



This document is scheduled to be published in the Federal Register on 07/08/2013 and available online at <http://federalregister.gov/a/2013-16238>, and on [FDsys.gov](http://FDsys.gov)

**Billing Code: 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740, 742, 770, 772 and 774**

**[Docket No. - 110928603-3298-01]**

**RIN 0694-AF39**

**Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items that the President Determines No Longer Warrant Control under the United States Munitions List**

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

**ACTION:** Final rule.

**SUMMARY:** This rule adds to the Export Administration Regulations (EAR) controls on military vehicles and related items; vessels of war and related items; submersible vessels, oceanographic equipment and related items; and auxiliary and miscellaneous items that the President has determined no longer warrant control on the United States Munitions List (USML). This rule also adds to the EAR controls on items within the scope of the Munitions List (WAML) of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) that are not specifically identified on the USML or the Commerce Control List (CCL) but that were subject to USML jurisdiction. Finally, this rule moves certain items that were already subject to the EAR to the new Export Control Classification Numbers (ECCNs) created by this rule. This rule is being published in conjunction with the publication of a Department of State, Directorate of Defense Trade Controls rule revising USML Categories VII, VI, XX, and XIII to control those articles the President has determined warrant control in those Categories of the USML. Both rules are part of the President's Export Control Reform Initiative. The revisions in this final rule are also part of Commerce's retrospective regulatory review plan under Executive Order (EO) 13563.

**DATES:** This rule is effective [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Commerce's full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding ground vehicles and related items controlled under ECCNs 0Y606, contact Gene Christiansen, Office of National Security and Technology Transfer Controls, at 202-482-2984 or [gene.christiansen@bis.doc.gov](mailto:gene.christiansen@bis.doc.gov).

For questions regarding surface vessels and related items controlled under ECCNs 8Y609 or submersible vessels and related items controlled under ECCNs 8Y620, contact Alexander Lopes, Office of Nonproliferation and Treaty Compliance, at 202-482-4875 or [alexander.lopes@bis.doc.gov](mailto:alexander.lopes@bis.doc.gov).

For questions regarding miscellaneous equipment, materials, and related items controlled under ECCNs 0Y617, contact Michael Rithmire, Office of National Security and Technology Transfer Controls, at 202-482-6105 or [michael.rithmire@bis.doc.gov](mailto:michael.rithmire@bis.doc.gov).

**SUPPLEMENTAL INFORMATON:**

## **Background**

This final rule is published by the Bureau of Industry and Security (BIS) as part of the Administration's Export Control Reform (ECR) Initiative. President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system to identify additional ways to enhance national security. In April 2010, then-Secretary of Defense Robert M. Gates, describing the initial results of that effort, explained that fundamental reform of the U.S. export control system is necessary to enhance our national security. The implementation of ECR includes amendment of the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML), so that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and amendment of the Export Administration Regulations (EAR) to control military items that do not warrant USML controls. This series of amendments to the ITAR and the EAR will reform the U.S. export control system to enhance our national security by: (i) improving the interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services; and (iii) allowing export control officials to focus government resources on transactions that pose greater national security, foreign policy, or proliferation concerns than those involving our NATO allies and other multi-regime partners.

On July 15, 2011, as part of the ECR, 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), would no longer warrant control on the USML would be controlled on the EAR's Commerce Control List (CCL) (herein "the July 15 (framework rule)").

On April 16, 2013, BIS published a final rule setting forth the framework for adding to the CCL items that the President has determined no longer warrant control on the USML through the creation of "600 series" Export Control Classification Numbers (ECCNs) (78 FR 22660, April, 16, 2013 (herein the "April 16 (initial implementation) rule"). That structure is described at 78 FR 22662 and is not repeated here. This rule generally follows that structure in creating new "600 series" ECCNs to control certain military vehicles and related items; vessels of war and related items; submersible vessels, oceanographic equipment and related items; and auxiliary and miscellaneous items on the CCL. Pursuant to a rule published concurrently with this rule by the Department of State, the items are being removed from the USML because the President has determined they no longer warrant control on the USML.

The changes described in this rule and the State Department's rule amending Categories VI, VII, XIII, and XX of the USML are based on a review of those categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the amendments. The review was focused on identifying the types of articles that are now controlled by the USML that either (i) are inherently military and otherwise warrant control on the USML, or (ii) if of a type common to civil applications, 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. If an article was found to satisfy either or both of those criteria, the article remains on the USML. If an article was found not to satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, “specially designed” for military applications, then it is identified in one of the new “600 series” ECCNs created by this rule.

Section 38(f) of the AECA (22 U.S.C. § 2778(f)) obligates the President to 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). The Department of State made the congressional notification required by Section 38(f) of the AECA for removal of these items from the USML.

All references to the USML in this rule are to the list of defense articles that are controlled for purposes of export, temporary import, or brokering pursuant to the ITAR, and not to the list of defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. Pursuant to section 38(a)(1) of the AECA, all defense articles controlled for export or import, or that are subject to brokering controls, are part of the “USML” under the AECA. For the sake of clarity, references to the USMIL are to the list of defense articles controlled by ATF for purposes of permanent import.

All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL, for purposes of export controls, does not affect the list of defense articles controlled on the USMIL under the AECA for purposes of permanent import or brokering controls.

On January 18, 2011, President Barack Obama issued Executive Order (EO) 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. The revisions in this final rule are part of Commerce's retrospective regulatory review plan under EO 13563. Commerce's full plan, completed in August 2011, can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), 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.

## Proposed rules

This rule implements amendments to the EAR proposed in the following four rules:

- *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*, (76 FR 76085, December 6, 2011) (herein “the December 6 (vehicles) rule”);
- *Revisions to the Export Administration Regulations (EAR): Control of Vessels of War and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, (76 FR 80282, December 23, 2011) (herein “the December 23 (vessels) rule”);
- *Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (76 FR 80291, December 23, 2011) (herein “the December 23 (submersible vessels) rule”); and
- *Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items That No Longer Warrant Control Under the United States Munitions List*

*and Items on the Wassenaar Arrangement Munitions List* (77 FR 29564, May 18, 2012) (herein “the May 18 (auxiliary equipment) rule”).

This rule creates new “600 series” ECCNs to control certain military vehicles and related items; vessels of war and related items; submersible vessels, oceanographic equipment and related items; and auxiliary and miscellaneous items on the CCL. Descriptions of these ECCNs, issues raised in public comments on the rules proposing them, and BIS responses to those comments are addressed in discrete sections below. However, certain changes made by this rule apply more broadly: License Exception STA eligibility; notes on forgings and castings; the United Nations reason for control; removal of the .y.99 paragraph; separate definitions for “accessories” and “attachments;” and the composition of the entries for software and technology.

### **Broadly applicable changes made by this rule**

#### **Amendments to Section 740.20 (License Exception STA)**

This final rule amends the License Exception STA provisions in § 740.20(b)(3)(iii) and (g)(1) of the EAR to indicate that the restrictions applicable to certain “600 series” ECCN “end items” also apply to “end items” controlled under ECCNs 0A606.a, 8A609.a, and 8A620.a or .b. These “600 series” ECCNs are being added to the CCL as part of this final rule. The April 16

(initial implementation) rule identified only those end items controlled by ECCN 9A610.a, because ECCNs 0A606, 8A609 and 8A620 would not be added to the CCL until publication of this rule.

### **Cross References to ECCN 0A919**

This final rule adds to the “related controls” paragraph of Product Groups A, B, C, and D of the “600 series” ECCNs the following sentence: “(2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.” This is a non-substantive change from what was proposed.

### **Forgings and Castings**

The December 6 (vehicles) rule included a note to ECCN 0A606.x, which stated that: “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.” The December 23 (vessels) rule proposed such a note to ECCN 8A609.x, and the December 23 (submersible vessels) rule proposed such a note to ECCN 8A620.x.

This final rule adds the phrase “mechanical properties” to those notes because there may be circumstances when the mechanical properties, as well as the material composition, geometry or function, of a forging, casting, or unfinished product, may have been altered specifically for a 0A606.x, 8A609.x, or 8A620.x part or component. The omission of “mechanical properties” from the lists in the proposed rules was an error that is being corrected in this rule.

### **United Nations (UN) Reason for Control**

The July 15 (framework) rule proposed applying a United Nations (UN) reason for control to military vehicles and related items. The December 6 (vehicles) rule proposed removing the UN reason for control that had been proposed by the July 15 (framework) rule. None of the other “600 series” ECCNs created by this rule contained items that would have been subject to a UN reason for control when they were proposed. Consistent with the April 16 (initial implementation) rule, this final rule includes the UN controls described in § 746.1(b) of the EAR in the ECCNs that it creates. These controls are consistent with the amendments contained in a final rule that BIS published on July 23, 2012 (77 FR 42973), titled “Export and Reexport Controls to Rwanda and United Nations Sanctions under the Export Administration Regulations.” That rule amended § 746.1 of the EAR to describe the licensing policy that applies to countries subject to a United Nations Security Council (UNSC) arms embargo and to limit the use of license exceptions to such countries. Applying that licensing policy and related license exception restrictions to the new “600 series” ECCNs that are created by this final rule is appropriate because of the military nature of the items controlled under these new ECCNs.

## **Paragraph .y.99**

The proposed rules would have created a paragraph .y.99 in each of the new “600 series” ECCNs. Those paragraphs would have imposed the antiterrorism (AT Column 1) reason for control to items that would otherwise be controlled in that ECCN but that had been determined to be subject to the EAR in a commodity jurisdiction determination issued by the Department of State and that are not elsewhere identified on the CCL (*i.e.*, were designated as EAR99). Applying the AT Column 1 reason for control would increase the number of circumstances under which these items would require a license. As stated in the preamble to the April 16 (initial implementation) rule (*See* 78 FR 2266, April 16, 2013), BIS agreed with a commenter that the burden of tracking down and analyzing whether items formally determined not to be subject to the ITAR that were also EAR99 items because they were not identified on the CCL outweighs the once-contemplated organizational benefits of creating the .y.99 control. Such items have already gone through an interagency review process that concluded whether the items were subject to the ITAR. Thus, BIS has determined that any such items should retain EAR99 status if not otherwise identified on the CCL. Accordingly, this final rule does not contain any .y.99 paragraphs.

## **Accessories and Attachments**

The proposed rules would have enclosed the phrase “accessories and attachments” in quotation marks through its regulatory text, in keeping with the July 15 (framework) rule, which proposed a single definition for that phrase. Subsequently, BIS published a proposed rule entitled “‘Specially Designed’ Definition” (77 FR 36409, June 19, 2012), which proposed, *inter alia*, creating separate, but identical definitions for “accessories” and for “attachments” to allow for instances when only one of the terms would be used. The April 16 (initial implementation) rule adopted that change as a final rule. Accordingly, this final rule identifies “accessories” and “attachments” as separate terms wherever they appear in the regulatory text.

### **Conforming Change Regarding Gas Turbine Engines**

In the April 16 (initial implementation) rule, BIS created, *inter alia*, ECCN 9A619 military gas turbine engines and related commodities (*See* 78 FR 22731, April 16, 2013). ECCN 9A619, as it appeared in that rule, applied to gas turbine engines that are not enumerated on the USML, but are “specially designed” for “end-items” in USML Category VIII or ECCN 9A610, both of which apply to aircraft. Consistent with the proposed changes in the December 6 (gas turbine engine) rule, this rule expands the scope of ECCN 9A619 to apply to gas turbine engines that are not on the USML, but are for military vehicles (USML Category VII and ECCN 0A606) and surface vessels (USML Category VI and ECCN 8A609). The President has determined these items no longer warrant control on the USML.

## **Consistency of Controls**

This final rule diverges in certain instances from the four proposed rules on which it was based with respect to the composition of the ECCNs. Software and technology ECCNs related to end items, production or other equipment, or materials generally control software and technology for the development and production of those items, and for some combination of the following six elements: operation, installation, maintenance, repair, overhaul, or refurbishing of those items. Separate technical teams determined the scope of control for different groups of ECCNs. As a result, different software and technology entries varied in the number and type of functions controlled.

Although this variation was not inappropriate technically and did not receive public comments when proposed in four separate rules, BIS is concerned that retaining this variation would complicate compliance. Standard text across ECCNs is a simpler approach. Therefore, each software ECCN in this final rule will control software for development, production, operation, or maintenance of the relevant items. Each new “600 series” technology ECCN in this final rule will control technology for development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of those items. To the extent that a particular function does not apply to a particular item because no software or technology to perform the function with respect to that item exists, no burden is imposed. Controlling a larger number of functions in technology ECCNs is not an increase in burden because all six functions are now controlled for technology on the USML.

Similarly, all production equipment ECCNs will control test, inspection, and production equipment for the development, production, repair, overhaul, or refurbishing of the relevant items.

## **Military Vehicles and Related Items**

### **Background**

The controls on military vehicles and related items in this final rule are based on the proposals for controlling those items set forth in the July 15 (framework) rule and refined in the December 6 (vehicles) rule and on a review of the public comments thereon by the Departments of Defense, State and Commerce.

This rule generally follows the structure established in the April 16 (initial implementation) rule in creating five new “600 series” ECCNs to control military ground vehicles and related items. However, this rule departs from that structure in ECCN 0A606.b. That paragraph retains national security (NS Column 2) and regional stability (RS Column 2)

controls on the unarmed armored vehicles that upon the effective date of this rule will be controlled under ECCN 0A606.b instead of ECCN 9A018.b. Otherwise, this rule applies the national security (NS Column 1) and regional stability (RS Column 1) reasons for control that apply generally to “600 series” items that are subject to the national security and regional stability reasons for control. The December 6 (vehicles) rule proposed these reasons for control, and BIS received no comments on that aspect of the December 6 (vehicles) proposed rule. As a conforming change, this rule revises the RS column 2 license requirement paragraph in § 742.6(a)(4)(i) to reference the column rather than to list specific ECCNs, as was done for the RS column 1 license requirement paragraph in the April 16 (initial implementation) rule. The change to § 742.6(a)(4)(i) is in format only; it does not alter the license requirements for any item that is subject to the RS Column 2 reason for control.

### **Changes to controls on military vehicles and related items made by this rule**

This rule implements the proposals of the July 15 (framework) rule and the December 6 (vehicles) rule by creating five new ECCNs. New ECCN 0A606 applies to military ground vehicles, parts, components, accessories and attachments. New ECCN 0B606 applies to related test, inspection and production equipment and parts and components. New ECCN 0C606 applies to related materials. New ECCN 0D606 applies to related software. New ECCN 0E606 applies to related technology.

This rule revises ECCN 9A018 only to cross reference ECCNs 9A610 (aircraft), 9A619 (gas turbine engines) and 0A606 (vehicles) because upon the effective date of this rule, all the commodities previously in ECCN 9A018 will have been moved to one of those other three ECCNs. This rule also revises ECCN 9D018 to contain only cross references to ECCNs 9D610 and 9D619 and to EAR99 and revises ECCN 9E610 to contain only cross references to 9E610, 9E619 and EAR99 because upon the effective date of this rule, all of the software and technology will have been moved to one of those ECCNs or will be EAR99.

This rule also removes “Interpretation 8” from § 770.2 of the EAR (15 CFR 770.2(h)). That interpretation, which explains the relationship between EAR and the ITAR with respect to ground vehicles, is no longer necessary because that relationship is expressly delineated in ECCN 0A606 (as published by this rule) and in USML Category VII in a Department of State rule that is being published simultaneously with the rule.

