



This document is scheduled to be published in the Federal Register on 12/07/2012 and available online at <http://federalregister.gov/a/2012-29143>, and on FDsys.gov

Billing Code: 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 120320200-2296-01]

RIN 0694-AF62

Editorial Corrections to the Commerce Control List of the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule corrects reference and typographical errors in the Commerce Control List (CCL) in the Export Administration Regulations (EAR). The corrections are primarily editorial in nature and do not affect license requirements. A technical standard in ECCN 3A991 is revised.

DATES: Effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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SUPPLEMENTARY INFORMATION:

This final rule updates seven categories of the Commerce Control List (CCL) to correct spelling and typographical errors and inaccurate internal references, and to provide a complete and more accurate description of controls and the related items on the CCL.

Category 0, Nuclear Materials, Facilities, and Equipment And Miscellaneous Items
ECCN 0A018.c is amended to correct an error in a final rule published by BIS on March 30, 2004 (69 FR 16478, 16480). The March 20, 2004, rule contained duplicative language and did not include the word ECCN prior to a reference to a related ECCN. To correct these errors, this rule removes the phrase “that were not specifically designed for hunting or sporting purposes” and adds the word “ECCN” before the word “0A984” in the Note to 0A018.c.

ECCN 0B001.g.2 is amended to correct an error in a final rule published by BIS on January 15, 1998 (63 FR 2452, 2462). The January 15, 1998, rule included an unnecessary apostrophe in the word “alloys”. To correct this error, the rule deletes the apostrophe from the word “alloy’s” in ECCN 0B001.g.2.

**Category 1, Special Materials and Related Equipment, Chemicals,
“Microorganisms,” and “Toxins”**

ECCN 1B999.a and 1C999.f are amended to correct typographical errors in a final rule published by BIS on June 19, 2000 (65 FR 38148, 38162). The June 19, 2000, rule misspelled “fluorine” in these two ECCNs. To correct these errors, this rule removes the word “flourine” from these two ECCNs and inserts the word “fluorine” in its place.

ECCN 1C350 is amended to update the mailing address for the Quarterly Report requirement to the Bureau of Industry and Security. The BIS mailroom is no longer Room 2705. Mail for BIS should now be directed to Room 2099B. Consistent with this room change, this rule changes the references to the “Room 2705” in paragraph (e) of the License Requirements Notes 1 to the “Room 2099B”.

The final paragraph of Category 1, describing the designation EAR99, is amended to correct an error in a final rule published by BIS on January 15, 1998 (63 FR 2452, 2484). The January 15, 1998, rule changed the language of the EAR99 paragraph in Categories 1 and 2 only to “Items subject to the EAR that are *not* elsewhere controlled by this CCL Category *or* in any other category in the CCL are designated by the number *EAR99*.” To

correct this error, this rule removes the language “controlled by” and inserts “specified in” in its place.

Category 2, Materials Processing

The final paragraph of Category 2, describing the designation EAR99, is amended to correct an error in a final rule published by BIS on January 15, 1998 (63 FR 2452, 2484). The January 15, 1998, rule changed the language of the EAR99 paragraph in Categories 1 and 2 only to “Items subject to the EAR that are *not* elsewhere controlled by this CCL Category *or* in any other category in the CCL are designated by the number *EAR99*.” To correct this error, this rule removes the language “controlled by” and inserts “specified in” in its place.

Category 3, Electronics

ECCN 3A991 is amended by revising the technical standard in items paragraph .j.2 from an energy density of 250 Wh/kg or less at 293 K to an energy density of 300 Wh/kg or less at 293 K. A final rule published on July 2, 2012 (77 FR 39354), changed the technical standard in ECCN 3A001, items paragraph .e.1.b, from an energy density exceeding 250 Wh/kg at 293 K to an energy density exceeding 300 Wh/kg at 293 K. When a multilateral regime control standard is modified, the standard practice is to retain the AT control by increasing the technical standard in the corresponding AT-only control. The July 2, 2012 rule did not change the corresponding control in 3A991.j.2. This rule implements that change by increasing the technical standard in items paragraph .j.2 to an energy density of 300 Wh/kg or less at 293 K.

Category 4, Computers

ECCN 4D994 is amended by revising the heading to remove the references to ECCN 4B994 and ECCN 4C994. A final rule published by BIS on June 28, 2010, removed ECCNs 4B994 and 4C994 and reserved Category 4B and 4C in their entirety. The heading of ECCN 4D994 refers to both ECCNs 4B994 and 4C994. It creates confusion to reference ECCNs that no longer exist. To resolve this confusion, this rule removes the phrase “4B994, and materials controlled by 4C994.”

