



Billing Code: 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 770 and 774

[Docket No. 151030999-6552-02]

RIN 0694-AG76

Clarifications and Revisions to Military Aircraft, Gas Turbine Engines and Related Items

License Requirements

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

ACTION: Final rule.

SUMMARY: This rule modifies the Commerce Control List (CCL) entries for two types of items: military aircraft and related items, and military gas turbine engines and related items. The rule adds clarifying text to the descriptions of the types of military aircraft controlled on the CCL. The lists of items that are subject only to the anti-terrorism reason for control are clarified and expanded. This rule, which is being published simultaneously with a rule by the Department of State, is based on a review of Categories VIII and XIX of the United States Munitions List (USML). This rule and the related Department of State rule are part of a plan to review rules published as part of the Export Control Reform Initiative (ECRI). This rule also furthers the retrospective regulatory review directed by the President in Executive Order 13563.

DATES: This rule is effective December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas DeFee or Jeffrey Leitz in the Office of Strategic Industries and Economic Security, Munitions Control Division by telephone at (202) 482-4506 or by email at Thomas.DeFee@bis.doc.gov or Jeffrey.Leitz@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS), Department of Commerce maintains the Export Administration Regulations (EAR), including the Commerce Control List (CCL). The Export Control Reform Initiative (ECRI), a fundamental reform of the U.S. export control system announced by the President in 2010, has resulted in the transfer to the CCL of military and other items the President determined did not warrant control on the USML, including certain military aircraft, military gas turbine engines, and related items. The USML is part of the International Traffic in Arms Regulations (ITAR) maintained by the Department of State. A core element of the ECRI is regularly streamlining USML categories and adding items that the President determines do not warrant USML control to the CCL. On December 10, 2010, the Department of State provided notice to the public of its intent, pursuant to the ECRI, to revise the USML to create a more “positive list” that describes controlled items using, to the extent possible, objective criteria rather than broad, open-ended, subjective, or design intent-based criteria (*see* 75 FR 76935). As a practical matter, this meant revising USML categories so that, with some exceptions, the descriptions of defense articles that continued to warrant control under the USML did not use catch-all phrases, such as “specially designed” or “specifically designed or modified,” to control unspecified items. With limited exceptions, the defense articles that warranted control under the USML were those that provided the United States with a critical military or intelligence advantage. All other items were to become subject to the jurisdiction of

the EAR and controlled as warranted for various national security, foreign policy, and other reasons. Since that time, the Departments of State and Commerce have jointly published final rules setting forth revisions for fifteen USML categories, each of which has been reorganized into a uniform and more “positive list” structure, and corresponding revisions to the CCL.

All references to the USML in this rule are to the list of defense articles controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations. *See* 27 CFR part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. The list of defense articles controlled by ATF for the purpose of permanent import is the U.S. Munitions Import List (USMIL). The transfer of defense articles from the ITAR’s USML to the EAR’s CCL does not affect the list of defense articles controlled on the USMIL.

As part of the ECRI, certain military aircraft and gas turbine engines along with related parts, components, accessories and attachments, materials, software, and technology were added to the CCL on October 15, 2013 (*see* 78 FR 22660, April 16, 2013). At the same time, the USML was amended by revising Category VIII (Aircraft and Related Articles) and by creating Category XIX (Gas Turbine Engines and Associated Equipment) to describe, for the most part, the defense articles in those categories that remained on the USML in positive, objective terms (*see* 78 FR 22740, April 16, 2013).

The advantage of revising the USML into a more positive list is that its controls can be tailored to satisfy the national security and foreign policy objectives of the ITAR by maintaining control over those defense articles that provide a critical military or intelligence advantage, or

otherwise warrant control under the ITAR, without inadvertently controlling items in normal commercial use or less sensitive military items. This approach, however, requires that both the USML and the CCL be regularly revised and updated to account for technological developments, practical application issues identified by exporters and reexporters, and changes in the military and commercial applications of items affected by the USML and the 600 series Export Control Classification Numbers (ECCNs).

In 2015, the Departments of Defense, State and Commerce reviewed the implementation of these changes to assess the effectiveness and utility of the 2013 amendments. That review included soliciting public comments by the Department of Commerce (*see* 80 FR 11315, March 2, 2015) and the Department of State (*see* 80 FR 11314, March 2, 2015).