### **Changes compared to the proposed December 6 (vehicles) rule**

The December 6 (vehicles) rule proposed including in ECCN 0A606.b certain all-wheel drive vehicles with armor that meet National Institute of Justice Level III standards. Such

vehicles currently are controlled in ECCN 9A018.b and listed in the Wassenaar Arrangement Munitions List (WAML) category ML6. To reflect changes agreed to at the Wassenaar 2012 plenary meeting and subsequently implemented in ECCN 9A018.b, this rule makes three substantive changes to the descriptions of those vehicles in ECCN 0A606.b compared to the text of ECCN 0A606.b in the December 6 (vehicles) rule. One change broadens the coverage of paragraph .b to apply to vehicles with transmissions that supply drive to the front and rear wheels simultaneously even if the vehicle has other wheels that may or may not provide driving force. The proposed wording was “all-wheel drive.” The second change limits the scope of the paragraph to vehicles with a gross vehicle weight rating greater than 4,500 kilograms. The third change replaces the term “capable of off road use” with the term “designed or modified for off road use.” In this final rule, ECCN 0A606.b also adopts the WAML category ML6 format in describing these vehicles, a non-substantive change from the December 6 (vehicles) rule.

This final rule also includes an illustrative list of characteristics that make a vehicle designed for military use in Note 2 to paragraph .a in ECCN 0A606. This note is based on note 2 to the WAML category ML6. Prior to the effective date of this rule the contents of the note were in an interpretation found in § 770.2(h) of the EAR. Because this rule removes § 770.2(h) from the EAR, inclusion of the note in ECCN 0A606 is appropriate.

Following the pattern of many of the ECCNs that control commodities, ECCN 0A606 contains a paragraph .x, which applies to *unspecified* parts, components, accessories and attachments that are specially designed for a specified set of end items, and a paragraph .y, which

applies to *specified* parts, components, accessories and attachments that are “specially designed” for items described in that ECCN or the corresponding USML Category. To lessen the chances that readers will mistakenly classify items specified in paragraph .y under paragraph .x, which requires a license to more destinations than does paragraph .y, this final rule adds wording to paragraph .x specifically excluding items specified under paragraph .y. This is not a substantive change to what was proposed.

ECCN 0A606.y identifies specific “parts,” “components,” “accessories” and “attachments” that are “specially designed” for commodities enumerated in 0A606 (other than paragraph .b) or for defense articles enumerated in USML Category VII and are not elsewhere specified on the USML or CCL. Among the parts so identified in the December 6 (vehicles) rule (0A606.y.1), were “brake system components,” which were then further described by an illustrative list reading “*e.g.*, discs, rotors, shoes, drums, springs, cylinders, lines, and hoses.” Subsequent events have made it necessary for BIS to revise paragraph .y.1 from what was proposed. First, the April 16 (initial implementation) rule adopted a definition of specially designed that expressly excludes “springs” from that term, effectively treating all springs as not being specially designed parts, components, accessories or attachments for purposes of 0A606.x and .y. That rule also adopted separate definitions of the terms “parts” and “components.” Some of the examples in the illustrative list, such as discs and drums, would be defined as parts rather than components. Finally, upon review of the public comment that proposed adding electronic braking systems to paragraph .y.1 (discussed below), BIS concluded that paragraph .y.1 needed additional precision. Therefore, this final rule makes paragraph .y.1 an exclusive list that reads: “Brake discs, rotors, drums, calipers, cylinders, pads, shoes, lines, hoses, vacuum boosters, and

parts therefor.” The term “parts therefor” means parts of any of the ten individual articles enumerated in paragraph .y.1.

ECCN 0C606 applies to materials “specially designed” for military vehicles, “parts,” “components,” “accessories” or “attachments” controlled by ECCN 0A606. The December 6 (vehicles) rule included wording in the header and in “Note 1” in ECCN 0C606 that would have limited the scope of materials controlled by ECCN 0C606 to materials not controlled by other ECCNs. The effect of that wording would have been to make materials that are specifically mentioned in a non-“600 series” ECCN controlled by that non-“600 series” ECCN even if they are “specially designed” for a military vehicle, “part,” “component,” “accessory” or “attachment” that is controlled by ECCN 0A606. In a rule published June 19, 2012 (77 FR 36409) (“the June 19 (specially designed) rule”), BIS proposed guidance for reviewing the CCL to determine an item’s classification. The April 16 (initial implementation) final rule adopted an order of review for the CCL that gives “600 series” ECCNs precedence over non-“600 series” ECCNs (*See* 78 FR 22735, April 16, 2013). The header and note proposed for 0C606 in the December 6 (vehicles) rule would contravene that order of precedence. Accordingly, this final rule revises the header of ECCN 0C606 to remove the reference to “not elsewhere specified . . . on the CCL,” removes proposed “Note 1” and redesignates “Note 2” as “Note.” This rule replaces the phrase “N/A” that appeared in the “Units” paragraph in the December 6 (vehicles) rule with the phrase “\$ value,” which more accurately describes the unit in which materials would be licensed.

The December 6 (vehicles) rule included notes in the “related controls” sections of ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606 referring readers to ECCN 0A919 for controls on “military commodities” containing more than 10 percent U.S.-origin “600 series” items. That text was consistent with the *de minimis* thresholds for “600 series” items proposed in the July 15 (framework) rule. Since publication of the December 6 (vehicles) rule, the June 21 (transition) rule proposed having no *de minimis* level for 600 series items destined for a U.S. arms embargoed country (*See* 77 FR 37532, June 21, 2012). The April 16 (initial implementation) rule adopted this standard as a final rule (*See* 78 FR 22667 and 22707, April 16, 2013). In addition, that rule created a new Country Group D:5 in Supplement No. 1 to part 740 to list the U.S. arms embargoed countries (*See* 78 FR 22675 and 22721, April 16, 2013). Thus, the *de minimis* level for U.S.-origin “600 series” items could be either 0% or 25% depending on the destination. Accordingly, in this final rule, the “related controls” sections in each of those ECCNs, except 0E606, referring readers to ECCN 0A919 use the phrase “more than a *de minimis* amount of U.S.-origin 600 series controlled content.” The reference is not included in 0E606 because the EAR do not provide for the incorporation of technology into a commodity under the *de minimis* rule.

#### **Comments on the December 6 (vehicles) rule addressed by this rule**

BIS received comments on the December 6 (vehicles) rule from one organization and one individual. Additionally, in the preamble to the December 6 (vehicles) rule, BIS stated that it

would continue to consider certain comments made in response to the July 15 (framework) rule with respect to military vehicles.

The organization that commented noted that in the preamble to the December 6 (vehicles) rule, BIS addressed comments made by that commenter and others concerning which vehicle parts should be subject to no more than the antiterrorism reason for control. In that preamble, BIS noted that it was continuing to review this issue and welcomed further comments. The organization addressed five general topics, all of which relate to whether certain parts and components should be included in “600 series” ECCNs generally and 0A606 in particular. The discussion below summarizes the points made under each of those topics separately and also addresses comments related to military vehicles that BIS received in response to the July 15 (framework) rule and that it stated in the December 6 (vehicles) rule it would further consider. This discussion provides a single response to topics 1, 2 and 3.

**Comments related to exclusion of certain items from the 600 series or to limiting them to the .y paragraphs.**

**Topic 1. List of Parts and Components with Little or No Military Significance.**

This commenter proposed that 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) be added to the list of .y items. The commenter reiterated its opinion expressed in its comments to the July 15 (framework) rule that these items have little or no military significance. The commenter also attributed to BIS the statement that these might have to be modified for a particular military vehicle; such modifications typically relate to fit and are similar to the types of modifications that are made for civilian vehicles. BIS's statement to this effect was part of its summary of a comment received in response to the July 15 (framework) rule. The commenter noted that BIS appeared to have adopted two "additional factors" for determining whether a part was militarily significant. Those factors were (1) concealment and (2) water proof/resistant status and stated that those two factors were not a reason to treat the above items as militarily significant. This conclusion on the part of the commenter appears to be based on a statement in the preamble to the December 6 (vehicles) rule that BIS made in response to a comment to the effect that exhaust systems should not be treated as militarily significant because they perform the same function on both civil and military vehicles. BIS's response noted that the exhaust systems on some military vehicles have features that reduce infrared signature to make the vehicle less detectable and features to enable deep water fording and therefore, could not be considered as *per se* lacking military significance.

In response to comments on the July 15 (framework) rule, BIS stated that it was still considering comments related to exhaust systems, wheels and blackout lights and 0A606.y. One

such comment 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. The commenter stated that exhaust pipes serve the function of keeping poisonous gases away from the passenger compartment on both civilian and military vehicles. A second comment 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. A third comment questioned why blackout lights were included in proposed ECCN 0A606.y (in the July 15 (framework) rule). The commenter noted that the .y paragraph was intended to apply to items of little or no military significance. However, the commenter noted that blackout lights also were included in proposed interpretation h, which, among other things, identifies features that give a military vehicle its military characteristics.

## **Topic 2. Criteria for Determining Military Significance.**

This commenter noted that the December 6 (vehicles) rule solicited additional comment on appropriate criteria for determining which items classified under “600 series” ECCNs should be limited to the AT reason for control. The organization stated that the December 6 (vehicles) rule listed five criteria. Actually, those five criteria were suggested in a comment to the July 15 (framework) rule. BIS noted them in the preamble to the December 6 (vehicles) rule and neither adopted nor rejected them, but encouraged further comment on appropriate criteria for determining which items classified under “600 series” ECCNs should be limited to the AT reason for control.

### **Topic 3. Process to Add to List of Items Lacking Military Significance.**

This commenter stated that the EAR, both currently and as proposed, lacks a process, short of amending the regulations, to designate an item as subject only to the .y paragraph controls because it lacks military significance. In addition, the commenter stated, self-classification will be impossible because of the “catch-all” character of the proposed .x paragraphs. Without a specific process to add more products to the .y paragraphs, the commenter suggested that export reform might cause more problems than it is intended to resolve. Although implementing such a process would likely require agency resources, the commenter suggested that reduced license application volume would result in a countervailing reduction in the need for agency resources. Exports of parts without military significance would be expedited by fewer license requirements.

This commenter also proposed that a more efficient alternative to adopting a process for adding items to the .y paragraphs would be to adopt a definition for “specially designed” that would eliminate the need to list militarily insignificant parts at all. This commenter suggested that as an alternative, the government could create a positive list of parts that are militarily significant and substantially deregulate all other parts. In the commenter’s view, either alternative would give the U.S. military better access at lower prices to commercial technologies that could update its fleet and better equip U.S. military personnel.

**Response to topics 1, 2 and 3:** Upon further review and reflection, BIS has concluded that it should not change the list of parts, components, accessories and attachments that were proposed for ECCN 0A606.y in the December 6 (vehicles) rule (except for the changes to 0A606.y discussed above). BIS has also concluded that it would not be possible to publish objective criteria by which additional parts, components, accessories and attachments would be designated as having such limited military significance that they should be controlled in the .y paragraph of ECCN 0A606 and establish a routine process for seeking such designation.

Subsequent to the closing of the comment period on the December 6 (vehicles) rule, BIS published the April 16 (initial implementation) rule, which adopted a new definition of “specially designed.” As described in more detail in that rule (*see* 78 FR 22728), parts and components that are used in or with USML Category VII or 0A610 vehicles and other commodities are not caught as specially designed items in 0A606.x or 0A606.y if any of the exclusions in the definition’s paragraph (b) apply. Thus, for example, as described in paragraph (b)(1), if the Commerce Department issues a classification determination that the Departments of Commerce, State, and Defense have agreed that a part or component used in or with a military vehicle does not warrant being considered “specially designed,” then it will not be controlled by 0A606.x or 0A606.y. If the part is one of the basic parts listed in paragraph (b)(2), then it is not controlled by 0A606.x or 0A606.y. If, as described in detail in paragraph (b)(3), a part or component not elsewhere enumerated on the USML or the CCL is common to a military vehicle and an EAR99 civil vehicle in production, then it is not controlled by 0A606.x or 0A606.y. If, as described in detail

in paragraphs (b)(4), (b)(5) and (b)(6), a part or component is not elsewhere enumerated on the USML or the CCL and there is sufficient contemporaneous evidence that it was developed for vehicles not on the USML or CCL (or on the CCL for only AT reasons) for such vehicles *and* for vehicles that are on the USML or other entries on the CCL, or was developed as a general purpose commodity or software, *i.e.*, with no knowledge that for use in or with a particular commodity, then it will not be within the scope of 0A606.x or 0A606.y.

After review of the comments, BIS has concluded that technological significance to the military character of the vehicle should not determine whether a particular part, component, accessory or attachment is included in paragraph .x (requiring a license to all destinations other than Canada), .y (requiring a license to a limited range of destinations), or even EAR99 (not listed on the CCL at all). BIS has reached this conclusion in recognition of national security and foreign policy justifications for the U.S. Government's having control over the export and reexport of parts, components, accessories and attachments that, even if they perform functions that are common to both civil and military vehicles, are nonetheless in some way unique to or specially designed for military vehicles. Imposing export license requirements on such parts, accessories and attachments gives the U.S. Government visibility into whether persons in certain countries have such military vehicles or need such vehicles repaired. As circumstances change, these controls give the U.S. Government the ability to control the flow of such parts and components as national security and foreign policy concerns warrant. The U.S. Government has, however, decided that controlling such items on the ITAR is too restrictive and has, thus, created the more flexible controls in the "600 series" for such items.

BIS notes that there are no items within the scope of 0A606.x or 0A606.y that were not, prior to the effective date of this rule, subject to the ITAR and controlled under USML Category VII(g), which controlled parts, components, accessories, and attachments specifically designed or modified for the military vehicle and other items described in USML Category VII. Although classification under a “600 series” ECCN might impose sufficient additional regulatory burden that a manufacturer of EAR99 items might not wish to modify the design of its products to adapt them to military vehicles, nonetheless, the movement of these items to a “600 series” ECCN represents a substantial reduction in the licensing burden for manufacturers whose products currently are subject to the ITAR.

BIS does not agree with the commenter’s statement that the catch-all nature of the .x paragraphs would make self-classifications “impossible.” If a part or component is listed on the USML, then it is ITAR controlled. If not, and it is enumerated in an ECCN 0A606 paragraph, then it is subject to the EAR and controlled in that paragraph. If not, and it was “specially designed” for a USML VII article or a 0A606 (other than 0A606.b) item, then it is controlled under 0A606.x, unless specifically identified in 0A606.y. Such items, when they were ITAR controlled under USML Category VII(g), required a license from State to export worldwide (except Canada if eligible under the Canadian exemption) and had a zero percent *de minimis* threshold when incorporated into civilian or military items. The U.S. Government has considerably adjusted the controls on such items by controlling them in the new 0A606.x, which has available to it several license exceptions and, for most of the world, a 25% *de minimis*

threshold. In addition, BIS disagrees with the commenter's request that the catch-all provisions be amended so that they only control "significant" parts and components. The commenter would leave solely up to the exporter the subjective determination whether something is "significant." It is certain that not all exporters and government officials would come to the same conclusion regarding the significance of any particular item. Granting the requested edit would thus not create the reliability and predictability BIS is trying to accomplish with the proposed revisions and the new definition of "specially designed." It is the government that decides whether a part or component is so significant, from either a national security or a foreign policy perspective, as to warrant control on the USML or the more flexible controls of the "600 series" ECCNs, not the exporter.

