECCN 0A606 providing that: “The form, fit, and function information necessary to design, modify, adapt, and configure parts and components listed in ECCN 0A606.y as having little or no military significance is controlled only for AT reasons. To the extent the form, fit, and function information relates to vehicle weapons; armor; threat detection systems; or military command, control, and communications systems, that information is controlled to the extent and in the same manner as ‘technology’ or ‘technical data’ concerning such item is controlled by the EAR or ITAR, respectively.”

#### Response

This comment, although directed at 0A606, applies to all the 600 series ECCNs that would be created in the Export Control Reform Initiative. BIS is not making the recommended changes at this time but will continue to consider the recommendation and may propose changes, if warranted. BIS encourages additional comments on this issue.

### Specific Changes Proposed by This Rule

#### Removal of Interpretation 8

This rule would remove § 770.2(h) *Interpretation 8: Ground vehicles*. BIS believes that the text that this rule proposes for ECCN 0A606 when read with the proposed State Department revisions to Category VII of the USML

are sufficiently precise to make Interpretation 8 unnecessary.

*Changes to Proposed ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606*

Following the pattern announced in the July 15 proposed rule, each of the five ECCNs noted above would contain a new paragraph designated “.y.99” to cover items that would otherwise fall within the scope of one of the ECCNs because, for example, they were “specially designed” for a military use, but which (i) Had been previously determined by the Department of State to be subject to the EAR and (ii) were not listed on the CCL. Items in these .y.99 paragraphs would be subject to antiterrorism controls.

Again, following the pattern announced in the aircraft proposed rule, the United Nations reason for control would be removed from the “License Requirements” section of each of the five ECCNs listed above. The policy of denying applications for licenses to export or reexport 600 series items to destinations that are subject to a United Nations arms embargo would be implemented in connection with the national security reason for control (proposed by the July 15 proposed rule) and with the regional stability reason for control (proposed by the aircraft proposed rule). Because the EAR as proposed relies on the national security and regional stability reasons for control to implement United Nations arms embargoes with respect to 600 series items on the CCL, a reference to the United Nations in these ECCNs has no legal effect and is likely to engender public confusion by suggesting the existence of a separate United Nations arms embargo licensing requirements and licensing policy section in the EAR. Such a section does not exist.

The references to other 600 series items in the same CCL category and product group would be removed from the “Related Controls” paragraphs of each of the five ECCNs noted above to conform to the practice prevailing throughout the CCL. Using the five product groups to describe items that differ in function but that are related to other items in the same CCL category has been an organizing principle of the EAR since at least 1966. Related Controls paragraphs alert readers to items that are similar to the items in a given ECCN but that are subject to the export control jurisdiction of another agency or appear in a different ECCN.

The words under the “Controls” and “Country Chart” columns in the “Reasons for Control” paragraph of each ECCN would be revised to conform to the pattern prevailing throughout the

CCL wherein the ECCN paragraphs to which a control apply are listed the “Controls” column rather than in the “Country Chart” column as was the case in the July 15 proposed rule. This change is stylistic only, and would not affect any license requirements.

*Changes to Proposed ECCN 0A606*

This rule proposes a new version of ECCN 0A606 that differs in a number of respects from the proposed ECCN 0A606 in the July 15 proposed rule. Those differences and the reasons therefor are as follows.

The heading would be revised from “Ground Vehicles, ‘Parts’ and ‘Components’ as follows” to “Ground vehicles and related commodities, as follows (See List of Items Controlled)” to reflect the fact that some of the items listed in the entry are accessories, attachments, forgings, castings and other unfinished products that are not, as defined, “parts” or “components” of the ground vehicles that would be classified under proposed ECCN 0A606.