After an interagency review of those public comments by the Departments of Defense, State, and Commerce, the Departments of Commerce and State published proposed rules to revise treatment of aircraft and gas turbine engines along with related parts, components, accessories and attachments, materials, software, and technology on the USML and the CCL (*see* 81 FR 6791 and 81 FR 6797, February 9, 2016, for Commerce and State's rules respectively). BIS's proposed rule is referred to in this document as the "February 9 rule." BIS is publishing this final rule, after an interagency review of the public comments on its proposed rule, simultaneously with a final rule being published by the Department of State.

This rule also furthers the retrospective regulatory review directed by the President in Executive Order 13563.

Public Comments on the Proposed Rule

Comment: One commenter asked BIS to insert text into licenses that the party who will conduct a re-export or transfer is required to inform subsequent parties in the transaction of

license terms and conditions. The commenter characterized this as a similar flow-down approach to informing parties that has been incorporated into Directorate of Defense Trade Controls (DDTC) authorizations.

This commenter also recommended that BIS consider clarifying or eliminating the requirement to obtain a letter of assurance in support of technology license applications as set forth in Supplement No. 2 to part 748, paragraph (o)(3)(i). The commenter stated that the requirement in that paragraph to submit the letter to BIS “upon request” combined with the requirement that, if the letter cannot be obtained, to state the reason the letter cannot be obtained in the license application creates ambiguity concerning the requirement.

Response: Although these are constructive proposals, they are outside the scope of the proposed rule. Therefore, BIS is making no changes to the proposed rule in response to these comments, but will consider them as part of other proposed rules to be issued later.

Comment: Four commenters addressed the proposal to replace with a single interpretation in § 770.2 a note that appears in several ECCNs. The note describes when an unfinished product is controlled in an ECCN. One commenter expressed approval of the idea because it centralizes the definition. Another commenter recommended retaining the note in individual ECCNs because doing so would, in the commenter’s view, aid classification. A third commenter expressed approval of the idea of one interpretation and asked whether the interpretation’s applicability would be limited to 600 series items and asked for clarification of the meaning of the term “clearly identifiable” in the text. The fourth commenter recommended that the applicability of the interpretation be extended to cover all unfinished commodities by removing the reference to the 600 series and that the definition of “material” in the EAR be revised to reference the interpretation.

Response: Although repeating the interpretation in each ECCN to which it applies might be a convenience for some users, doing so would lengthen the EAR and would increase the likelihood of inadvertent omissions or differences in text in the various renditions of the interpretation that would result. The text of this interpretation was adopted from the definition of defense article in § 120.6 of the ITAR, which applies throughout the USML. BIS is unaware of any difficulties that have arisen because the definition is not repeated throughout the USML. BIS believes that stating the interpretation and its scope once is the best way to promote a concise EAR and prevent inadvertent errors or omissions.

The interpretation was originally adopted as a series of notes in 600 series, Product Group A ECCNs so that commodities that were being transferred from the USML to the CCL would be subject to the same standard with respect to coverage of unfinished goods when on the CCL as they had been when on the USML. Because these commodities were previously on the USML, parties to transactions that are subject to the ITAR and the U.S. Government have substantial experience in dealing with the interpretation in connection with the commodities that are now in the 600 series. However, no such experience exists with respect to commodities that are not in the 600 series. To avoid possible unintended consequences, extending the interpretation to items outside the 600 series should not be undertaken without a comprehensive review to determine exactly which ECCNs would be affected and how they would be affected. Additionally, such a change would be outside the scope of what was in the proposed rule.

Although the interpretation does not define the term “clearly identifiable,” its text does provide some guidance. That term applies to unfinished products that “have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by any Product Group A . . . ‘600

series' ECCN.” When, based on consideration of its mechanical properties, material composition, geometry, or function, an unfinished product can be recognized readily as a commodity that is controlled in a 600 series, Product Group A ECCN, it is clearly identifiable as that commodity. This term has been used to describe the affected commodities for years when they were controlled on the USML, and BIS is not aware of any confusion on this point.

Finally, the interpretation is intended to identify when an unfinished product is to be treated for export control purposes as it would be treated if finished. It is not intended to apply to raw materials that have not been subjected to any manufacturing processes. To determine whether a raw material not identified on the USML would be controlled on the CCL as such (i.e., before it has been transformed as described above), one would need to review the C group ECCNs in the CCL.