BIS also notes that although the July 15 (framework) rule included blackout lights in ECCN 0A606.y, the December 6 (vehicles) rule did not do so. In the preamble to the December 6 (vehicles) rule, BIS stated that it did not include blackout lights because blackout lights were then the subject of discussions at the Wassenaar Arrangement and that changing controls on them at that time would be premature. Since the publication of the December 6 (vehicles) rule, two plenary meetings of the Wassenaar Arrangement have taken place. At neither plenary meeting did the Wassenaar Arrangement decide to remove blackout lights from the list of modifications that make a vehicle one for military use as found in Note 2 to WAML category ML6. For this reason, in addition to those in the immediately preceding paragraph, this final rule does not include blackout lights in 0A606.y. Thus, blackout lights that are "specially designed" parts for vehicles in USML Category VII or in ECCN 0A606.a are included in ECCN 0A606.x.

#### **Topic 4. Information Needed to Adapt Militarily Insignificant Parts and Components for Military Vehicles.**

One commenter noted that the December 6 (vehicles) rule stated that BIS is considering recommendations to “limit the controls on form, fit and function data needed to provide militarily insignificant items for military vehicles to the antiterrorism reason [for control]” and reiterated with some elaboration the comments it made on this issue in response to the July 15 (framework) rule. The commenter stated that such a limit is critical to effective export control reform. Parts suppliers need to know basic information about size, shape, available electrical current and voltage, and other basic parameters in order to adapt a part to a particular vehicle. They need to communicate this information to their employees and suppliers. Requiring parts manufacturers to obtain licenses in order to do so would increase the cost and complexity of compliance programs, negating much of the advantage of creating 0A606.y items.

**Response:** BIS did not adopt this recommendation. Although BIS desires to avoid imposing excessive compliance costs on parties engaged in transactions that are subject to the EAR, some such costs cannot be avoided. In many cases, BIS maintains export license requirements on development and production technology for those parts and components that are comparable to the license requirements imposed on the parts and components themselves because doing so provides a source of information about the disposition and status of military

vehicles. BIS also disagrees with the commenter that adding parts and components to the .y controls increases compliance burdens. All parts and components that are now controlled in 0A606.y were, prior to the effective date of this rule, subject to the ITAR under USML Category VII(g). There are significantly fewer licensing and compliance burdens for an AT-only EAR item than for an ITAR-controlled item.

### **Topic 5. Analog v. Digital Parts and Components**

One commenter noted that the proposed December 23 (vessels) and December 23 (submersible vessels) rules distinguished between digital and analog parts in compiling lists of parts of little military significance. However, the commenter addressed its comment on this issue to those two rules and to the December 6 (vehicles) rule. This commenter described that distinction as arbitrary and unwarranted. This commenter noted that digital automobile parts have been in use for dozens of years and are in almost all modern civil vehicles and vessels. The commenter noted that the main reasons for using digital components are: reduced signal degradation, interoperability with other vehicle parts and ability to track and display diagnostic, service and repair codes. This commenter asserted that there is nothing inherently military about these functions. This commenter also noted that some parts designed for a specific military function are analog.

**Response:** With respect to military vehicles, the July 15 (framework) rule, the December 6 (vehicles) rule and this final rule do not draw a distinction between analog and digital components in designating items for the .y paragraph of ECCN 0A606.

**Comments related primarily to definitions or terminology.**

**Comment:** One commenter recommended that the term “military use” and similar terms such as “military application,” “military mission” or “defense articles” be avoided because they are ambiguous and that more specific terms be substituted instead.

**Response:** BIS certainly desires to make the EAR as explicit and precise as it can. However, in some instances, terms such as the commenter proposes avoiding cannot be avoided. For some things, a military application is an important distinguishing factor. In some instances, such terms are needed to fully describe the items to which the EAR applies. Sometimes, such terms are needed to conform with multilateral control lists which continue to use phrases such as “military application.” The CCL will be amended over time to reflect changes in the multilateral control lists.

**Comment:** One commenter recommended that the term “specially designed” be replaced with “required” and that the definition of “required” currently in the EAR be expanded

to apply to commodities as well as software and technology. This definition focuses on the portion of the technology that is peculiarly responsible for achieving or exceeding the controlled performance levels. This commenter opined that “required” would be more precise than “specially designed.” He also stated that the term “specially designed” is generally associated with designer intent.

This commenter recommended that only components that meet the definition of “required” be controlled under “600 series” ECCNs. To address situations in which an end item that is on the USML could be manufactured from parts, none of which meets the definition of “required,” this commenter recommended adding a new end-use control to part 744 of the EAR that would control technology required for assembly of components into USML end items even if the components are not specified on the CCL.

As a specific instance of this recommendation, this commenter recommended changing “specially designed” to “required” in 0A606.x, 0B606 heading, .a, and .b; 0D606 and 0E606 headings.

**Response:** BIS did not adopt these recommendations. The term “required” is defined in the EAR and is not coextensive with the term “specially designed.” Limiting controls on parts and components to only those that would be “peculiarly responsible” for the military functionality of a particular item would be a significant decontrol contrary to the national

security and foreign policy bases for the controls and the reform initiative. Most parts and components that are specially designed for military vehicles do not provide any military functionality to the item other than to enable it to operate.

In the April 16 (initial implementation) rule, BIS adopted a definition of “specially designed” that is the product of two rounds of proposed rules and review of extensive public comments. This definition applies two tests for inclusion within the definition of “specially designed” and then provides six exclusions whereby a part, component, accessory, attachment or software may be released from the definition. (*See* 78 FR 22728, April 16, 2013) The first test, which is similar to the definition of “required,” addresses items that have, as a result of “development,” “properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph. . . .” The second test in the definition covers parts, components, accessories, attachments or software that are for use in or with defense articles on the USML or items on the CCL. When paired with the exclusions, this second test provides a basis for including within ECCNs 0A606, 0B606, and 0D606 parts, components, accessories, attachments and software that are sufficiently military in their character to merit inclusion in a “600 series” ECCN while excluding those that are common to both military and unlisted civil items in production. Inclusion of military parts, components, accessories, attachments and software in these ECCNs provides the U.S. Government with useful information about the disposition and operating status of vehicles that previously have been licensed for export.

The comment also implicitly assumes that the only parts and components that warrant controls are those that provide peculiar military functionality to a controlled item. The basis for the government's controls on unspecified parts and components is that those items that are deliberately designed or modified and are not otherwise in normal commercial use – i.e., that are “specially designed” for a military end item -- warrant control for that reason. The U.S. government has national security and foreign policy interests in being able to monitor, control, and otherwise have visibility into the supply chain of the parts and components that are necessary to keep military items functioning. The U.S. Government has made a determination that such parts and components, which are now ITAR controlled, do not warrant all the controls of the ITAR. The Government has not made, and does not intend to make, a determination that such items do not warrant control at all.

**Comment:** One commenter recommended that ECCNs 0D606 and 0E606 (along with related provisions of the ITAR) as proposed in the December 6 (vehicles) rule and the State Department's corresponding rule be revised to place control over production software and technology with Commerce because production equipment is controlled by Commerce. This commenter also stated that the definitions of “development” and “production” overlap. The commenter proposed remedying these situations by revising 0D606 and 0E606 to apply to software and technology required for the development or production of military vehicles and related items on the ITAR and to apply to software and technology for the development, production, operation, installation, maintenance, repair, overhaul or refurbishing of military vehicles and related items on the CCL.

**Response:** BIS did not adopt this recommendation. The commenter is correct in noting that ECCN 0D606 in the December 6 (vehicles) rule and in this final rule applies *inter alia* to software for the production of commodities in ECCN 0A606 and that the term “production” is defined in the EAR to include inspection and testing. However, the equipment that is used to produce those commodities and articles is not necessarily of the same sensitivity as the software and technology that is specific to the production of the commodities and articles. Some equipment may be used to produce multiple types of items of varying sensitivity. The decision to place a particular software or technology on the USML or on the CCL should be based on the capabilities of that software or technology.

BIS does not agree with the commenter’s assertion that the definitions of “development” and “production” overlap. Those definitions, which are the definitions used by the Wassenaar Arrangement, have been in the EAR for years, and BIS is unaware of any confusion caused by alleged overlap of the terms.

**Comment:** One commenter recommended that proposed ECCN 0A606, paragraph a., be modified to incorporate, into the body of that paragraph, proposed text in a note immediately following that paragraph and by revising that text to make the following three changes:

1. Add language to the description of the tanks subject to that paragraph to allow certain modifications of tanks built prior to 1956. Those modifications are safety features required by law, cosmetic modifications and addition of parts and components available prior to 1956;

2. Replace with word “military” with the word “armored” in describing the trains subject to paragraph .a; and

3. Remove all references to trailers.

**Response:** This final rule adopts the portions of this commenter’s recommendation relating to modifications of certain tanks built prior to 1956 that do not change the tank’s status as a tank built in 1955 or earlier. The wording concerning such modifications appeared in the Department of State proposed rule on Category VII in proposed language in 22 CFR 121.4(b) describing ground vehicles that are subject to the EAR (See 76 FR 76100, 76102, December 6, 2011). Including matching language in the EAR will make the boundary between the EAR and the ITAR more explicit with respect to military vehicles. Accordingly this rule adds, in response to the commenter’s recommendation, at the end of Note 1 to paragraph .a of ECCN 0A606, the sentence “For purposes of this note, the term “modified” does not include incorporation of safety

features required by law, cosmetic changes (e.g., different paint or repositioning of bolt holes) or addition of “parts” or “components” available prior to 1956.”

BIS did not adopt the proposal to incorporate the text of the note into the body of paragraph .a because BIS does not believe that doing so would add clarity to the rule. BIS did not replace the word “military” with the word “armored” because currently, USML Category VII(a) applies to, *inter alia*, “military railway trains” and does not require that such trains be armored. BIS’s intent is to include in ECCN 0A606 the trains currently covered by Category VII(a) unless those trains are armed or are specially designed for launching missiles. BIS did not remove references to trailers because trailers are included in WAML category ML6. Failure to include them would be inconsistent with the U.S. Government’s commitments to the Wassenaar Arrangement.

**Comment:** This commenter also recommended deleting the term “specially designed” from 0A606.b.1, Note 2 because in the commenter’s opinion, “none of the definitions under consideration for specially designed make sense when applied to a decontrol.”

**Response:** BIS is not deleting the term “specially designed” from this note, which is taken from the WAML category ML6 and reads: “ECCN 0A606.b.1 does not control civilian vehicles ‘specially designed’ for transporting money or valuables.” Although the commenter’s position is arguably correct when applied to the proposed definition of “specially designed” in

the July 15 (framework) rule, the definition of “specially designed” adopted in the April 16 (initial implementation) rule does make sense in provisions such as this note. That definition of “specially designed” applies to an item that “(1) As a result of “development” has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; or (2) Is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML.”

When the first definition criterion is substituted for the defined term, ECCN 0A606.b.1, Note 2 reads: “ECCN 0A606.b.1 does not control civilian vehicles “[that][ a]s a result of “development” . . . [have] properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph for transporting money or valuables.” Furthermore, the second criterion does not apply because vehicles for transporting money or valuables are not parts, components, accessories, attachments or software. The phrase transporting money or valuables is a parameter that appears on the decontrol note and not in the ECCN 0A606.b.1 control text. Thus, Note 2 limits the scope of ECCN 0A606.b.1. BIS believes use of the term “specially designed” here will not cause confusion.

**Comment:** One commenter also recommended deleting the word “special” from the phrase “special reinforcements for mounts for weapons” in 0A606.b.1 Note 3.

**Response:** BIS did not accept this recommendation. ECCN 0A606.b.1 applies to, *inter alia*, certain unarmed vehicles with armor. Note 3 defines an unarmed vehicle for purposes of paragraph .b.1. The adjective “special” in this instance makes clear that ordinary bracing or reinforcing used in the bodies of civil vehicles does not make a make a civil vehicle armed. Additionally, BIS notes the similarity between the language in Note 3 – “special reinforcements for mounts for weapons” and the example, set forth in WAML category ML6, of a modification that makes a vehicle “specially designed” for military use – “Special reinforcements or mountings for weapons . . . .”

**Comment:** One commenter also recommended deleting the term “specially designed” in the phrase that appears in 0A606.e and reads “deep water fording kits specially designed for ground vehicles controlled by 0A606.a or USML Category VII.”

**Response:** BIS did not adopt this recommendation. BIS believes that the term “specially designed” is necessary to provide precision to the scope of paragraph .e.

**Comment:** One commenter recommended making 0A606.x, which applies to “specially designed” parts, components, accessories and attachments, inapplicable to 0A606.c (air-cooled diesel engines and engine blocks for armored vehicles of 40 tons or more), .d (continuously variable automatic transmission for tracked combat vehicles), .e (deep water fording kits for vehicles in USML Category VII or ECCN 0A606), and .f (self-launching bridge components not enumerated in USML Category VII(g) for deployment by vehicles in USML Category VII or 0A606). This commenter also asserted that imposing a license requirement on components of components was problematic but did not provide reason for the assertion.

**Response:** BIS did not adopt this recommendation, which would have the effect of eliminating the license requirement for “specially designed” parts, components, accessories and attachments for items listed in this comment. Each of the commodities listed in ECCN 0A606, paragraphs .c through .f, is a piece of military equipment or a part or component thereof. Applying a license requirement to “specially designed” parts and components for such equipment serves to provide the U.S. Government with information about the equipment’s disposition and use. BIS does not agree with the commenter that imposing a license requirement on components of components is problematic.

## **Vessels of War and Related Items; Submersible Vessels, Oceanographic Equipment and Related Items**

## **Background**

This rule makes final the provisions contained in the December 23 (vessels) and the December 23 (submersible vessels) rules. These two proposed rules from BIS were published in conjunction with two rules from the Department of State, Directorate of Defense Trade Controls that proposed to amend the list of articles controlled by USML Categories VI and XX (*see* 76 FR 80282, 80302 and 76 FR 80291, 80305, respectively).

Specifically, this final rule describes how surface vessels of war and related articles that the President determines no longer warrant control under Category VI (surface vessels of war and special naval equipment) of the USML will now be controlled on the CCL under new “600 series” ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609. The rule also describes how submersible vessels, oceanographic and associated equipment that the President has determined no longer warrant control on the USML Category VI or XX will now be controlled on the CCL under new “600 series” ECCNs 8A620, 8B620, 8D620, and 8E620.

**Summary of Public Comments Submitted in Response to the Proposals Contained in the December 23 (vessels) rule published by BIS.**

The public comment period for the December 23 (vessels) rule, which addressed controls on surface vessels of war and related articles, ended on February 6, 2012. BIS received comments from four respondents. Following is a summary of those comments, along with BIS's responses. The comments are organized by topic, with similar comments grouped together under the same heading.

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

**Comment:** Two respondents commented that Note 2 to proposed ECCN 8A609.x incorrectly referenced USML Category VI(g), instead of USML Category VI(f).

**Response:** This final rule corrects Note 2 to ECCN 8A609.x to refer to USML Category VI(f), which controls specified components, parts, accessories, attachments, and associated equipment for surface vessels of war and special naval equipment enumerated in USML Category VI. Note 2 indicates that the latter are excluded from control under ECCN 8A609.x.