This proposed rule would add a new sentence to the STA paragraph in the License Exception section to explicitly state that items in 0A606.x are not subject to the requirement for a determination as described in § 740.20(g) before being exported or reexported under License Exception STA. Such determinations are not needed because item in paragraph .x are, by definition, parts and components and are not “end items.” BIS regards this proposal as an additional statement of a principle set forth in the July 15 proposed rule and is not a substantive change.

The EAR Country Chart Column designators in the License Requirements section would apply national security (NS column 2), regional stability (RS column 2) to 0A606.b, certain unarmed all-wheel drive off-road vehicles derived from civilian vehicles that provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better and parts and components that provide such protection. As proposed in the July 15 proposed rule, all other paragraphs of this ECCN, except paragraph .y, would be subject to the NS column 1 and RS column 1 reason for control, and the entire ECCN would be subject to the anti-terrorism reason for control. Applying NS column 2 and RS column 2 reasons for control to the armored off-road vehicles in 0A606.b would allow armored SUVs that are used for personal protection to be exported to most NATO member countries along with Australia, Japan and New Zealand without a license. Any risk that such vehicles

exported to such destinations would be employed in a military use inimical to the United States or its allies is minimal.

As revised, proposed new ECCN 0A606 would include deep water fording kits “specially designed” for ground vehicles controlled by 0A606.a or USML Category VII, and self-launching bridge components not enumerated in USML Category VII(g) “specially designed” for deployment by ground vehicles enumerated in USML Category VII or 0A606. Such items are specifically identified in WAML Category 6. Because a goal of the effort of the reform effort is to more clearly align the U.S. Government’s controls with the controls of the multilateral regimes, these controls are specifically listed in the new 0A606.

This proposed rule would add a note to paragraph .x providing that forgings, castings and certain other unfinished products that have reached a stage in manufacture where they are clearly identifiable as commodities controlled by 0A606.x are controlled by that paragraph. Adding this note serves to better align the controls over 600 series military articles with the controls in the WAML, which controls in its Category 16 such forgings and castings. This proposed note also would better align the requirements of ECCN 0A606 with the controls on forgings and castings now in the ITAR (22 CFR 121.10). BIS encourages comments on whether the proposed controls on forgings and castings in the new 0A606.x are clear.

Also, the proposed new ECCN would not include in paragraph .y blackout lights, which were included in paragraph .y of the July 15 proposed rule because the subject of appropriate controls over blackout lights is a topic under consideration by the Wassenaar Arrangements on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Blackout lights that are specially designed parts, components, accessories or attachments for a commodity enumerated in ECCN 0A606 (other than 0A606.b) or a defense article enumerated in USML Category VII classified under ECCN 0A606.x unless specified elsewhere on the CCL or the USML.

Finally, the proposed new ECCN 0A606 would not include military vehicle gas turbine engines because controls on gas turbine engines and related items for military aircraft, ships, and vehicles are addressed in another proposed rule which, would create a proposed ECCN 9A619. Although this numbering deviates slightly from the WAML numbering approach, BIS believes that it would be more efficient

to list all 600 series controls for gas turbine engines and related items in one ECCN. The anticipated new ECCN will correspond to a new USML Category XIX that the State Department would propose creating to control USML-controlled gas turbine engines and related articles.

#### *Changes to Proposed ECCN 0B606*

This rule proposes a new version of ECCN 0B606 that differs in a number of respects from the ECCN 0B606 in the July 15 proposed rule.

The heading would be changed from “Test, inspection, and production ‘equipment’ and related commodities ‘specially designed’ for the ‘development’ or ‘production’ of commodities enumerated in ECCN 0A606” to “Test, inspection, and production ‘equipment’ and related commodities ‘specially designed’ for the ‘development’ or ‘production’ of commodities enumerated in ECCN 0A606 or USML Category VII (See List of Items Controlled).” This text more accurately reflects the scope of this proposed ECCN.