Therefore, BIS is making no changes to the rule in response to this recommendation.

Comment: One commenter stated that under the EAR definition, the “‘range’ for . . . [unmanned aerial vehicle (UAV)] systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links or other external constraints.” The commenter suggested this condition be modified or removed to accommodate the increasing commercialization of UAVs. The commenter noted that: “Many potential customers have expressed the desire to purchase UAVs that are capable of remaining on station for extended periods of time, which requires a certain amount of fuel. . . . an aircraft that can fly in circles for hours over an oil pipeline or fishing territory could easily trip the MTCR range thresholds if not for operational restrictions and limitations imposed by telemetry and data links.”

Response: The definition of range to which the commenter refers is adopted from the Missile Technology Control Regime (MTCR) and used in the EAR with respect to items on the MTCR Annex. In accordance with the United States' commitment to the MTCR, BIS would not change that definition unless the MTCR agrees to change the definition on the Annex.

Accordingly, BIS is making no changes to the rule in response to this comment.

Comment: One commenter recommended that BIS add the phrase “with no fuel reserve” to technical note .d in the definition of “range” in the EAR to match the definition in note 2 to USML Category VIII(a) in the Department of State proposed rule.

Response: The definition of range in note 2 to USML Category VIII(a) of the Department of State proposed rule, although adopted from the MTCR definition of range, applies to things that are not on the MTCR annex, including certain manned aircraft for which range is one of the criteria that determines whether the aircraft is controlled under USML Category VIII(a). The notion of calculating the range of an aircraft that carries people without including an allowance for fuel reserves to deal with unexpected circumstances or emergencies is sufficiently unusual that the State proposed rule explicitly stated that fuel reserves should not be included when calculating range. By contrast, on the CCL, the term range, when describing how far something can fly, is used only in setting a criterion for the application of the missile technology reason for control and applies only to items controlled on the MTCR Annex, most of which, including unmanned vehicles, do not carry people. Thus, the exact text of the MTCR definition is appropriate. Therefore, BIS is making no changes to the rule in response to this comment.

Comment: One commenter proposed revising the definition of military aircraft in 9A610 Note 1 to apply to aircraft that are specially designed for operation by military end-users and to

exclude: aircraft that are not enumerated in USML Category VIII(a); civil aircraft (commenter's proposed definition in next comment); and aircraft for which the person obtaining airworthiness certification has "knowledge" that the aircraft will be a "civil aircraft" after planned designation in published airworthiness certification lists has been obtained. The note would define military end-users as meaning national armed services (army, navy, marine, air force, or coast guard), as well as national guard and national police, government intelligence or reconnaissance organizations, international military organizations, or irregular military forces or units. The commenter cited uniformity throughout the EAR, commonality of the definition for the CCL with the definition of military end user in part 744, consistency with the ITAR definition of defense services, and clarity with respect to non-military aircraft as the reason for proposing this change.

Response: BIS believes that the definition proposed by this commenter would not be an improvement over the text of the proposed rule. The commenter's proposed standard "specially designed for operation by military end users" would shift the focus from the capabilities of the aircraft to the nature of the intended end users. If adopted, this change would affect ECCNs that are outside the scope of the rule and should not be undertaken without seeking public comment on those changes. Accordingly, BIS is making no changes in response to this comment.

Comment: One commenter recommended adding a note to the definition of "civil aircraft" in EAR part 772 clarifying the meaning of the phrase "legitimate civil, private or business use" to explain which government uses fall within the term "legitimate civil use." The commenter suggested that activities such as wildlife and environmental aerial survey, forest fire suppression, and public hospital medevac would reasonably be considered "legitimate civil use" of aircraft even if flown by governments. The commenter asserted that, "given the definitions

for 'military end user' in EAR [sections] 744.9, 744.17, 744.21 and 'armed forces' on the DDTC DSP-83, industry would reasonably conclude that a national police helicopter is a 'military aircraft' for military uses but that an unarmed city police helicopter with a WA type certificate is a 'civil aircraft' put to a 'legitimate civil use.'”

Response: The suggestion would be a substantive change affecting multiple ECCNs outside the scope of the proposed rule. BIS is not adopting it in this final rule.