*ECCN 8A609.y (Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity controlled by ECCN 8A609 or for a defense article in USML Category VI and not specified elsewhere in the USML).*

**Comment:** One respondent questioned why proposed ECCN 8A609.y.12 referred to analog gauges and indicators only, and not also to “digital” gauges and indicators, because there is nothing inherently military about all “digital” parts and components.

**Response:** Since BIS does not intend that ECCN 8A609.y distinguish between the relative merits of “analog” and “digital” technologies, this final rule changes ECCN 8A609.y to refer to all gauges and indicators, regardless of whether they are “analog” or “digital.” As published in this final rule, these gauges and indicators are now controlled under ECCN 8A609.y.10.

**Comment:** Two respondents recommended that additional items be included in the list of specific “parts,” “components,” and “accessories and attachments” controlled by ECCN 8A609.y.

One respondent recommended that the following items be added to ECCN 8A609.y:

- Atmosphere control and monitoring equipment

- Environmental control and monitoring equipment
- Thermal insulation
- Trash handling systems
- Mooring, towing and dry dock equipment
- Anchoring systems
- Material corrosion and fouling control systems
- Damage-control equipment
- Firefighting equipment, fire suppression systems, extinguishers, water hoses
- Emergency water rescue equipment
- On-board cranes
- Non-structural bulkheads and flexible space arrangements
- Cargo doors
- Bunks, lockers, and living/recreational quarter equipment or fixtures
- Meeting and classroom equipment or fixtures
- Bridge screens, panels, and monitors

- Electrical cable, cableways, wire, tapes, distribution panels, circuit breakers, supply outlets, connectors, switches, and fixtures
- Fiber optic cable, cableways, fixtures, switches, and supply outlets
- Equipment foundations and shock mounts
- Fasteners, washers, O-rings, bushings, adapters, couplings, bolts and similar ancillary hardware
- Mountings and clamps (meant to keep computers, office furniture in place).

The other respondent recommended that the following items be added to ECCN 8A609.y:

- Air vents and outlets
- Cabin doors and door seals
- Crew and cabin seats and bunks
- Fire or smoke detection, prevention and suppression systems
- Gas detection and generation systems
- Heating, air-conditioning and air management equipment
- Junction boxes
- Lithium-ion batteries and battery cells

- Port hole and port hole seals.

**Response:** This final rule retains the scope of controls set forth in the December 23 (vessels) rule and does not add the additional items recommended by the commenters. In this regard, note that BIS has concluded that the technological significance of a “part,” “component,” “accessory” or “attachment” to the military character of a vessel should not be the sole determining factor as to whether a particular “part,” “component,” “accessory” or “attachment” is included in paragraph .x (requiring a license to all destinations other than Canada) or paragraph .y (requiring a license to a limited range of destinations) or classified under the designation “EAR99” (not listed on the CCL but subject to the EAR). BIS reached this conclusion in recognition of the national security and foreign policy justifications in support of the U.S. Government exercising control over the export and reexport of “parts,” “components,” “accessories” and “attachments” that, although they perform functions common to both civil and military vessels, are nonetheless in some way unique to, or “specially designed” for, vessels of war. Imposing export license requirements on such “parts,” “components,” “accessories” and “attachments” provides the U.S. Government with insight into whether persons in certain countries have military vessels or need to have such vessels repaired. These controls give the U.S. Government the ability to control the flow of such parts, components, accessories, and attachments consistent with our national security and foreign policy objectives. Nevertheless, the U.S. Government has decided that controlling such items on the ITAR is too restrictive and, accordingly, has created more flexible controls for such items in the new “600 series” ECCNs on the CCL.

**Comment:** One respondent recommended that ECCN 8A609.y.5 be rewritten to clarify that it controls “metal hydraulic, fuel, oil and air lines that are straight, bent, flexible, braided or varying internal cross sectional area.”

**Response:** This final rule clarifies which items of this type are controlled under 8A609.y by including the following control language in ECCN 8A609.y.2: “Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems.”

**Comment:** One respondent commented that the .y paragraphs in ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609 should be removed and that “parts” and “accessories and attachments” should not be controlled elsewhere in the 8Y609 ECCNs or in USML Category VI. Instead, only individually identified “required” “components” should be controlled.

**Response:** This final rule controls “parts,” “components,” “accessories” and “attachments” for commodities enumerated in the new 8Y609 ECCNs, consistent with the scope of the definition of “specially designed,” as published in the April 16 (initial implementation) rule. Accordingly, an item is considered to be “specially designed,” per paragraph (a) of the “specially designed” definition, if the item: (i) as a result of “development” has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or

functions in the relevant ECCN or USML paragraph; or (ii) is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML. Nevertheless, a “part,” “component,” “accessory,” “attachment,” or “software” that otherwise would be controlled by paragraph (a) of the “specially designed” definition is released from being treated as “specially designed,” if one or more of the exceptions contained in paragraph (b) of the “specially designed” definition applies. The “catch and release” construct employed in paragraphs (a) and (b), respectively, of the “specially designed” definition is intended to work in combination to catch all items that may warrant being controlled as “specially designed.” Paragraph (b) of the definition tries, to the extent possible, to release those “parts,” “components,” “accessories,” “attachments,” or “software” that the U.S. Government has determined, in all cases, do not warrant being controlled as “specially designed.”

***ECCN 8E609.a (“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 8A609, 8B609, or 8C609, or “software” controlled by ECCN 8D609, except for ECCN 8A609.y, 8B609.y, 8C609.y, or 8D609.y).***

**Comment:** One respondent recommended that the phrase “operation, installation, maintenance, repair, or overhaul,” in ECCN 8E609.a, be removed and replaced with the term “use,” as defined in the EAR.

**Response:** This final rule uses the phrase “operation, installation, maintenance, repair, overhaul, or refurbishing” in ECCN 8E609.a, because this phrase is intended to include each of the specific sub-elements of “use,” as defined in the EAR.

***Production “software” and “technology” controlled under ECCNs 8D609 and 8E609, respectively.***

**Comment:** One respondent stated that “software” and “technology” should be controlled by the same agency that controls production equipment (i.e., Commerce). In that event, the respondent recommended that ECCN 8D609 be expanded to control “software” “required” for the “development” or “production” of defense articles in USML Category VI(a) through (f) and the “software” portion of USML Category VI(g). In addition, the respondent recommended that ECCN 8E609 be expanded to control “technology” “required” for the “development” or “production” of defense articles in USML Category VI(a) through (f) and the “software” portion of USML Category VI(g); and the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for defense articles in USML Category VI(a) through (f) and the “software” portion of USML Category VI(g), and items in ECCN 8A609, 8B609 or 8D609, even if the “components” of such production installations are not specified on either the CCL or the USML.

**Response:** BIS did not adopt this recommendation. As discussed previously in the preamble, the changes described in this rule and in the State Department’s rule amending Categories VI, VII, XIII, and XX of the USML are based on a review of those categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the amendments. The review was focused on identifying the types of articles that are now controlled by the USML that either: (i) are inherently military and otherwise warrant control on the USML; or (ii) if of a type common to civil applications, 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. If an article was found to satisfy either or both of those criteria, the article remains on the USML. Based on the review of USML Category VI, ECCN 8D609 controls “software” for items controlled under ECCN 8A609, 8B609, or 8C609 only (and not “software” for any of the defense articles enumerated in USML Category VI), while ECCN 8E609 controls “technology” for items controlled under ECCN 8A609, 8B609, 8C609, or 8D609 only (and not “technology” for any of the defense articles enumerated in USML Category VI). In short, as a result of the review, “software” and “technology” for surface vessels of war, special naval equipment, and related defense articles enumerated in USML Category VI will be controlled under Category VI and not under the related “software” and “technology” entries on the CCL (i.e., ECCNs 8D609 and 8E609, respectively).

***Use of the term “specially designed” in the 8Y609 ECCNs.***

**Comment:** One respondent recommended that the proposed definition of “specially designed” (and, in particular, the “parts” and “components” exclusions therein) be changed to avoid the overly broad control of a large and diverse array of militarily insignificant items used on military surface vessels and related articles. In the respondent’s view, the provisions of the proposed definition applicable to “parts” and “components,” if read literally, would capture “parts” and “components” for practically every military item enumerated on the CCL or the USML, unless the “parts” and “components” are separately enumerated (i.e., either in a USML subcategory or in an ECCN that does not have “specially designed” as a control criterion) or fall within one of the four limited exclusions in subparagraph (d) of the proposed definition (as published in the July 15 (framework) rule. To clarify the scope of the definition, with respect to “parts” and “components,” the respondent recommended that ECCN 8A609.y be revised to add the following types of minor “parts:” threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common type hardware (e.g., washers, spacers, insulators, connectors, diodes, resistors, grommets, bushings), springs, wire, seals, packings, blankets, insulation, decals, and name/information plates.

In addition, the respondent noted that the application of the proposed “specially designed” definition to items other than “parts” and “components” was ambiguous with respect to the phrase “peculiarly responsible” (i.e., the significance of an item’s properties to the stated performance characteristics or functions), which could be interpreted as meaning that the properties are both “necessary” and “sufficient” to achieve or exceed the stated performance parameters. To address this ambiguity, the respondent recommended that BIS provide examples

of how the phrase “peculiarly responsible” would be applied in determining whether or not an item was “specially designed.”

**Response:** This final rule does not adopt the respondent’s recommendation, although the definition of “specially designed” published in the April 16 (initial implementation rule) did include a Note to paragraph (a)(1) to provide more detail on applying the peculiarly responsible standard, including providing two examples for applying the peculiarly responsible standard for purposes of paragraph (a)(1). This rule controls “parts,” “components,” “accessories” and “attachments” for commodities enumerated in the new 8Y609 ECCNs, consistent with the scope of the definition of “specially designed,” as published in the April 16 (initial implementation) rule.

With respect to the phrase “peculiarly responsible,” as applied in subparagraph (a)(1) of the proposed “specially designed” definition, most respondents who commented on the proposed “specially designed” definition in the July 15 (framework) rule found this part of the definition to be clear – perhaps, this is because this part of the definition was taken from the definition of “required” in § 772.1 of the EAR. Although the “required” definition applies only to “software” and “technology,” BIS applied the defining principle of that definition in paragraph (a)(1) of the “specially designed” definition, as published in the April 16 (initial implementation) rule. Therefore, within the context of paragraph (a)(1) of the “specially designed” definition, the phrase “peculiarly responsible” means not merely that an item captured by this paragraph is somehow capable of use with a controlled item, but that something was done during the item’s

development to enable it to achieve or exceed the performance levels, characteristics, or functions described in a referenced ECCN or USML paragraph. If, for example, the control characteristic of a vehicle indicates that the vehicle be “specially designed” for military use, then, at a minimum, any “part” or “component” that was, as a result of development, deliberately made for and unique to such a military vehicle would be considered peculiarly responsible for meeting the control characteristic of the vehicle, regardless of the part or component’s capabilities or functions. The only control characteristic for such vehicles is that the vehicle itself was “specially designed” for military use, not that it performed at any particular level. Whether the part or component is ultimately considered to be “specially designed” depends upon whether any of the releases in paragraph (b) apply.

For purposes of paragraph (a)(1) in the definition of “specially designed,” this principle applies equally to “parts,” “components,” “accessories” and “attachments” for commodities. In addition, note that an item is considered to be “specially designed,” per paragraph (a)(2) of the “specially designed” definition, as published in the April 16 (initial implementation) rule, if the item is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML. Even so, a “part,” “component,” “accessory,” “attachment,” or “software” that otherwise would be controlled by paragraph (a) of the “specially designed” definition would be released from being treated as “specially designed,” if one or more of the exceptions contained in paragraph (b) of the “specially designed” definition applies. The “catch and release” construct employed in paragraphs (a) and (b), respectively, of the “specially designed” definition is intended to work in combination to catch all items that may warrant being controlled as “specially designed.”

Therefore, the paragraph (a) “catch” must be broad in scope. To compensate for those instances in which paragraph (a) of the definition may overreach, paragraph (b) of the definition seeks, to the extent possible, to release those “parts,” “components,” “accessories,” “attachments,” or “software” that the U.S. Government has determined, in all cases, do not warrant being controlled as “specially designed.” For example, paragraph (b)(2) in the definition of “specially designed” exempts specified “parts,” and “components” from the definition, if the item is, regardless of “form” or “fit,” a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder.

### **Changes to controls on vessels made by this rule**

This final rule creates five new 600 series ECCNs in CCL Category 8 (ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609) that control articles the President has determined no longer warrant control under USML Category VI. These amendments are discussed in more detail below.

#### ***New ECCN 8A609 (Surface Vessels of War and Related)***

Paragraph .a of ECCN 8A609 controls surface vessels of war that are “specially designed” for military use, but not enumerated in the USML. Paragraph .b of ECCN 8A609 controls non-magnetic diesel engines that have a power output of 50 hp or more and either of the following: (1) a non-magnetic content exceeding 25 percent of total weight or (2) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. These diesel engines were listed under ECCN 8A620 in BIS’s December 23 (submersible vessels) rule that proposed to control on the CCL submersible vessels, oceanographic and associated equipment determined by the President to no longer warrant control under USML Category VI or Category XX. However, this final rule controls these engines under new ECCN 8A609, instead of new ECCN 8A620 (Submersible vessels oceanographic and associated equipment), because they are generally designed for use in surface vessels, rather than submersible vessels. Paragraphs .c through .w of ECCN 8A609 are reserved. Paragraph .x controls “parts,” “components,” “accessories” and “attachments” (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are “specially designed” for a commodity in paragraph .a or .b or for a defense article in USML Category VI. This final rule specifically excludes from 8A609.x any “parts,” “components,” “accessories” and “attachments” for commodities controlled under 8A609.y. Paragraph .y consists of specific types of commodities that, if “specially designed” for a commodity subject to control in ECCN 8A609 or a defense article in USML Category VI, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y are subject to antiterrorism (AT Column 1) controls only.

This final rule does not add gas turbine engines for military vessels of war to new ECCN 8A609. Instead, the April 16 (initial implementation) rule created a new ECCN 9A619 and included gas turbine engines and related items for military aircraft in that ECCN. This rule adds gas turbine for surface vessels of war and military vehicles to that ECCN .

This final rule adds a note to ECCN 8A609 specifying the changes that may be made to certain vessels built prior to 1950 without changing the vessel's status as a vessel built prior to 1950 and unmodified since 1949. Similar language concerning such modifications is in the Department of State rule that is being published simultaneously with this rule. For purposes of this note, the term modified does not include installation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of "parts" or "components" otherwise available prior to 1950. Including this clarifying language in both rules will make it easier to distinguish vessels on the USML from those on the CCL.

***New ECCN 8B609 (Test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities in ECCN 8A609 or USML Category VI (except for Cat VI(f)(7)))***

ECCN 8B609.a controls test, inspection, and production “equipment” “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of surface vessels of war and related commodities enumerated in ECCN 8A609 (except for items in 8A609.y) or in USML Category VI (except for articles enumerated in USML Cat VI(f)(7)). This final rule adds an exclusion to 8B609.a that applies to test, inspection, and production “equipment” “specially designed” for the “development” or “production” of articles in USML Cat VI(f)(7). Paragraph .b is reserved.