The four specific commodities that were listed in paragraphs .a, .b, .c and .d in the July 15 proposed rule: (i) Armor plate drilling machines, other than radial drilling machines, (ii) armor plate planing machines, (iii) armor plate quenching presses; and (iv) tank turret bearing grinding machines are included as a note to paragraph .a in this proposed rule. Paragraph .a, as a whole, would apply more broadly in this proposed rule to test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 0A606 (except for 0A606.y) or in USML Category VII, and “parts,” “components,” “accessories and attachments” “specially designed” therefor. Paragraph .b would apply more broadly in this proposed rule to environmental test facilities “specially designed” for the certification, qualification, or testing of commodities enumerated in ECCN 0A606 (except for 0A606.b or 0A606.y) or in USML Category VII, and “equipment” “specially designed” therefor. This specifically identifies as controlled in U.S. export control law such items, which are identified in WAML Category 18.

Paragraphs .c through .x would be reserved for future use.

#### *Changes to Proposed ECCN 0C606*

The “Items” paragraph in the “List of Items Controlled” section would be in the form of a list rather than just a reference to the ECCN heading as was

the case in the July 15 proposed rule. Paragraph .a of that list would enumerate materials “specially designed” for the “development” or “production” of commodities enumerated in ECCN 0A606 (other than 0A606.b or 0A606.y) or USML Category VII, not elsewhere specified in the USML or the CCL. Two notes following paragraph .a would make clear that materials enumerated elsewhere on the CCL are subject to the controls of the CCL in which they are enumerated and materials specially designed for vehicles enumerated in ECCN 0A606 or in USML Category VII are subject to ECCN 0C606 unless such materials are identified in USML Category VII(g).

#### *Changes to Proposed ECCN 0D606*

The term “use” would be replaced with the term “operation and maintenance” because the latter more accurately describes the software functions of concern.

#### *Changes to Proposed ECCN 0E606*

The term “use” would be replaced with the term “operation, installation, maintenance, repair or overhaul” because the latter is a more accurate description of the technology of concern.

#### **Request for Comments**

All comments must be in writing and submitted via one or more of the methods listed under the **ADDRESSES** caption to this notice. All comments (including any personal identifiable information) will be available for public inspection and copying. Anyone wishing to comment anonymously may do so by submitting their comment via regulations.gov and leaving the fields for information that would identify the commenter for identifying information blank.

#### **Relationship to the July 15 Proposed Rule and the Aircraft Proposed Rule**

As referenced above, the purpose of the July 15 proposed rule was to set up the framework to support the transfer of items from the USML to the CCL. To facilitate that goal, the July 15 proposed rule contained definitions and concepts that were meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the aircraft proposed rule, BIS proposed several changes to those definitions and

concepts. The comment period for the aircraft proposed rule will close on December 22, 2011.

To the extent that this rule’s proposals affect any provision in either of those proposed rules or any provision in either of those proposed rules affect this proposed rule, BIS will consider comments on those provisions so long as they are in the context of the changes proposed in this rule.

BIS believes that the following aspects of the July 15 proposed rule and the aircraft proposed rule are among those that could affect this proposed rule:

- *De minimis* provisions in § 734.4;
- Definitions of terms in § 772.1;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20 (including restrictions proposed by the November 7, 2011, proposed rule that would apply to items outside the scope of that rule);
- Change to national security licensing policy in § 742.4;
- Requirement to request authorization to use License Exception STA 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;
- Licensing policy in § 742.4(b)(1)(ii);
- 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
- Addition of U.S. arms embargo policy regarding 600 series items set forth in § 742.4(b)(1)(ii) (national security) of the July 15 proposed rule to § 742.6(b)(1) (regional stability) of this proposed rule.

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.

#### **Rulemaking Requirements**

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

Some items formerly on the USML will 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 proposed rule, BIS believes that the increased use of License Exception STA resulting from combined effect of all rules to be published adding items to EAR that are being removed from the ITAR as part of the administration’s Export Control Reform Initiative will increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on military vehicles 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 vehicles 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 and acknowledgement and commitment to comply with the EAR. It is, however, the Administration’s understanding that complying with the burdens 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 is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 0E606 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 Regulations, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that proposed rule published on July 15, 2011, will not have a significant impact on a substantial number of small entities.