Comment: One commenter stated that commodities and software “specially designed” for current or planned “civil aircraft” should not be enumerated or described in ECCNs 9x610 or 9x619, even if DDTC controls the “civil aircraft” as a “defense article” because of a single incorporated defense article. For both the EAR and the ITAR, the full complement of “specially designed” items used in or with an aircraft should depend on more than incorporation of a single USML, 600 series, or xA018 commodity into the aircraft. It should also depend on whether the aircraft will be used for a purpose the government deems military, and if not, whether the items are classified in relation to the USML, 600 series, or xA018 commodity.

Response:

The commenter's concern is unwarranted because parts, components, accessories, attachments, and software subject to the EAR that are, *inter alia*, designed for or common to 9A991 civil aircraft or engines in production cannot, pursuant to the release provisions of the EAR's definition of "specially designed," become controlled under a 600 series ECCN merely because they are also used in an otherwise civil 9A991 aircraft or engine that has been converted to ITAR control by virtue of the provisions in USML Categories VIII(a) or XIX(a).

If a commodity or software is enumerated on the USML or in a 600 series ECCN, it is based on a decision that the commodity or software warrants control as a military item. BIS is making no change to the rule in response to this comment.

Comment: One commenter, referring to L-100 aircraft built prior to 2013, stated that “It is not appropriate to enumerate under ECCN 9A610, which controls military aircraft and related commodities, a “civil aircraft” that has been operated by commercial aircraft operators since the 1960s, has been operated by more than one U.S. commercial airline and has been out of production for nearly a quarter of a century. It would be appropriate to enumerate in 9A610 L-100 aircraft that have been modified for military end users and no longer meet the definition of “civil aircraft.” The commenter stated that BIS has the flexibility to control possible exports, reexports and transfers to undesired recipients in parts 744 and 746.

Response: BIS included L-100 aircraft in ECCN 9A610 to resolve a long history of complex jurisdictional and classification issues. Controlling existing L-100s in ECCN 9A610, but applying the same reasons for control as ECCN 9A991 is consistent with the reasons for control that applied to those aircraft historically under ECCN 9A991. Therefore, BIS is making no changes in the rule in response to this comment.

Comment: One commenter expressed agreement with and appreciation for the clarification of the status of L-100 aircraft and the 501-D22 engine. The commenter noted that the issue has been an ongoing discussion for years. This clarification will help to drive consistency.

Response: BIS agrees.

Comment: One commenter recommended that DDTC and BIS clarify that all non-ship based UAV launching, recovery and landing systems fall under ECCN 9A610.u (or another CCL category) or clarify when to use ECCN 9A610.u and when to use USML Category VIII(h)(5).

Response: To clarify where non-ship based launching, recovery, and landing systems are controlled, this final rule adds the word “runway” to ECCN 9A610.e to make clear that ECCN 9A610.e controls runway-based arresting and systems for all aircraft (whether manned or unmanned) that are controlled by either USML Category VIII(a) or ECCN 9A610.a. Shipboard engagement and arresting systems will continue to be controlled under USML Category VIII(d). Mobile land-based arresting and engagement systems on runways for manned and unmanned aircraft controlled under USML Category VIII(a) or ECCN 9A610.a will be controlled by ECCN 9A610.e. ECCN 9A610.u will control all other non-ship based devices for handling, control, activation, and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km. This final rule revises ECCN 9A115, which, prior to publication of this rule, referred readers only to the ITAR. The revised text alerts readers that both the ITAR USML Category VIII(d) and ECCN 9A610.e and .u need to be consulted when making jurisdictional and classification determinations regarding such items.

Comment: One commenter noted that the proposed rule incorporated text from a technical note that provides guidance on the meaning of the term “ground equipment” into the regulatory text of 9A610.f. The commenter noted that the word “includes,” which was in the technical note was omitted from proposed paragraph .f. This omission, the commenter noted, effectively narrowed the scope of the control from all ground equipment to only ground equipment for pressure refueling or to facilitate operation in confined areas. The commenter

stated that, if such was the intent, the word “other” should be removed from the phrase “Pressure refueling equipment and other ground equipment designed to facilitate operations in confined areas.”

Response: BIS agrees with the commenter’s interpretation. This final rule revises the text of paragraph .f to make clear that it applies only to pressure refueling equipment and equipment that facilitates operations in confined areas that are specially designed for military aircraft, *i.e.*, aircraft controlled in USML Category VIII(a) or ECCN 9A610.a.