***New ECCN 8C609 (Materials “specially designed” for the “development” or “production” of commodities controlled by 8A609 not elsewhere specified in the USML)***

ECCN 8C609.a controls materials “specially designed” for the “development” or “production” of surface vessels of war and related commodities enumerated in ECCN 8A609 (except for items in 8A609.y) that are not specified elsewhere on the USML. The December 23 (vessels) rule proposed language in the ECCN heading, in 8C609.a, and in the Note thereto, that would have limited the scope of the materials controlled by ECCN 8C609 to those materials not controlled by other ECCNs on the CCL. The effect of that language would have been to make materials specifically mentioned in a non-“600 series” ECCN controlled by that non-“600 series” ECCN, even if they were “specially designed” for a military vessel, “part,” “component,” “accessory,” or “attachment” that is controlled by ECCN 8A609. Conversely, the April 16 (initial implementation) rule adopted a CCL order of review (*see* 78 FR 22735, April 16, 2013) in Supplement No. 4 to part 774) that gives “600 series” ECCNs precedence over non-“600

series” ECCNs when classifying an item. Accordingly, this final rule does not include the proposed language from the December 23 (vessels) rule that would have limited the scope of the materials controlled by ECCN 8C609 to those materials that are not controlled under other ECCNs on the CCL.

***New ECCN 8D609 (“Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by 8A609, 8B609, or 8C609)***

ECCN 8D609.a controls “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 8A609, ECCN 8B609, or ECCN 8C609 (except for commodities controlled by ECCN 8A609.y). Paragraph .b is reserved. ECCN 8D609.y applies to specific “software” that is “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 8A609.y.

***New ECCN 8E609 (“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A609, 8B609, or 8C609, or “software” controlled by 8D609)***

ECCN 8E609.a controls “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of items enumerated in ECCN 8A609, 8B609, 8C609, or 8D609 (except for commodities enumerated in ECCN 8A609.y). Paragraph .b is reserved. ECCN 8E609.y applies to specific “technology” that is “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of items enumerated in ECCN 8A609.y.

## **Changes to the EAR amendments proposed in the December 23 (vessels) rule**

### ***Non-magnetic diesel engines controlled under new ECCN 8A609.b***

As previously discussed, the December 23 (submersible vessels) rule published by BIS proposed that new ECCN 8A620.d.3 control non-magnetic diesel engines having a power output of 50 hp or more, and either of the following characteristics: (i) a non-magnetic content exceeding 25 percent of total weight or (ii) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. However, because these non-magnetic diesel engines are generally designed for use in surface vessels, rather than submersible vessels, this final rule controls these engines under new ECCN 8A609.b.

### ***Changes to make new ECCN 8C609 consistent with the CCL Order of Review***

The April 16 (initial implementation) rule adopted a CCL order of review (see Supplement No. 4 to part 774) that gives “600 series” ECCNs precedence over non-“600 series” ECCNs when classifying an item. Accordingly, the control language for ECCN 8C609 in this final rule differs from the control language proposed in the December 23 (vessels) rule in that it does not limit the scope of the materials controlled by ECCN 8C609 to materials that are not controlled elsewhere on the CCL. Practically speaking, this means that, if an item subject to the EAR is described by a “600 series” ECCN (e.g., ECCN 8C609), then the item would be controlled under the “600 series” ECCN even if it were also described elsewhere on the CCL under a non-“600 series” ECCN.

### **Summary of Public Comments Submitted in Response to the Proposals Contained in the December 23 (submersible vessels) rule published by BIS.**

The public comment period for the December 23 (submersible vessels) rule, which addressed controls on submersible vessels, oceanographic equipment and related articles, ended on February 6, 2012. BIS received comments from four respondents. Following is a summary

of those comments, along with BIS's responses. The comments are organized by topic, with similar comments grouped together under the same heading.

***ECCN 8A620.d (Engines and propulsion systems).***

**Comment:** One respondent recommended that the word "crankcase" be replaced with the word "crankshaft" in ECCN 8A620.d.3 (Non-magnetic diesel engines with a power output of 50 hp or more), as proposed in the December 23 (submersible vessels) rule.

**Response:** This final rule retains the word "crankcase" in the control language, because "crankcase" more fully describes the types of items that are subject to control than the word "crankshaft." Specifically, the "crankcase" is often integrated with the cylinder bank(s), forming the engine block, and serves as the housing for the "crankshaft." In addition, note that the non-magnetic diesel engines that were proposed for control under new "600 series" ECCN 8A620.d.3 of the December 23 (submersible vessels) rule will now be controlled under new ECCN 8A609 (surface vessels of war and related commodities), instead of new ECCN 8A620, because these engines are generally designed for use in surface vessels, rather than submersible vessels.

*ECCN 8A620.x (“Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity enumerated in ECCN 8A620 (except for 8A620.b or .y) and not specified elsewhere on the USML or in 8A620.y)*

**Comment:** One respondent noted that proposed ECCN 8A620.x and .y deviate from similar proposed changes in other ECR rules in that neither paragraph controls specific “parts,” “components,” “accessories” and “attachments” for defense articles in USML Category XX. The respondent recommended that BIS include language in Note 2 to ECCN 8A620.x to clarify that 8A620.x and .y do not control “parts,” “components,” “accessories” and “attachments” for any defense articles enumerated in USML Category XX.

**Response:** The exclusion of “parts,” “components,” “accessories” and “attachments” for any defense articles in USML Category XX is clearly indicated in ECCN 8A620.x and .y, both of which refer only to items controlled under new “600 series” ECCN 8A620 and not to any defense articles in USML Category XX. For this reason, BIS did not make the recommended change in this final rule.

*ECCN 8A620.y (Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity subject to control in this ECCN).*

**Comment:** Two respondents recommended that additional items be included in the list of specific “parts,” “components,” and “accessories” and “attachments” controlled by ECCN 8A620.y.

One respondent recommended that the following items be added to ECCN 8A620.y:

- Thermal insulation
- Firefighting equipment, fire suppression systems, extinguishers, water hoses
- Emergency water rescue equipment
- Non-structural bulkheads and flexible space arrangements
- Bunks, lockers, and living/recreational quarter facilities
- Meeting and classroom facilities
- Electrical cable, cableways, wire, tapes, distribution panels, circuit breakers, supply outlets, connectors, switches, and fixtures
- Fiber optic cable, cableways, fixtures, switches, and supply outlets
- Equipment foundations and shock mounts
- Fasteners, washers, O-rings, bushings, adapters, couplings, bolts and similar ancillary hardware

- Mountings and clamps (meant to keep computers, office furniture in place).

The other respondent recommended that the following items be added to ECCN 8A620.y:

- Floats for 8A620.e commodities
- Cabin doors and door seals
- Crew and cabin seats and bunks
- Fire or smoke detection, prevention and suppression systems
- Junction boxes
- Lithium-ion batteries and battery cells
- Port hole and port hole seals.

**Response:** This final rule retains the scope of controls set forth in the December 23 (submersible vessels) rule. In this regard, note that BIS has concluded that the technological significance of a “part,” “component,” “accessory” or “attachment” to the military character of a submersible vessel should not be the sole determining factor as to whether a particular “part,” “component,” “accessory” or “attachment” is included in paragraph .x (requiring a license to all destinations other than Canada) or paragraph .y (requiring a license to a limited range of destinations) or classified under the designation “EAR99” (not listed on the CCL at all). BIS

reached this conclusion in recognition of the national security and foreign policy justifications in support of the U.S. Government exercising control over the export and reexport of “parts,” “components,” “accessories” and “attachments” that, although they perform functions common to both civil and military submersible vessels, are nonetheless in some way unique to, or “specially designed” for, submersible vessels of war. Imposing export license requirements on such “parts,” “components,” “accessories” and “attachments” provides the U.S. Government with insight into whether persons in certain countries have military submersible vessels or need to have such vessels repaired. These controls give the U.S. Government the ability to control the flow of such parts, components, accessories, and attachments consistent with our national security and foreign policy objectives. Nevertheless, the U.S. Government has decided that controlling such items on the ITAR is too restrictive and, accordingly, has created more flexible controls for such items in the new “600 series” ECCNs on the CCL.

**Comment:** One respondent recommended that ECCN 8A620.y.5 be rewritten to clarify that it controls “metal hydraulic, fuel, oil and air lines that are straight, bent, flexible, braided or varying internal cross sectional area.”

**Response:** This final rule clarifies which items of this type are controlled under 8A620.y by including the following control language under ECCN 8A620.y.2: “Filters and filter

assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems.”

***ECCN 8B620 (Test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620).***

**Comment:** One respondent stated that neither proposed ECCN 8B620 nor proposed USML Category XX addressed equipment “specially designed” to produce defense articles enumerated in USML Category XX. The respondent recommended that such equipment be controlled on the CCL under new ECCN 8B620.

**Response:** USML Category XX has been re-written to specifically capture equipment “specially designed” to produce defense articles in USML Category XX. Therefore, new ECCN 8B620 does not control this equipment.

***Production “software” and “technology” controlled under ECCNs 8D620 and 8E620, respectively.***

**Comment:** One respondent stated that “software” and “technology” should be controlled by the same agency that controls production equipment (i.e., Commerce). In that event, the respondent recommended that ECCN 8D620 be expanded to control “software” “required” for the “development” or “production” of defense articles in proposed USML Category XX(a) through (c) and the “software” portion of proposed USML Category XX(d). In addition, the respondent recommended that ECCN 8E620 be expanded to control “technology” “required” for the “development” or “production” of defense articles in proposed USML Category XX(a) through (c) and the “software” portion of proposed USML Category XX(d); and the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for defense articles in proposed USML Category XX(a) through (c) and the “software” portion of proposed USML Category XX(d), and items in ECCN 8A620, 8B620 or 8D620, even if the “components” of such production installations are not specified on either the CCL or the USML.

**Response:** BIS did not adopt this recommendation. As discussed previously in the preamble, the changes described in this rule and in the State Department’s rule amending Categories VI, VII, XIII, and XX of the USML are based on a review of those categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the amendments. The review was focused on identifying the types of articles that are now controlled by the USML that either: (i) are inherently military and otherwise warrant control on the USML; or (ii) if of a type common to civil applications, 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. If an article was found to satisfy either or both of those criteria, the article remains on the USML. Based on the review of USML Categories VI and XX, ECCN 8D620 controls “software” for items controlled under ECCN 8A620 or 8B620 only (and not “software” for any of the defense articles enumerated in USML Category XX), while ECCN 8E620 controls “technology” for items controlled under ECCN 8A620, 8B620, or 8D620 only (and not “technology” for any of the defense articles enumerated in USML Category XX). In short, as a result of the review, “software” and “technology” for submersible vessels and related defense articles enumerated in USML Category XX will be controlled under Category XX and not under the related “software” and “technology” entries on the CCL (i.e., ECCNs 8D620 and 8E620, respectively).

***Use of the term “specially designed” in the 8Y620 ECCNs.***

**Comment:** One respondent recommended that the proposed definition of “specially designed” (and, in particular, the “parts” and “components” exclusions therein) be changed to avoid the overly broad control of a large and diverse array of militarily insignificant items used on military surface vessels and related articles. In the respondent’s view, the provisions of the proposed definition applicable to “parts” and “components,” if read literally, would capture “parts” and “components” for practically every military item enumerated on the CCL or the USML, unless the “parts” and “components” are separately enumerated (i.e., either in a USML subcategory or in an ECCN that does not have “specially designed” as a control criterion) or fall

within one of the four limited exclusions in subparagraph (d) of the proposed definition (as published in the July 15 (framework) rule. To clarify the scope of the definition, with respect to “parts” and “components,” the respondent recommended that ECCN 8A620.y be revised to add the following types of minor “parts”: threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common type hardware (e.g., washers, spacers, insulators, connectors, diodes, resistors, grommets, bushings), springs, wire, seals, packings, blankets, insulation, decals, and name/information plates.

In addition, the respondent noted that the application of the proposed “specially designed” definition to items other than “parts” and “components” was ambiguous with respect to the phrase “peculiarly responsible” (i.e., the significance of an item’s properties to the stated performance characteristics or functions), which could be interpreted as meaning that the properties are both “necessary” and “sufficient” to achieve or exceed the stated performance parameters. To address this ambiguity, the respondent recommended that BIS provide examples of how the phrase “peculiarly responsible” would be applied in determining whether or not an item was “specially designed.”

**Response:** This final rule does not adopt the respondent’s recommendation, although the definition of “specially designed” published in the April 16 (initial implementation rule) did include a Note to paragraph (a)(1) to provide more detail on applying the peculiarly responsible standard, including providing two examples for applying the peculiarly responsible standard for purposes of paragraph (a)(1). This rule controls “parts,” “components,” and “accessories” and

“attachments” for commodities enumerated in the new 8Y620 ECCNs, consistent with the scope of the definition of “specially designed,” as published in the April 16 (initial implementation) rule.

With respect to the phrase “peculiarly responsible,” as applied in subparagraph (a)(1) of the proposed “specially designed” definition, most respondents who commented on the proposed “specially designed” definition in the July 15 (framework) rule found this part of the definition to be clear – perhaps, this is because this part of the definition was taken from the definition of “required” in § 772.1 of the EAR. Although the “required” definition applies only to “software” and “technology,” BIS applied the defining principle of that definition in paragraph (a)(1) of the “specially designed” definition, as published in the April 16 (initial implementation) rule. Therefore, within the context of paragraph (a)(1) of the “specially designed” definition, the phrase “peculiarly responsible” means that an item captured by this paragraph is not merely somehow capable of use with a controlled item, but that something was done during the item’s development to enable it to achieve or exceed the performance levels, characteristics, or functions described in a referenced ECCN or USML paragraph. For purposes of paragraph (a)(1) in the definition of “specially designed,” this principle applies equally to “parts,” “components,” “accessories” and “attachments” for commodities. In addition, note that an item is considered to be “specially designed,” per paragraph (a)(2) of the “specially designed” definition, as published in the April 16 (initial implementation) rule, if the item is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML. Even so, a “part,” “component,” “accessory,” “attachment,” or “software” that otherwise would be

controlled by paragraph (a) of the “specially designed” definition would be released from being treated as “specially designed,” if one or more of the exceptions contained in paragraph (b) of the “specially designed” definition applies. The “catch and release” construct employed in paragraphs (a) and (b), respectively, of the “specially designed” definition is intended to work in combination to catch all items that may warrant being controlled as “specially designed.” Therefore, the paragraph (a) “catch” must be broad in scope. To compensate for those instances in which paragraph (a) of the definition may overreach, paragraph (b) of the definition tries, to the extent possible, to release those “parts,” “components,” “accessories,” “attachments,” or “software” that the U.S. Government has determined, in all cases, do not warrant being controlled as “specially designed.” For example, paragraph (b)(2) in the definition of “specially designed” exempts specified “parts” and “components” from the definition, if the item is, regardless of “form” or “fit,” a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder.

### **Changes to controls on submersible vessels made by this rule**

This final rule creates four new “600 series” ECCNs in CCL Category 8 (ECCNs 8A620, 8B620, 8D620, and 8E620) that control articles the President has determined no longer warrant control under USML Category VI or Category XX. These amendments are discussed in more detail below.