This proposed rule re-proposes with certain changes, 5 ECCNs that were proposed in the July 15, 2011 rule. The changes proposed in this rule do not impact the original certification. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification, which also takes into consideration the changes to the five proposed ECCNs in this rule, 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 VII articles, which are tanks and military vehicles and related parts, components, production equipment, software, and technology. Most operational tanks and military vehicles 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 vehicles, 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 VII items would reduce the burden on small entities (and other entities as well) through elimination of some license requirements, greater availability of license exceptions, simpler license application procedures, and 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, discouraging 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 avoid purchasing U.S.-origin parts and components.

Fourteen types of parts and components, identified in ECCN 0A606.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, the People's Republic of China.

Many exports and reexports of Category VII 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 in which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category VII 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 will need to caveat all sales presentations with a reference to the need for government approval and is more likely to have 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 particular consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), 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 VII 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, then its ITAR registration and registration fee requirement would be eliminated.

*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 that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeded 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 avoid 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 the 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 Regulations 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 770

Exports.

##### 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

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

#### 15 CFR PART 742—[AMENDED]

1. The authority citation paragraph for part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22

U.S.C. 7210; Sec 1503, Pub. L. 108–11, 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 paragraphs (a)(1) and (a)(4)(i) to read as follows:

#### § 742.6 Regional stability.

(a) \* \* \*

##### (1) RS Column 1 License

*Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and .y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only “software” for the “development” or “production” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only “software” for the “use” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only “software” for the “development,” “production,” or “use” of equipment classified under 6A002.e or 6A998.b); 6E001 (only “technology” for “development” of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only “technology” for “production” of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only “technology” for the “development,” “production,” or “use” of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only “software” for “development” or “production” of items in 7A001, 7A002, or 7A003); 7E001 (only “technology” for the “development” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only “technology” for the “production” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only “technology” for the “use” of inertial navigation systems, inertial

equipment, and specially designed components for civil aircraft); 9A610 (except 9A610.y); 9A619; 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the development,” “production,” operation or maintenance of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the “development,” “production,” operation or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except “technology” for the “development,” “production” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y) and 9E619 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, overhaul of refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

\* \* \*

(4) \* \* \*

(i) License Requirements Applicable to Most RS Column 2 Items. As indicated in the CCL and in RS Column 2 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except Australia, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO) for items described on the CCL under ECCNs 0A918, 0E918, 1A004.d, 1D003 (software to enable equipment to perform the functions of equipment controlled by 1A004.d), 1E001 (technology for the development, production, or use of 1A004.d), 2A983, 2A984, 2D983, 2D984, 2E983, 2E984, 0A606.b, 8A918, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, and 2B018.

\* \* \* \* \*

#### 15 CFR PART 770—[AMENDED]

3. The authority citation paragraph for part 770 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

#### Section 770.2 [Amended]

4. Section 770.2 is amended by removing and reserving paragraph (h).

#### PART 774—[AMENDED]

5. The authority citation paragraph for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

6. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0A606 between Export Control Classification Numbers 0A018 and 0A918 to read as follows:

**0A606 Ground vehicles and related commodities, as follows (See List of Items Controlled):**

**License Requirements**

*Reason for Control:* NS, RS, AT

Control(s)	Country chart
NS applies to entire, entry except 0A606.b and .y.	NS Column 1
NS applies to 0A606.b.	NS Column 2
RS applies to entire entry, except 0A606.b and .y.	RS Column 1
RS applies to 0A606.b.	RS Column 2
AT applies to entire entry.	AT Column 1

**License Exceptions**

*LVS:* \$1500

*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 0A606. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any “end item” in 0A606, 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 0A606 as part of an export, reexport, or in-country (transfer) 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 <http://www.bis.doc.gov> \* \* \*.

Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used to export, reexport, or transfer (in-country) commodities that are not “end items,” such as those controlled by 0A606.x, without the need for a determination described in § 740.20(g).

**List of Items Controlled**

*Unit:* Equipment in number; “parts,” “components,” “accessories and attachments” in \$ value

**Related Controls:** (1) Ground vehicles and related articles, technical data (including software) and services described in 22 CFR part 121, Category VII, Ground Vehicles and Related Articles, 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.

**Related Definitions:** N/A  
*Items:*

a. Ground vehicles, whether manned or unmanned, “specially designed” for a military use and not enumerated in USML Category VII.

**Note:** For purposes of paragraph .a, “ground vehicles” include (i) Tanks and armored vehicles manufactured prior to 1956 that do not contain a functional weapon or a weapon capable of becoming functional through repair; (ii) military railway trains except those that are armed or are “specially designed” to launch missiles; (iii) unarmored military recovery and other support vehicles; (iv) unarmored, unarmed vehicles with mounts or hard points for firearms of .50 caliber or less; and (v) trailers “specially designed” for use with other ground vehicles enumerated in USML Category VII or ECCN 0A606.a, and not separately enumerated in USML Category VII.

b. Other Ground Vehicles and Related Commodities, as follows:

b.1. Unarmed all-wheel drive vehicles capable of off-road use that are derived from civilian vehicles that have been modified or fitted with materials or components other than reactive or electromagnetic armor to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better.

b.2. “Parts” and “components” that provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better “specially designed” for ground vehicles controlled by 0A606.b.1.

**Note 1:** Ground vehicles otherwise controlled by 0A606.b.1 that contain reactive or electromagnetic armor are subject to the controls of USML Category VII.

**Note 2:** ECCN 0A606.b.1 does not control civilian vehicles “specially designed” for transporting money or valuables.

**Note 3:** “Unarmed” means not having installed weapons, installed mountings for weapons, or special reinforcements for mounts for weapons.

c. Air-cooled diesel engines and engine blocks for armored vehicles that weigh more than 40 tons.

d. Fully automatic continuously variable transmissions for tracked combat vehicles.

e. Deep water fording kits “specially designed” for ground vehicles controlled by ECCN 0A606.a or USML Category VII.

f. Self-launching bridge components not enumerated in USML Category VII(g) “specially designed” for deployment by ground vehicles enumerated in USML Category VII or this ECCN.

g. through w. [RESERVED]

x. “Parts,” “components,” “accessories and attachments” that are “specially designed”

for a commodity enumerated in ECCN 0A606 (other than 0A606.b) or a defense article enumerated in USML Category VII and not elsewhere specified on the USML or the CCL.

**Note 1:** Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 0A606.x are controlled by ECCN 0A606.x.

**Note 2:** “Parts,” “components,” “accessories and attachments” enumerated in USML paragraph VII(g) are subject to the controls of that paragraph. “Parts,” “components,” “accessories and attachments” enumerated in ECCN 0A606.y are subject to the controls of that paragraph.

y. Specific “parts,” “components,” “accessories and attachments” “specially designed” for a commodity enumerated in this ECCN (other than ECCN 0A606.b) or for a defense article in USML Category VII and not elsewhere specified on the USML or the CCL, as follows:

y.1. Brake system components (e.g., discs, rotors, shoes, drums, springs, cylinders, lines, and hoses);

y.2. Alternators and generators;

y.3. Axles;

y.4. Batteries;

y.5. Bearings (e.g., ball, roller, wheel);

y.6. Cables, cable assemblies, and connectors;

y.7. Cooling system hoses;

y.8. Hydraulic, fuel, oil, and air filters, other than those controlled by ECCN 1A004;

y.9. Gaskets and o-rings;

y.10. Hydraulic system hoses, fittings, couplings, adapters, and valves;

y.11. Latches and hinges;

y.12. Lighting systems, fuses, and components;

y.13. Pneumatic hoses, fittings, adapters, couplings, and valves;

y.14. Seats, seat assemblies, seat supports, and harnesses;

y.15. Tires, except run flat ; and

y.16. Windows, except those for armored vehicles.