Category 5, Telecommunications and “Information Security”

The Title to this Category is amended by modifying the numbering of the subsections to Category 5. “I. Telecommunications” is changed to “Part 1 – Telecommunications” and “II. ‘Information Security’” is changed to “Part 2 – ‘Information Security’” to remain consistent with the Wassenaar Arrangement and to make these headings conform to the many references in the regulatory language of the EAR.

Category 5, Part 1. Telecommunications

ECCN 5A101 is amended to correct an error in a final rule published by BIS on May 4, 2004 (69 FR 24508, 24510). The May 4, 2004, rule included the word “Item” at the beginning of a note to ECCN 5A101. This rule corrects the error by removing the word “Item” from the beginning of the final note to ECCN 5A101.

ECCN 5A991 is amended:

- a. By adding ECCN 5E001.c to the Related Controls paragraph. The reference is appropriate to identify potentially applicable controls of technology under ECCN 5E001.c for the "development" and "production" of commodities controlled under 5A991. This change will improve the ability of users of the Export Administration Regulations to correctly identify the classification of the technologies related to these commodities.
- b. To correct an error in a final rule published by BIS on December 10, 2003 (68 FR 68976, 68989). The December 10, 2003, rule moved the note to 5A991.c.10 to before 5A991.c.10. To correct this error, this rule removes the language “Note: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.” from before 5A991.c.10 and inserts it before 5A991.c.11.

Category 6, Sensors and Lasers

ECCN 6A005.f.3 is amended to correct an error in a final rule published by BIS on May 26, 2011 (76 FR 30538, 30539). The May 26, 2011, rule used the word “lambda” in place of the symbol “λ” at 6A005.f.3. To correct this error, this rule removes the word “lambda” and inserts the symbol “λ” in its place.

Category 8, Marine

ECCN 8A992.b is amended to correct an error in a final rule published by BIS on March 5, 1999 (64 FR 18052, 10869). The March 5, 1999 rule used the incorrect spelling of “autofocusing,” “focusing,” and “format.” To correct the error, this rule removes the

words “autofocussing”, “focussing”, and “formate” and inserts “autofocusing”, “focusing”, and “format” in the respective places in 8A992.b.

Category 9, Aerospace and Propulsion

ECCN 9B116 is amended to correct an error in a final rule published by BIS on November 21, 2002 (67 FR 70157, 70158). The November 21, 2002, rule inserted a reference in the Related Controls paragraph to “the ‘production equipment’ controlled in this entry” while 9B116 controls only “production facilities.” There was also a semicolon in place of a comma in the list of related controls. To correct this error, the rule removes the phrase “production equipment” and inserts “production facilities” in its place and removes the semicolon and inserts a comma in its place. This rule also removes the word “is” and inserts the word “are” in its place to create subject verb agreement.

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 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive 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 determined to be not significant for purposes of Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule does not affect any paperwork collection. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.
3. The Department of Commerce finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act otherwise requiring prior notice and the opportunity for public comment because they are unnecessary. All of the revisions made by this rule, except the modification of the technical standard in ECCN 3A991, are administrative in nature and do not affect the privileges and obligations of the public. Because these revisions are not substantive changes to the EAR, the 30-day delay in effectiveness otherwise required by 5 U.S.C. 553(d) is not applicable. The

modification of the technical standard in ECCN 3A991 is to correct an oversight in a final rule published on July 2, 2012 (77 FR 39353), which was published without requiring notice of proposed rulemaking, the opportunity for public participation, or a delay in effective date, as a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). As the modification of the technical standard was intended to be included in that final rule, immediate implementation of this correction to the amendments in the July 2, 2012 (77 FR 39353), rule fulfills the United States' international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. No other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) are not applicable.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 774 of the EAR (15 CFR Parts 730-774) is amended as follows:

Part 774 - [AMENDED]

1. The authority citation for Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq., 22 U.S.C. 6004; 30 U.S.C.

185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

2. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 0, ECCN 0A018 is amended by revising the Note to paragraph (c) of the Items paragraph in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774 - Commerce Control List

* * * * *

0A018 Items on the Wassenaar Munitions List.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. * * *

Note: 0A018.c does not control weapons used for hunting or sporting purposes that were not specially designed for military use and are not of the fully automatic type, but see ECCN 0A984 concerning shotguns.

* * * * *

3. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 0, ECCN 0B001 is amended by removing the apostrophe from the word “alloy’s” in paragraph g.2. in the Items paragraph of the List of Items Controlled section.

4. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1B999 is amended by removing the word “flourine” and adding in its place the word “fluorine” in paragraph a. of the Items paragraph in the List of Items Controlled section.

5. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C350 is amended by removing the phrase “Room 2705” and adding its place the phrase “Room 2099B” in paragraph e. of License Requirement Notes 1 in the License Requirements section.

6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C999 is amended by removing the word “flourine” and adding in its place the word “fluorine” in paragraph f. of the Items paragraph in the List of Items Controlled section.

7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1 is amended by revising the EAR99 paragraph to read as follows:

Category 1

* * * * *

EAR99 Items subject to the EAR that are *not* elsewhere specified in this CCL Category *or* in any other category in the CCL are designated by the number EAR99.

8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2 is amended by revising the EAR99 paragraph read as follows:

Category 2

* * * * *

EAR99 Items subject to the EAR that are *not* elsewhere specified in this CCL Category *or* in any other category in the CCL are designated by the number EAR99.

9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3A991 is amended by revising paragraph j.2. in the Items paragraph in the List of Items Controlled section to read as follows:

3A991 Electronic devices and components not controlled by 3A001.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

j. * * *

* * * * *

j.2. Secondary cells having an energy density of 300 Wh/kg or less at 293 K (20 °C).

* * * * *

10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 4, ECCN 4D994 is amended by revising the heading to read as follows:

4D994 “Software” other than that controlled in 4D001 specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 4A101 and 4A994.

* * * * *

11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 is amended by removing the heading “I. Telecommunications” and adding in its place “Part 1 – Telecommunications” to read as follows:

CATEGORY 5—TELECOMMUNICATIONS AND “INFORMATION SECURITY”

PART 1 – TELECOMMUNICATIONS

* * * * *

12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5A101 is amended by revising the final Note in the Items paragraph of the List of Items Controlled section to read as follows:

5A101 Telemetry and telecontrol equipment, including ground equipment, designed or modified for unmanned aerial vehicles or rocket systems (including

ballistic missile systems, space launch vehicles, sounding rockets, cruise missile systems, target drones, and reconnaissance drones) capable of a maximum “range” equal to or greater than 300km.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

Note: 5A101 does not include items not designed or modified for unmanned aerial vehicles or rocket systems (including ballistic missile systems, space launch vehicles, sounding rockets, cruise missile systems, target drones, and reconnaissance drones) capable of a maximum “range” equal to or greater than 300 km (e.g., telemetry circuit cards limited by design to reception only and designed for use in personal computers).

* * * * *

13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5A991, List of Items Controlled section is amended by:

- a. Revising the second sentence of the Related Controls paragraph; and
- b. Amending the Items Paragraph by removing the Note that reads

“5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.” and adding it above paragraph c.11, to read as follows:

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * * *See also* 5E001.c, 5E101 and 5E991.

Related Definitions: * * *

Items:

* * * * *

c. * * *

* * * * *

Note: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.

c.11. “Optical switching”;

* * * * *

14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 is amended by removing the heading “II. Information Security” and adding in its place “Part 2 – Information Security” to read as follows:

CATEGORY 5—TELECOMMUNICATIONS AND “INFORMATION SECURITY”

* * * * *

PART 2 – “INFORMATION SECURITY”

* * * * *

15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6A005, List of Items Controlled section is amended by removing the word “lambda” and inserting the symbol “λ” in its place in paragraph f.3. of the Items paragraph.

16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8, ECCN 8A992, List of Items Controlled section is amended by revising paragraph b. in the Items paragraph to read as follows:

8A992 Vessels, marine systems or equipment, not controlled by 8A001, 8A002 or 8A018, and specially designed parts therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Photographic still cameras specially designed or modified for underwater use, having a film format of 35 mm or larger, and having autofocusing or remote focusing specially designed for underwater use;

* * * * *

17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B116, List of Items Controlled section is amended by revising the Related Controls paragraph to read as follows:

9B116 Specially designed “production facilities” for the systems, sub-systems, and components controlled by 9A004 to 9A009, 9A011, 9A012, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

* * * * *

List of Items Controlled

* * * * *

Related Controls: Although items described in ECCNs 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, and 9A116 to 9A119 are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121), the “production facilities” controlled in this entry that are related to these items is subject to the export licensing authority of BIS.

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Dated: November 26, 2012

Kevin J. Wolf

Assistant Secretary for Export Administration

[FR Doc. 2012-29143 Filed 12/06/2012 at 8:45 am; Publication Date: 12/07/2012]