***New ECCN 8A620 (Submersible vessels, oceanographic and associated equipment)***

Paragraph .a of ECCN 8A620 controls submersible and semi-submersible vessels “specially designed” for a military use, but not enumerated on the USML (e.g., submarine rescue vehicles and Deep Submergence Vehicles (DSVs)). Paragraph .b of ECCN 8A620 controls submersible and semi-submersible vessels “specially designed” for cargo transport (submersible and semi-submersible vessels of a type known to have been used in illegal drug trafficking activities) and “parts,” “components,” “accessories” and “attachments” “specially designed” therefor. Paragraph .c of ECCN 8A620 controls harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL. Paragraph .d of ECCN 8A620 controls certain engines and propulsion devices for submersible or semi-submersible vessels (i.e., diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over “specially designed” for submarines). In a change from BIS’s December 23 (submersible vessels) rule, paragraph .d does not control non-magnetic diesel engines that have a power output of 50 hp or more and either of the following: (1) a non-magnetic content exceeding 25 percent of total weight or (2) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. These engines are controlled under new ECCN 8A609 (surface vessels of war and related commodities), instead of new ECCN 8A620, because they are generally designed for use in surface vessels, rather than submersible vessels. In another change from BIS’s December 23 (submersible vessels) rule, paragraph .d does not control electric motors “specially designed” for

submarines and having all of the following: (i) a power output of more than 1,000 hp; (ii) quick reversing; (iii) liquid cooled; and (iv) totally enclosed. These electric motors are controlled under USML Category XX, instead of ECCN 8A620. The Note to paragraph .d states that propulsion systems not controlled under ECCN 8A620 that are “specially designed” for an article controlled by USML Category XX are controlled by USML XX(b) or (c). Paragraphs .e and .f control submarine and torpedo nets and certain closed and semi-closed circuit (rebreathing) apparatus, respectively. Paragraphs .g through .w are reserved. Paragraph .x controls “parts,” “components,” “accessories” and “attachments” (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are “specially designed” for a commodity in paragraphs .a and .c through .f; however, paragraph .x does not include items “specially designed” for a defense article in USML Category VI or XX.

Paragraph .y contains specific types of commodities that, if “specially designed” for a commodity subject to control in ECCN 8A620, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y are subject to antiterrorism (AT Column 1) controls only. The systems and equipment described in ECCN 8A620.y.14 through .y.20, as proposed in the December 23 (submersible vessels) rule, are not included in ECCN 8A620.y in this final rule. Any such systems and equipment that are subject to the EAR and not elsewhere specified on the CCL are classified under the designation “EAR99.”

***New ECCN 8B620 (Test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620)***

ECCN 8B620.a controls test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620 (except for items in 8A620.b and .y). Paragraph .b of ECCN 8B620 controls test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A620.b. Currently, ECCN 8B620 does not identify specific test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A620.y.

***New ECCN 8D620 (“Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by 8A620 or 8B620)***

ECCN 8D620.a controls “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 8A620 or 8B620 (except for commodities controlled by 8A620.b or .y or ECCN 8B620.b). Paragraph .b of ECCN 8D620 controls “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in 8A620.b or 8B620.b. ECCN 8D620.y applies to

specific “software” that is “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 8A620.y.

***New ECCN 8E620 (“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 8A620 or 8B620, or “software” controlled by 8D620)***

ECCN 8E620.a controls “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620 or 8B620 or “software” controlled by ECCN 8D620 (except for commodities controlled by ECCN 8A620.b or .y or ECCN 8B620.b, or “software” controlled by ECCN 8D620.b or .y). Paragraph .b of 8E620 controls “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620.b or 8B620.b or “software” controlled by 8D620.b. ECCN 8E620.y applies to specific “technology” that is “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of items enumerated in ECCN 8A620.y.

## **Amendments to ECCN 8A018**

This final rule also affects items controlled under ECCN 8A018. Specifically, engines and propulsion systems described in ECCN 8A018.b.1 will be moved to new ECCN 8A620.d as of the effective date of this final rule. In addition, anti-submarine and anti-torpedo nets described in ECCN 8A018.b.4 will be moved to new ECCN 8A620.e and closed and semi-closed circuit (rebreathing) apparatus described in ECCN 8A018.a will be moved to new ECCN 8A620.f, as of the effective date of this final rule. However, new ECCN 8A620.d will not control either electric motors described in ECCN 8A018.b.2 or non-magnetic diesel engines described in 8A018.b.3, as proposed in the December 23 (submersible vessels) rule. Instead, the former will be controlled under USML Category XX, while the latter will be controlled under new ECCN 8A609.b (since these engines are generally designed for use in surface vessels, rather than submersible vessels).

Consistent with the April 16 (initial implementation) rule and with the statement in the July 15 (framework) rule that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule amends ECCN 8A018 to remove all language except cross references to the controls for these items in new “600 series” ECCNs 8A609.b and 8A620.d, .e, and .f and in revised USML Category XX.

### **Changes to the EAR amendments proposed in the December 23 (submersible vessels) rule**

#### ***Engines controlled under new ECCN 8A620.d***

As previously discussed, the December 23 (submersible vessels) rule published by BIS proposed that new ECCN 8A620.d.3 control non-magnetic diesel engines having a power output of 50 hp or more, and either of the following characteristics: (i) a non-magnetic content exceeding 25 percent of total weight or (ii) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. However, because these non-magnetic diesel engines are generally designed for use in surface vessels, rather than submersible vessels, these engines are now controlled under new ECCN 8A609.b, instead. In addition, new ECCN 8A620.d does not control electric motors, as proposed in the December 23 (submersible vessels) rule, that are “specially designed” for submarines and have all of the following: (i) a power output of more than 1,000 hp; (ii) quick reversing; (iii) liquid cooled; and (iv) totally enclosed. These electric motors are controlled under USML Category XX, instead.

## **Auxiliary and Miscellaneous Military Equipment**

### **Background**

The May 18 (auxiliary equipment) rule described BIS's proposal for how it would control auxiliary and miscellaneous military equipment, related articles, software and technology under USML Category XIII that no longer warrant control on the USML. That rule proposed controlling those items under five new ECCNs. That rule also proposed to include in those five new ECCNs items listed in WAML category ML17 that would be removed from the USML, or that are not specifically identified on the USML or CCL but were subject to USML jurisdiction. This final rule is based on the May 18 (auxiliary equipment) rule and on a review of the public comments thereon by the Departments of Defense, State and Commerce. The period for submitting comments on that rule closed July 2, 2012.

#### **Changes made to controls on Auxiliary and Miscellaneous Military Equipment by this rule**

This rule implements the proposals of the May 18 (auxiliary equipment) rule by creating five new ECCNs to control auxiliary and miscellaneous military equipment and related articles the President determined no longer warrant control under USML Category XIII (Auxiliary Military Equipment) and the integration of certain WAML category ML17 items on the CCL as part of the new "600 series."

This rule controls some items that were classified under ECCNs 0A018, 0A918, and 0E018 now under new ECCNs 0A617 and 0E617.

### **Comments and Responses to the May 18 (auxiliary equipment) rule**

Three companies submitted comments to BIS regarding the May 18 (auxiliary equipment) rule. Their comments and BIS's responses are as follows.

#### **General Observations**

**Comment:** One commenter asserted that BIS omitted several items from WAML category ML17 in the proposed rule's list of equipment for ECCN 0A617. Specifically, the commenter said that BIS failed to include items in paragraph 17.a self-contained diving and underwater apparatus; 17.c - .e fittings, field engineer equipment, "robots"; 17.g - .i. nuclear power generating equipment, equipment and material, simulators; and 17.o & .p laser protection equipment, "fuel cells" in ECCN 0A617.

**Response:** The control in the EAR of the WAML category ML17 items the commenter identified are described in BIS’s May 18 (auxiliary equipment) rule and are further described in the “related items” to 0A617 and in 0A617.y.

**Comment:** One commenter stated that proposed changes to companion USML Category XIII as proposed would result in only a small number of items proposed to be moved to the “600 series” on the CCL. The commenter further stated that jurisdictional clarity would provide few benefits for U.S. exporters if items that no longer warrant control as munitions items continue to be identified on the USML.

**Response:** BIS notes that the purpose of ECR and the resulting movement and revision of the list of items from USML categories was not intended to be an exercise to decontrol items *per se* but rather is an effort to identify items that need to be controlled on the USML consistent with the national security and foreign policy objectives of the effort.

#### **ECCN 0A617: Miscellaneous Equipment, Materials, and Related Commodities**

**Comment:** With regard to paragraph .a of ECCN 0A617 (construction equipment), a commenter expressed an expectation that this paragraph would control a substantial amount of

construction material not currently controlled on the USML, subjecting the items to a worldwide licensing requirement, except Canada. A simple mobile crane designed to fit within a USML-controlled cargo aircraft would be caught simply on the basis of size. The commenter went on to say that this would result in precisely the type of militarily insignificant equipment that does not warrant such a stringent control.

**Response:** Upon further review, BIS has determined that such items do not warrant controls more than those applicable to 0A617.y and has revised the rule by placing construction equipment under paragraph .y of ECCN 0A617.

**Comment:** One commenter asked that BIS clarify what is covered or is meant by the term “test models,” as proposed in the May 18 (auxiliary equipment) rule to be covered by paragraph .d of ECCN 0A617. The commenter went on to say that without the clarification the control could have significant licensing impact on all USML-controlled programs, as well as some systems in the EAR. As proposed, test models could include both physical and standard computer test models/programs. Exporters would be required to apply for a license for computer test models that simply validate form, fit and function or dynamic physical properties of an end item. The commenter recommended that this item be deleted. Existing USML and EAR controls are adequate to control sensitive test models.

**Response:** BIS does not accept the recommendation that test models under ECCN 0A617 be deleted. Instead, this rule clarifies in ECCN 0A617.d what is meant by test models for purposes of that entry, which does not control software. To the extent software is controlled, it is described in a D group ECCN. In the proposed rule, BIS stated that such items are identified in WAML category ML17.n and controlled in relation to the defense article they model, such as items in USML Categories VII(g) and VIII(h). However, to address the commenter's request for further guidance on what is meant by the term test model for purposes of complying with the EAR, and to track more closely with the WAML, this rule narrows ECCN 0A617.d to control test models for defense articles in USML Categories IV, VI, VII and VIII.

**Comment:** A commenter recommended that the description of items as proposed in the May 18 (auxiliary equipment) rule to be covered by then paragraph .y.1 of ECCN 0A617 (containers "specially designed for defense articles or items controlled by a "600 series") be modified if the proposed definition of "specially designed" in the June 19 (specially designed) rule changed or was not adopted. Positive criteria are needed for "parts," "components," "accessories," and "attachments" cited in the Federal Register notice. As proposed, the wording of 0A617.y.1 would be sufficient only to control containers that are part or component of a defense article or "600 series" item, or an accessory or attachment of such articles if it also enhances the article's usefulness or effectiveness.

**Response:** The intended scope of paragraph y.1 was to control containers as "end items." Containers "specially designed" for use in or with controlled items may be controlled without

being a “part,” “component,” “accessory,” or “attachment.” To refine the scope of coverage, in this final rule, BIS revised the description of containers to be covered by ECCN 0A617.y.3 by limiting the containers to those that are not elsewhere specified on the CCL and that are “specially designed” for shipping or packing defense articles or “600 series” items.

**Comment:** A commenter recommended deleting field generators “specially designed” for military use covered by proposed paragraph .y.2 in ECCN 0A617. The commenter noted that the Department of State, Directorate of Defense Trade Controls determined in a commodity jurisdiction determination that these items were classified under ECCN 2A994. The commenter added that this existing ECCN for portable electric generators and specially designed parts seems to be more suitable to control these generators/items.

**Response:** BIS does not adopt this recommendation. Items “specially designed” for military use are to be controlled in “600 series” items, particularly when listed on the WAML. Thus, BIS will control field generators specially designed for military use in 0A617.y. Items controlled by 2A994 continue to be controlled by 2A994.

#### **ECCN 0C617 Miscellaneous Materials “Specially Designed” for Military Use**

**Comment:** A commenter recommended that specific positive criteria be provided in the entry for proposed paragraph .a of ECCN 0C617 - materials, coatings, and treatments for signature suppression, “specially designed” for military use that are not controlled by the USML Category XIII or ECCNs 1C001 or 1C101. The commenter stated that such criteria are needed to prevent misinterpretation of what is caught by the ECCN because the term significant suppression is not defined and lacks positive criteria as to what level of suppression would be caught by the ECCN. As proposed, use of thicker sheet metal or insulation (both are material) to reduce noise level (acoustic signature) could be construed as controlled by 0C617.a.

**Response:** To clarify the scope of the items covered by paragraph .a of ECCN 0C617, BIS revised the description of that paragraph. That paragraph now reads “[m]aterials, coatings and treatments for signature suppression, “specially designed” for military use to reduce detectability or observability and that are not controlled by USML Category XIII or ECCNs 1C001 or 1C101.”

## **Detailed Description of 0Y617 ECCNs Final Provisions Compared to the Proposed Rule**

### ***New ECCN 0A617: Miscellaneous equipment, materials, and related commodities***

The May 18 (auxiliary equipment) rule proposed to include in ECCN 0A617.a the control of construction equipment “specially designed” for military use, including such equipment

“specially designed” for transport in aircraft controlled by USML Category VIII(a) or ECCN 9A610.a; and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor, including crew protection kits used as protective cabs. Such items were controlled under ECCN 0A018.a as “construction equipment built to military specifications, including equipment specially designed for airborne transport; and specially designed parts and accessories for such construction equipment, including crew protection kits used as protective cabs,” and are identified in WAML category ML 17.b. In response to comment and upon further review, BIS determined that construction equipment and “parts,” “components,” “accessories,” and “attachments” for such equipment, if “specially designed” for a defense article or “600 series” end item appropriately will be controlled for anti-terrorism (AT) reasons only by paragraph .y.1 of ECCN 0A617. Paragraph .a is reserved.

As was proposed, ECCN 0A617.b controls concealment and deception equipment “specially designed” for military application that are not controlled in USML Category XIII(g), as well as “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor.

ECCN 0A617.c controls ferries, bridges (other than those described in ECCN 0A606 or USML Category VII), and pontoons if the ferries, bridges or pontoons are “specially designed” for military use. Although not explicitly named or described on the USML, these items were controlled by USML Category VII(g) and identified in WAML category ML 17.m.

In this final rule, ECCN 0A617.d controls test models “specially designed” for the “development” of defense articles controlled by the USML in Categories IV, VI, VII and VIII.

ECCN 0A617.e is reserved. The photointerpretation, stereoscopic plotting, and photogrammetry equipment originally proposed to be controlled in paragraph .e are retained on the USML.

ECCN 0A617.f controls “metal embrittlement agents,” currently controlled by USML Category XIII(i) but not within the scope of the revised Category XIII the State Department has proposed. The term “metal embrittlement agents” is defined in the EAR the same way it is defined in the ITAR.

Paragraphs .g through.x are reserved. Unlike other proposed “600 series” ECCN rules previously published as a part of ECR, ECCN 0A617, and the other ECCNs in the 0Y617 series, still do not contain a catch-all control in the “.x” subparagraph for all parts and components “specially designed” for items in that category because neither USML Category XIII nor WAML category ML17 contain such a catch-all for auxiliary or miscellaneous military equipment. To the extent a part or component is controlled in this ECCN, it is described in the applicable subparagraphs.