y.17. to .98. [RESERVED]

y.99. Commodities that would otherwise be controlled elsewhere in ECCN 0A606 but that (i) Have been determined to be “subject to the EAR” in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not elsewhere identified on the CCL.

7. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0B606 between Export Control Classification Numbers 0B006 and 0B986 to read as follows:

**0B606 Test, inspection, and production “equipment” and related commodities, not enumerated on the USML, “specially designed” for the “development” or “production” of commodities enumerated in ECCN 0A606 or USML Category VII (See List of Items Controlled).**

**License Requirements***Reason for Control:* NS, RS, AT

Control(s)	Country chart
NS applies to 0B606, except 0B606.y.	NS Column 1
RS applies to 0B606, except 0B606.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 0B606.

**List of Items Controlled***Unit:* N/A

*Related Controls:* (1) Ground vehicles and related articles, technical data (including software) and services described in 22 CFR part 121, Category VII, Ground Vehicles and Related Articles, 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.

*Related Definitions:* N/A*Items:*

a. Test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 0A606 (except for 0A606.y) or in USML Category VII, and “parts,” “components,” “accessories and attachments” “specially designed” therefor.

**Note 1:** ECCN 0B606 includes (i) Armor plate drilling machines, other than radial drilling machines, (ii) armor plate planing machines, (iii) armor plate quenching presses; and (iv) tank turret bearing grinding machines.

b. Environmental test facilities “specially designed” for the certification, qualification, or testing of commodities enumerated in ECCN 0A606 (except for 0A606.b or 0A606.y) or in USML Category VII, and “equipment” “specially designed” therefor.

c. through x. [RESERVED]

y. Specific test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 0A606 (except for 0A606.y) or in USML Category VII, and “parts,” “components,” “accessories

and attachments” “specially designed” therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Commodities that would otherwise be controlled elsewhere by ECCN 0B606, but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not elsewhere identified on the CCL.

8. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0C606 between Export Control Classification Numbers 0C201 and the product group header that reads “D. Software”

**0C606 Materials “specially designed” for commodities controlled by ECCN 0A606 not elsewhere specified in the USML or the CCL (See List of Items Controlled).**

**License Requirements***Reason for Control:* NS, RS, AT

Control(s)	Country chart
NS applies to entire entry, except 0C606.y.	NS Column 1
RS applies to entire entry, except 0C606.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 0C606.

**List of Items Controlled***Unit:* N/A

*Related Controls:* (1) Materials specifically designed, modified, adapted, or configured for military vehicles and related articles controlled in USML Category VII are controlled in USML paragraph XIII(f). (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 the “development” or “production” of commodities enumerated in ECCN 0A606 (other than 0A606.b or 0A606.y) or USML Category VII, 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 controls of the applicable ECCN.

**Note 2:** Materials “specially designed” for both ground vehicles enumerated in USML Category VII and ground vehicles enumerated in ECCN 0A606 are subject to the controls of this ECCN unless identified in USML Category VII(g) as being subject to the controls of that paragraph.

b. through .w. [RESERVED]

y. Specific materials “specially designed” for the “production” or “development” of commodities enumerated in ECCN 0A606 (except for 0A606.y), as follows:

y.1. through y.98 [RESERVED]

y.99. Materials that would otherwise be controlled elsewhere in ECCN 0C606 but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not otherwise identified elsewhere on the CCL.

9. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0D606 between Export Control Classification Numbers 0D001 and 0D999 to read as follows:

**0D606 “Software” “specially designed” for the “development,” “production,” operation, or maintenance of ground vehicles and related commodities controlled by 0A606, 0B606, or 0C606.**

**License Requirements***Reason for Control:* NS, RS, AT

Control(s)	Country chart
NS applies to entire entry, except 0D606.y.	NS Column 1
RS applies to entire entry, except 0D606.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 0D606.

**List of Items Controlled***Unit:* N/A

*Related Controls:* Software directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h). 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 0A606 (except for ECCNs 0A606.b or 0A606.y).

b. to w. [RESERVED]

y. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities enumerated in ECCN 0A606, 0B606, or 0C606, as follows:

y.1. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities enumerated in ECCNs 9A610.y, 9B610.y, or 9C610.y.

y.2 through y.98 [RESERVED]

y.99. Software that would otherwise be controlled elsewhere by ECCN 0D606 but

that (i) Has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

10. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0E606 between Export Control Classification Numbers 0E018 and 0E918 to read as follows:

**0E606 Technology “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul, of ground vehicles and related commodities in 0A606, 0B606, 0C606, or 0D606.**

#### License Requirements

*Reason for Control:* NS, RS, AT

Control(s)	Country chart
NS applies to entire entry, except 0E606.y.	NS Column 1
RS applies to entire entry, except 0E606.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 0D606.

#### List of Items Controlled

*Unit:* N/A

*Related Controls:* Technical data directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h). 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 enumerated in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y).

b. through w. [RESERVED]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, or overhaul, of commodities enumerated in ECCN 0A606.y., 0B606.y., or 0C606.y., as follows:

y.1. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair or overhaul of commodities enumerated in ECCN 9A610.y, 9B610.y, 9C610.y, or 9D610.y.

y.2. through y.98 [RESERVED]

y.99. “Technology” that would otherwise be controlled elsewhere by ECCN 0E606 but that (i) Has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

Dated: November 28, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2011-30976 Filed 12-5-11; 8:45 am]

**BILLING CODE 3510-33-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1140

[Docket No. FDA-2011-N-0467]

RIN 0910-AG43

#### Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the comment period until January 19, 2012, for an advance notice of proposed rulemaking (ANPRM) that was published in the **Federal Register** of September 9, 2011 (76 FR 55835). In that document, FDA requested comments, data, research, or other information related to non-face-to-face sale and distribution of tobacco products; the advertising, promotion, and marketing of such products; and the advertising of tobacco products via the Internet, email, direct mail, telephone, smart phones, and other communication technologies that can be directed to specific recipients. The Agency is extending the comment period in response to a request to give interested parties additional time to comment.

**DATES:** Submit either electronic or written comments by January 19, 2012.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA-2011-N-0467 and/or RIN number 0910-AG43, by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Written Submissions

Submit written submissions in the following ways:

- *FAX:* (301) 827-6870.

- *Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and Docket No. FDA-2011-N-0467 and Regulatory Information Number (RIN 0910-AG43) for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the “Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beth Buckler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229, (877) 287-1373, [beth.buckler@fda.hhs.gov](mailto:beth.buckler@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of September 9, 2011 (76 FR 55835), FDA issued an ANPRM to obtain information related to the regulation of non-face-to-face sale and distribution of tobacco products and the advertising, promotion, and marketing of tobacco products. FDA took this action as part of its implementation of the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111-31, 123 Stat. 1776). FDA requested comments, data, research, or other information related to non-face-to-face sale and distribution of tobacco products; the advertising, promotion, and marketing of such products; and the advertising of tobacco products via the Internet, email, direct mail, telephone, smart phones, and other communication technologies that can be directed to specific recipients. FDA intends to use the information submitted in response to the ANPRM to inform its regulation of the sale and distribution of tobacco products through a non-face-to-face exchange and the advertising, promotion, and marketing of tobacco products. FDA provided a 90-day comment period (*i.e.*, until December 8, 2011) for the ANPRM.