Paragraph .y controls other commodities, as listed in the .y subparagraphs. However, in the May 18 (auxiliary equipment) rule, BIS proposed that ECCN 0A617.y.1 would control containers “specially designed” for military use, which are currently identified in WAML category ML 17.i. ECCN 0A617.y.2 would control military field generators, which are currently identified in WAML category ML 17.k. ECCN 0A617.y.3 would control military power-controlled searchlights and related items. Such items were classified under ECCN 0A918.a as “miscellaneous military equipment.”

In this final rule, ECCN 0A617.y.1 controls construction equipment “specially designed” for military use, including such equipment “specially designed” for transport in aircraft controlled by USML Category VIII(a) or ECCN 9A610.a. “Parts,” “components,” “accessories,” and “attachments” “specially designed” therefor, including crew protection kits used as protective cabs, are controlled in 0A617.y.2.

Containers “specially designed” for military use, which are currently identified in WAML category ML17.l, are controlled by ECCN 0A617.y.3. Military field generators, which are currently identified in WAML category ML17.k, are controlled by ECCN 0A617.y.4. Military power-controlled searchlights and related items are controlled by ECCN 0A617.y.5. Such items were classified under ECCN 0A918.a as “miscellaneous military equipment.”

Finally, as noted in the May 18 (auxiliary equipment) rule, to the extent an item referred to in WAML category ML17 is already clearly controlled in another existing USML Category or ECCN, then the “related controls” note at the beginning of proposed ECCN 0A617 identifies where in the CCL or the USML it is controlled.

***New ECCN 0B617: “Equipment” “specially designed” for commodities controlled by ECCN 0A617 or USML Category XIII.***

Consistent with the April 16 (initial implementation) rule, ECCN 0B617.a controls test, inspection, and production “equipment” not controlled by USML Category XIII(k) “specially designed” for the “production,” “development,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A617 (except for 0A617.y) or USML Category XIII, and “parts,” components,” “accessories,” and “attachments” specially designed” therefor. Paragraph .b is reserved.

A note to 0B617 explains that field engineer equipment “specially designed” for use in a combat zone and mobile repair shops “specially designed or modified to service military equipment, which are identified in WAML category ML17.d and 17.j,” respectively, are classified under ECCN 0B617 to the extent that the items are not included in USML XIII(k).

***New ECCN 0C617: Miscellaneous materials “specially designed” for military use***

ECCN 0C617.a controls materials, coatings and treatments for signature suppression, “specially designed” for military use to reduce detectability or observability and that are not controlled by the USML or ECCNs 1C001 or 1C101. The May 18 (auxiliary equipment) rule listed the units in which commodities controlled by this ECCN would be licensed as “End items in number; parts, components, accessories and attachments in \$ value.” This final rule replaces that sentence with “\$ value,” which is the unit used for licensing materials in other ECCNs. Unchanged from the May 18 (auxiliary equipment) rule, paragraph .b is reserved.

***New ECCN 0D617: “Software” “specially designed” for items controlled by ECCN 0A617, 0B617 or 0C617***

Consistent with the April 16 (initial implementation) rule, ECCN 0D617.a controls “software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 0A617, “equipment” controlled by ECCN 0B617, or materials controlled by ECCN 0C617 as described in the proposed rule. Paragraphs .b through .x are reserved.

Consistent with the other implemented “600 series” software controls, the .y paragraphs for ECCN 0D617 controls specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities controlled by ECCN 0A617.y.

***New ECCN 0E617: “Technology” “required” for items controlled by ECCN 0A617, 0B617, 0C617 or 0D617***

As provided in the May 18 (auxiliary equipment) rule, ECCN 0E617.a controls “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 0A617, “equipment” controlled by ECCN 0B617, materials controlled by ECCN 0C617, or “software” controlled by ECCN 0D617. Items controlled by ECCN 0E617 include “technology” previously in ECCN 0E018 for the “production” of crew protection kits used as protective cabs (previously in ECCN 0A018.a and proposed for ECCN 0A617). Paragraphs .b through .x are reserved.

Subparagraph .y. of ECCN 0E617 controls specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul or refurbishing of items controlled by ECCNs 0A617.y or 0D617.y. ECCN 0E617.y.1 controls “technology” for military power-controlled searchlights and related items, which would be classified under ECCN 0A617.y.5, instead of .y.3 as originally proposed, (moving from ECCN 0A918.a). The “technology” for such items is classified under ECCN 0E617.y.

## **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 final rule would affect the following approved collections: Simplified Network Application Processing System (control number 0694-0088), which includes, among other things, license applications; license exceptions (0694-0137); voluntary self-disclosure of violations (0694-0058);

recordkeeping (0694-0096); export clearance (0694-0122); and the Automated Export System (0607-0152).

As stated in the July 15 (framework) rule, BIS believed that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 16,000 annually. As the review of the USML progressed, the interagency group gained more specific information about the number of items that would come under BIS jurisdiction. As of the June 21 (transition) rule, BIS estimated the increase in license applications to be 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694-0088. BIS continues to review its estimate of this level of increase as more information becomes available. As described below, the *net* burden U.S. export controls impose on U.S. exporters will go down as a result of the transfer of less sensitive military items to the jurisdiction of the CCL and the application of the license exceptions and other provisions set forth in this rule.

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 an eligibility request. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694-0137 by about 14,758

hours (12,650 transactions at 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.

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, certified to the Chief Counsel for Advocacy that this rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was stated in the preambles to proposed rules at 76 FR 76085, 76091, December 6, 2011; 76 FR 80282, 80287, December 23, 2011; 76 FR 80291, 80298, December 23, 2011; and 77 FR 29564, 29570, May 18, 2012. BIS received no comments on that rationale and is making no changes to it for this final rule. Therefore, it is not repeated here.

## **List of Subjects**

### **15 CFR Part 740**

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

### **15 CFR Part 742**

Exports, Terrorism

### **15 CFR Parts 770 and 772**

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 amended as follows:

### **PART 740 – [AMENDED]**

1. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

2. Section 740.20 is amended by revising paragraphs (b)(3)(iii) and (g)(1), as added April 16, 2013, at 78 FR 22718, effective October 15, 2013, to read as follows:

**§ 740.20 License Exception Strategic Trade Authorization (STA).**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) License Exception STA may not be used to export, reexport, or transfer (in-country) end items described in ECCN 0A606.a, ECCN 8A609.a, ECCN 8A620.a or .b, or ECCN 9A610.a until after BIS has approved their export under STA under the procedures set out in § 740.20(g).

\* \* \* \* \*

(g) \* \* \*

(1) *Applicability.* Any person may request License Exception STA eligibility for end items described in ECCN 0A606.a, ECCN 8A609.a, ECCN 8A620.a or .b, or ECCN 9A610.a.

\* \* \* \* \*

**PART 742 – [AMENDED]**

3. The authority citation paragraph for part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; Sec 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

4. Section 742.6 is amended by revising paragraph (a)(4)(i) to read as follows:

**§ 742.6 Regional stability.**

(a) \* \* \*

(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 all items in ECCNs on the CCL that include RS Column 2 in the Country Chart column of the “License Requirements” section.

\* \* \* \* \*

**PART 770 – [AMENDED]**

5. 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 15, 2012, 77 FR 49699 (August 16, 2012).

**§ 770.2 [Amended]**

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

**PART 772 – [AMENDED]**

7. The authority citation for part 772 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 15, 2012, 77 FR 49699 (August 16, 2012).

8. Section 772.1 is amended by adding a definition for “metal embrittlement agents” in alphabetical order to read as follows:

**§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR)**

\* \* \* \* \*

*Metal embrittlement agents.* (Cat. 0) – Non-lethal weapon substances that alter the crystal structure of metals within a short time span. Metal embrittlement agents severely weaken metals by chemically changing their molecular structure. These agents are compounded in various substances to include adhesives, liquids, aerosols, foams, and lubricants.

\* \* \* \* \*

**PART 774 - [AMENDED]**

9. 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).

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0 – Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] – Export Control Classification Number (ECCN) 0A018 is amended by:

a. Adding a sentence to the end of the Related Controls paragraph in the List of Items Controlled section as set forth below; and

b. Removing and reserving paragraph .a in the Items paragraph of the List of Items Controlled section:

**0A018 Items on the Wassenaar Munitions List**

\* \* \* \* \*

***List of Items Controlled:***

*Unit:* \* \* \*

*Related Controls:* \*\*\* (1) See 0A979, 0A988, and 22 CFR 121.1 Categories I(a), III(b-d), and X(a). (2) See ECCN 0A617.y.1 and .y.2 for items formerly controlled by ECCN 0A018.a.

*Related Definitions:* \* \* \*

*Items:*

a. [RESERVED].

\* \* \* \* \*

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] add new ECCNs 0A606 and 0A617 between ECCNs 0A521 and 0A918 to read as follows:

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

**License Requirements**

License Requirements

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

<b>Control(s)</b>	<b>Country chart</b>
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
UN applies to entire entry, except 0A606.y	See § 746.1(b) for UN controls

### **License Exceptions**

*LVS*: \$1500

*GBS*: N/A

*CIV*: N/A

*STA:* (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 0A606.a, 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). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A606.

### **List of Items Controlled**

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

*Related Controls:* (1) The ground vehicles, other articles, technical data (including software) and services described in 22 CFR part 121, Category VII 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 a *de minimis* amount of U.S.-origin “600 series” controlled content.

*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 1 to paragraph .a:* For purposes of paragraph .a, “ground vehicles” include (i) tanks and armored vehicles manufactured prior to 1956 that have not been modified since 1955 and 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 (iv) 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. For purposes of this note, the term “modified” does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint or repositioning of bolt holes) or addition of “parts” or “components” available prior to 1956.*

*Note 2 to paragraph .a: A ground vehicle’s being “specially designed” for military use for purposes of determining controls under paragraph .a. entails a structural, electrical or mechanical feature involving one or more components that are “specially designed” for military use. Such components include:*

- a. Pneumatic tire casings of a kind specially designed to be bullet-proof;*
- b. Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs);*
- c. Special reinforcements or mountings for weapons;*
- d. Black-out lighting.*

*b. Other ground vehicles, “parts” and “components,” as follows:*

*b.1. Unarmed vehicles that are derived from civilian vehicles and that have all of the following:*

b.1.a. Manufactured 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.1.b. A transmission to provide drive to both front and rear wheels simultaneously, including those vehicles having additional wheels for load bearing purposes whether driven or not;

b.1.c. Gross vehicle weight rating (GVWR) greater than 4,500 kg; *and*

b.1.d. Designed or modified for off-road use.

b.2. “Parts” and “components” having all of the following:

b.2.a. “Specially designed” for vehicles specified in paragraph .b.1 of this entry; *and*

b.2.b. Providing ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better.

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

*Note 3 to paragraph b: “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 0A606.y) or a defense article enumerated in USML Category VII and not elsewhere specified on the USML or in 0A606.y.

*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 mechanical properties, 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 discs, rotors, drums, calipers, cylinders, pads, shoes, lines, hoses, vacuum boosters, and parts therefor;
- 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.

**0A617 Miscellaneous “equipment,” materials, and related commodities (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 0A617.y	NS Column 1
RS applies to entire entry, except 0A617.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 0A617.y	See §764.1(b) for UN controls

**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 0A617.

### **List of Items Controlled**

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

*Related Controls*: (1) Defense articles, such as materials made from classified information, that are controlled by USML Category XIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content. (3) For controls on self-contained diving and underwater swimming apparatus and related commodities, see ECCN 8A620.f. (4) For controls on robots, robot controllers, and robot end-effectors, see USML Category VII and ECCNs 0A606 and 2B007. (5) “Libraries,” *i.e.*, parametric technical databases, “specially designed” for military use with equipment controlled by the USML or a “600 series” ECCN are controlled by the technical data and technology controls pertaining to such items. (6) For controls on nuclear power generating equipment or

propulsion equipment, including “nuclear reactors,” “specially designed” for military use, and parts and components “specially designed” therefor, see USML Categories VI, XIII, XV, and XX. (7) Simulators “specially designed” for military “nuclear reactors” are controlled by USML Category IX(b). (8) See USML Categories X, XI and XII for laser protection equipment (e.g., eye and sensor protection) “specially designed” for military use. (9) “Fuel cells” “specially designed” for a defense article not on the USML or a commodity controlled by a “600 series” ECCN are controlled according to the corresponding “600 series” ECCN for such end items. (10) See USML Category XV for controls on fuel cells specially designed for satellite or spacecraft.

***Items:***

a. [RESERVED]

b. Concealment and deception equipment “specially designed” for military application, including special paints, decoys, smoke or obscuration equipment and simulators, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor, not controlled by USML Category XIII.

c. Ferries, bridges (other than those described in ECCN 0A606 or USML Category VII), and pontoons, “specially designed” for military use.

d. Test models “specially designed” for the “development” of defense articles controlled by USML Categories IV, VI, VII and VIII.

e. [RESERVED]

f. “Metal embrittlement agents.”

g. through x. [RESERVED]

y. Other commodities as follows:

y.1. Construction equipment “specially designed” for military use, including such equipment “specially designed” for transport in aircraft controlled by USML VIII(a) or ECCN 9A610.a.

y.2. “Parts,” “components,” “accessories,” and “attachments” “specially designed” for commodities in paragraph .y.1 of this entry, including crew protection kits used as protective cabs.

y.3. Containers, n.e.s., “specially designed” for shipping or packing defense articles or items controlled by a “600 series” ECCN.

y.4. Field generators “specially designed” for military use.

y.5. Power controlled searchlights and control units therefor, “specially designed” for military use, and “equipment” mounting such units.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A918 is amended by:

a. revising the License Exceptions section; and

b. revising the List of Items Controlled section, to read as follows:

**0A918 Miscellaneous Military Equipment Not on the Wassenaar Munitions List (see List of Items Controlled).**

\* \* \* \* \*

**License Exceptions**

*LVS:* \$1500

*GBS:* N/A

*CIV:* N/A

**List of Items Controlled**

*Unit:* In Number.

*Related Controls:* See ECCN 0A617.y.5 for items formerly controlled by ECCN 0A918.a.

*Related Definitions:* N/A

*Items:* Bayonets.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add new ECCNs 0B606 and 0B617 between ECCNs 0B521 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,” “production” repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A606 or USML Category VII (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

UN applies to entire entry	See § 746.1(b) for UN controls
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### **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 0B606.

### **List of Items Controlled**

*Unit*: Equipment in units. “Parts,” “components,” “accessories,” and “attachments” in \$ value.

*Related Controls*: (1) Ground vehicles, other articles, technical data (including software) and services described in 22 CFR part 121, Category VII 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 a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions:* N/A

*Items:*

a. Test, inspection, and production “equipment” “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A606 (except for 0A606.b or 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.

**0B617 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of**

commodities enumerated in ECCN 0A617 or USML Category XIII, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor (see List of Items Controlled).

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

**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 0B617.

### **List of Items Controlled**

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

*Related Controls:* See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions:* N/A

*Items:*

a. Test, inspection, and production “equipment” not controlled by USML Category XIII(k) “specially designed” for the “production,” “development,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A617, (except for 0A617.y) or USML Category XIII, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor.

b. [RESERVED].

*Note: Field engineer equipment “specially designed” for use in a combat zone, identified in the Wassenaar Arrangement Munitions List 17.d, and mobile repair shops “specially designed” or modified to service military equipment, identified in Wassenaar Arrangement Munitions List 17.j, are controlled by 0B617 to the extent that the items are not included in USML Category XIII(k).*

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add new ECCNs 0C606 and 0C617 after ECCN 0C521 to read as follows:

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

## **License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

### **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 0C606.

## List of Items Controlled

*Unit:* \$ value

*Related Controls:* (1) Materials that are subject to the jurisdiction of the ITAR are described in USML Category XIII. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions:* N/A

*Items:* Materials “specially designed” for 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:* 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.

**0C617 Miscellaneous Materials “Specially Designed” for Military Use (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

**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 0C617.

### **List of Items Controlled**

*Unit:* \$ value.

Related Controls: (1) For controls on other signature suppression materials, see USML Category XIII and ECCNs 1C001 and 1C101. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

***Items:***

a. Materials, coatings and treatments for signature suppression, “specially designed” for military use to reduce detectability or observability and that are not controlled by USML Category XIII or ECCNs 1C001 or 1C101.

b. [RESERVED].

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add new ECCNs 0D606 and 0D617 after 0D521 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 (see List of Items Controlled).**

### **License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
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
UN applies to entire entry, except 0D606.y	See § 746.1(b) for UN controls

**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*: \$ value.

*Related Controls:* (1) Software directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h). (2) See ECCN 0A919 for foreign made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*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. through x. [RESERVED]

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

**0D617 “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 0A617, “equipment” controlled by 0B617, or materials controlled by 0C617 (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 0D617.y	NS Column 1
RS applies to entire entry, except 0D617.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 0D617.y	See § 746.1(b) for UN controls

**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 0D617.

### **List of Items Controlled**

*Unit:* \$ value.

*Related Controls:* (1) “Software” directly related to articles controlled by USML Category XIII is subject to the control of USML paragraph XIII(1). (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions:* N/A

*Items:*

a. “Software” (other than “software” controlled in paragraph .y of this entry) “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCNs 0A617 (except 0A617.y), 0B617, or 0C617.

b. to x. [RESERVED].

y. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities controlled by ECCN 0A617.y.

16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0 – Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] – ECCN 0E018 is amended by adding a note at the end of the entry to read as follows:

**0E018 “Technology” for the “development,” “production,” or “use” of items controlled by 0A018.**

\* \* \* \* \*

*Note: This ECCN no longer controls “technology” for items formerly controlled by 0A018.a See ECCN 0A617.y.1 and.y.1.a for items formerly controlled by 0A018.a and see the “technology” controls for those items in ECCN 0E617.y.*

17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] add new ECCNs 0E606 and 0E617 between ECCNs 0E521 and 0E918 to read as follows:

**0E606 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of ground vehicles and related commodities in 0A606, 0B606, 0C606, or software in 0D606 (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
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
UN applies to entire entry, except 0E606.y	See § 746.1(b) for UN controls

### **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).

*Related Definitions:* N/A

*Items:*

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y).

b. through x. [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 0A606.y or 0D606.y.

**0E617 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A617, “equipment controlled by 0B617, or materials controlled by 0C617, or “software” controlled by ECCN 0D617 (see List of Items Controlled).**

### **License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 0E617.y	NS Column 1
RS applies to entire entry, except 0E617.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 0E617.y	See § 746.1(b) for UN controls

### **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 0E617.

### **List of Items Controlled**

*Unit:* \$ value.

*Related Controls:* Technical data directly related to articles controlled by USML Category XIII are subject to the control of USML paragraph XIII(l).

*Related Definitions:* N/A

*Items:*

a. “Technology” (other than “technology” controlled by paragraph .y of this entry) “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or “software” controlled by ECCN 0A617 (except 0A617.y), 0B617, 0C617, or 0D617 (except 0D617.y).

b. through x. [RESERVED].

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A617.y or “software” controlled by 0D617.y.

18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, ECCN 8A018 is revised to read as follows:

**8A018 Items on the Wassenaar Arrangement Munitions List.**

No items currently are in this ECCN. See ECCN 8A609 for engines and propulsion systems and specially designed components therefor that, immediately prior to [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], were classified under ECCN 8A018.b.3. See ECCN 8A620 for closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible vessels (diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over “specially designed” for submarines), submarine and torpedo nets, and specially designed components therefor that, immediately prior to [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], were classified under ECCN 8A018.a, .b.1, or .b.4, respectively. See ECCNs 8A001, 8A002 and 8A992 for controls on non-military submersible vehicles, oceanographic and associated equipment. See USML Category XX (22 CFR part 121) for electric motors specially designed for submarines that, immediately prior to [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], were classified under ECCN 8A018.b.2.

19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, add new ECCNs 8A609 and 8A620 between ECCNs 8A018 and 8A918 to read as follows:

**8A609 Surface vessels of war and related commodities (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 8A609.y	NS Column 1
RS applies to entire entry, except 8A609.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 8A609.y	See § 746.1(b) for UN controls

**License Exceptions**

*LVS*: \$1500

*GBS*: N/A

*CIV*: N/A

*STA*: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 8A609.a, 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). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8A609.

### **List of Items Controlled**

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

*Related Controls*: (1) Surface vessels of war and special naval equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category VI, Surface Vessels of War and Special Naval Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content. (3) For controls on diesel engines and electric motors for

surface vessels of war subject to the EAR, see ECCN 8A992.g. (4) For controls on military gas turbine engines and related items for vessels of war, see ECCN 9A619.

*Related Definitions:* N/A

*Items:*

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

*Note 1: 8A609.a includes: (i) underway replenishment ships; (ii) surface vessel and submarine tender and repair ships, except vessels that are “specially designed” to support naval nuclear propulsion plants; (iii) non-submersible submarine rescue ships; (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT);*

*(v) amphibious warfare craft, except those that are armed; and (vi) unarmored and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.*

*Note 2: For purposes of paragraph .a, surface vessels of war includes vessels “specially designed” for military use that are not identified in paragraph (a) of ITAR § 121.15, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and that have not been modified since 1949. For purposes of this note, the term modified does not*

*include incorporation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of “parts” or “components” available prior to 1950.*

b. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

b.1. Non-magnetic content exceeding 25% of total weight; *or*

b.2. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

c. through w. [RESERVED]

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

*Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable*

*by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.*

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

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

y.1. Public address (PA) systems;

y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;

y.3. Galleys;

y.4. Lavatories;

y.5. Magnetic compass, magnetic azimuth detector;

y.6. Medical facilities;

y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;

y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;;

y.9. Emergency lighting;

y.10. Gauges and indicators;

y.11. Audio selector panels.

**8A620 Submersible vessels, oceanographic and associated commodities (see List of Items Controlled).**

### **License Requirements**

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

Control(s)	Country chart
NS applies to entire entry, except 8A620. b and .y	NS Column 1
RS applies to entire entry, except 8A620.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 8A620.y	See § 746.1(b) for UN controls

### License Exceptions

*LVS*: \$1500

*GBS*: N/A

*CIV*: N/A

*STA*: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 8A620.a or .b, 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). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8A620.

### **List of Items Controlled**

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

*Related Controls:* (1) Submersible vessels, oceanographic and associated equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category XX, Submersible Vessels, Oceanographic and Associated Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). “Parts,” “components,” “accessories,” and “attachments” “specially designed” for defense articles in USML Category XX are controlled under USML sub-category XX(c). (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content. (3) For controls on non-military submersible vehicles, oceanographic and associated equipment, see ECCNs 8A001, 8A002, and 8A992. (4) See ECCN 8A609 for controls on non-magnetic diesel engines with a power output of 50 hp or more and either: (i) non-magnetic content exceeding 25% of total weight; or (ii) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

*Related Definitions:* N/A

*Items:*

a. Submersible and semi-submersible vessels “specially designed” for a military use and not enumerated in the USML.

*Note: 8A620.a includes submarine rescue vehicles and Deep Submergence Vehicles (DSV).*

b. Submersible and semi-submersible vessels “specially designed” for cargo transport and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor.

c. Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL.

d. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over “specially designed” for submarines.

*Note: Propulsion systems not specified in ECCN 8A620.d that are “specially designed” for an article controlled by USML Category XX are controlled by USML XX(b) or (c).*

e. Submarine nets and torpedo nets.

f. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use and not enumerated elsewhere in the CCL or in the USML, and specially designed components for use in the conversion of open-circuit apparatus to military use.

g. through w. [RESERVED]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity enumerated in ECCN 8A620 (except for 8A620.b or .y) and not specified elsewhere on the USML or in 8A620.y.

*Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 8A620.x are controlled by ECCN 8A620.x.*

*Note 2: “Parts,” “components,” “accessories” and “attachments” specified in ECCN 8A620.y are subject to the controls of that paragraph.*

y. Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity subject to control in this ECCN, as follows:

- y.1. Public address (PA) systems;
- y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;
- y.3. Galleys;
- y.4. Lavatories;
- y.5. Magnetic compass, magnetic azimuth detector;
- y.6. Medical facilities;
- y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;
- y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;
- y.9. Emergency lighting;

y.10. Gauges and indicators;

y.11. Audio selector panels.

20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, add new ECCNs 8B609 and 8B620 immediately following ECCN 8B001 to read as follows:

**8B609 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A609 or USML Category VI (except for Cat VI(f)(7)), as follows.**

### **License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
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NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

### **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 8B609.

### **List of Items Controlled**

*Unit:* N/A

Related Controls: See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions:* N/A

*Items:*

a. Test, inspection, and production “equipment” “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A609 (except for 8A609.y) or in USML Category VI (except for USML Cat VI(f)(7)), and “parts,” “components,” “accessories” and “attachments” “specially designed” therefor.

b. [RESERVED]

**8B620 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620 (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 8B620.b	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

**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 8B620.

### **List of Items Controlled**

*Unit*: N/A

*Related Controls*: See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions*: N/A

*Items*:

- a. Test, inspection, and production “equipment” “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620

(except for 8A620.b and .y) and “parts,” “components,” “accessories” and “attachments” “specially designed” therefor.

b. Test, inspection, and production “equipment” “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620.b and “parts,” “components,” “accessories” and “attachments” “specially designed” therefor.

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

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

### **License Requirements**

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

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

**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 8C609.

**List of Items Controlled**



**8D609 “Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by 8A609, 8B609, or 8C609 (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 8D609.y	NS Column 1
RS applies to entire entry, except 8D609.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 8D609.y	See § 746.1(b) for UN controls

**License Exceptions**

*CIV:* N/A

*TSR:* N/A

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

### **List of Items Controlled**

*Unit:* \$ value.

*Related Controls:* (1) “Software” directly related to articles enumerated in USML Category VI is controlled under USML Category VI(g). (2) See ECCN 0A919 for foreign made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions:* N/A

*Items:*

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

b. through .x [RESERVED]

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities in ECCN 8A609.y.

**8D620 “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 8A620 or 8B620 (see List of Items Controlled).**

### **License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 8D620.b and .y	NS Column 1
RS applies to entire entry, except 8D620.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 8D620.y	See § 746.1(b) for UN controls

### **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 8D620.

## List of Items Controlled

*Unit:* \$ value

*Related Controls:* (1) “Software” directly related to articles enumerated in USML Category XX is controlled under USML Category XX(d). (2) See ECCN 0A919 for foreign made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

*Related Definitions:* N/A

*Items:*

a. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 8A620 or ECCN 8B620 (except for commodities controlled by ECCN 8A620.b or .y or ECCN 8B620.b).

b. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 8A620.b or ECCN 8B620.b.

c. through .x [RESERVED]

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities in ECCN 8A620.y.

23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, add new ECCNs 8E609 and 8E620 between ECCN 8E002 and 8E992 to read as follows:

**8E609 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A609, 8B609, or 8C609, or “software” controlled by 8D609 (see List of Items Controlled).**

#### **License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 8E609.y	NS Column 1
RS applies to entire entry, except 8E609.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 8E609.y	See § 746.1(b) for UN controls

### **License Exceptions**

*CIV*: N/A

*TSR*: N/A

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

## List of Items Controlled

*Unit:* N/A

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

*Related Definitions:* N/A

*Items:*

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

b. through .x [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software in ECCN 8A609.y or 8D609.y.

**8E620 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A620 or 8B620, or “software” controlled by 8D620 (see List of Items Controlled).**

**License Requirements**

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

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry, except 8E620.b and .y	NS Column 1
RS applies to entire entry, except 8E620.y	RS Column 1

AT applies to entire entry	AT Column 1
UN applies to entire entry, except 8E620.y	See § 746.1(b) for UN controls

## 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 8E620.

## List of Items Controlled

*Unit:* N/A

*Related Controls:* Technical data directly related to articles enumerated in USML Category XX are controlled under USML Category XX(d).

*Related Definitions:* N/A

*Items:*

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620 or 8B620 or “software” controlled by ECCN 8D620 (except for commodities controlled by ECCN 8A620.b or .y or ECCN 8B620.b or “software” controlled by 8D620.b or .y).

b. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620.b or 8B620.b or “software” controlled by ECCN 8D620.b.

c. through .x [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 8A620.y or 8D620.y.

24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A018 is revised to read as follows:

**9A018 Equipment on the Wassenaar Arrangement Munitions List.**

(a) See ECCN 9A610 for the aircraft, refuelers, ground equipment, parachutes, harnesses, and instrument flight trainers, as well as “parts”, “accessories,” and “attachments” for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f.

(b) See ECCN 9A619 for military trainer aircraft turbo prop engines and “parts” and “components” therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

(c) See ECCN 9A606.b for certain armored ground transport vehicles that prior to [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] were classified under ECCN 9A018.b.

25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9-- Aerospace and Propulsion, ECCN 9A619, the Note at the end of paragraph .a in the Items paragraph of the List of Items Controlled section is revised to read as follows:

**9A619 Military gas turbine engines and related commodities.**

\* \* \* \* \*

**List of Items Controlled**

\* \* \* \* \*

Items:

a. \* \* \*

**Note:** For purposes of ECCN 9A619.a, the term “military gas turbine engines” means gas turbine engines “specially designed” for “end items” enumerated in USML Categories VI, VII or VIII or on the CCL under ECCNs 0A606, 8A609 or 9A610.

\* \* \* \* \*

26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9-- Aerospace and Propulsion, ECCN 9D018 is revised to read as follows:

**9D018 “Software” for the “use” of equipment controlled by 9A018.**

(a) See ECCN 9D610 for “software” related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and “parts”, “accessories,” and “attachments” for the foregoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f.

(b) See ECCN 9D619 for “software” related to military trainer aircraft turbo prop engines and “parts” and “components” therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

(c) Software related to certain armored ground transport vehicles that prior to [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] were classified under ECCN 9A018.b is EAR99 (See 0D606).

27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9E018 is revised to read as follows:

**9E018 “Technology” for the “development,” “production,” or “use” of equipment controlled by 9A018.**

(a) See ECCN 9E610 for “technology” related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and “parts”, “accessories” and “attachments” for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f.

(b) See ECCN 9E619 for “technology” related to military trainer aircraft turbo prop engines and “parts” and “components” therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

(c) Technology related to certain armored ground transport vehicles that prior to [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] were classified under ECCN 9A018.b is EAR99 (See 0E606).

Kevin J. Wolf

Assistant Secretary for Export Administration

[FR Doc. 2013-16238 Filed 07/05/2013 at 8:45 am; Publication Date: 07/08/2013]