Comment: One commenter noted that the proposed rule would make application of the national security and regional stability reasons for control for parts covered by ECCN 9A610.x dependent on the end use. The commenter stated that this would cause significant difficulties for compliance automation. The commenter noted that end use controls normally follow separate logic from CCL controls. Another commenter recommended that parts for L-100 aircraft should be controlled in 9A991.d. to eliminate confusion when all reasons of control are the same. The commenter stated that the proposed change leaves confusion on when a 9A610.x part requires NS and RS control.

Response: The first commenter’s perception that, in most instances, the EAR treats end-use based license requirements separately from CCL-based license requirements is correct. Only in a few instances is end use a factor to be considered in determining CCL-based license requirements. This rule creates an additional such instance with respect to aircraft parts that are common to C-130 aircraft and L-100 aircraft that were manufactured prior to 2013. If such parts are being exported or reexported to be installed in a C-130, the national security (NS 1) and regional stability (RS 1) reasons for control apply in addition to the anti-terrorism and United Nations embargo reasons for control. If the parts are being exported or reexported to be installed

in an L-100 built prior to 2013, only the antiterrorism and United Nations embargo reasons for control apply. The proposed rule created this structure to maintain the level of control that C-130 parts had before moving from the USML to the CCL and to retain the level of control that applied to L-100s and their parts when controlled under ECCN 9A991. BIS acknowledges that the structure is somewhat awkward but believes that it is less awkward than classifying these parts under two entirely different ECCNs (9A610 and 9A991) depending on which aircraft will use them. Given the small number of L-100s still in use (in its comment on the proposed rule, the manufacturer stated that it produced more than 100 L-100s from 1965 to 1992 and that more than 50 were still in operation), BIS believes that any problems with classification are likely to be small and are likely to diminish as existing L-100s are retired from service. Accordingly, BIS is making no change to the rule in response to these comments.

Comment: One commenter recommended that the phrase “not elsewhere specified on the USML, in 9A610.y, or 3A611.y,” which appeared in the text of ECCN 9A610.x in the proposed rule be changed to read “not elsewhere specified on the USML or in another 600 series entry.” The commenter stated that this change would bring 9A610.x into line with Supplement No. 4 to part 774 – Commerce Control List Order of Review.

Response: BIS believes that ECCN 9A610.x is consistent with Supplement No. 4 to Part 774 – Commerce Control List Order of Review without the change suggested by this commenter. The order of review provides for checking the USML before checking the CCL, checking 600 series ECCNs and ECCNs ending with the numerals “515” before checking other ECCNs, and within an ECCN, checking paragraphs that specifically enumerate the items they cover before checking paragraphs that describe the items they cover by a general description. The reference to 9A610.y in 9A610.x serves as a reminder to check the .y paragraph (which specifically

enumerates the items that it covers) before concluding that an item is controlled under 9A610.x. This reminder is useful because the paragraphs that precede paragraph .x all specifically enumerate the items that they cover whereas 9A610.x covers specially designed parts, but not specifically enumerated parts, for military aircraft. Readers who review the paragraphs in alphabetical order might erroneously conclude when they reach paragraph .x that no additional paragraphs that specifically enumerate the items that they control follow. The reference to ECCN 3A611.y serves a similar function because parts, components, accessories, and attachments enumerated in that paragraph might be specially designed for any 600 series ECCN. Although it is true that ECCN 9A610.x does not control parts, components, accessories, or attachments for items in other ECCNs, this fact is true for ECCNs generally. BIS does not believe that an additional reference is needed to make this point and is making no change to the rule in response to this comment.

Comment: One commenter stated that the effect on product classification of coating an aircraft part with a material controlled in USML Category XIII(j)(2) needed to be clarified. The commenter expressed a belief that DDTC has taken the position that the part is classified under USML Category XIII(j)(2) if any property of the material can be discerned after its application to the part is complete. The commenter stated that this interpretation can convert otherwise ECCN 9A610.x parts into ITAR-controlled and, in some instances, significant military equipment. Such an interpretation would create significant compliance and classification difficulties because, for example, the same part could have two different jurisdictional statuses. The commenter recommended that DDTC publish an interpretation confirming that XIII(j)(2) controls materials, not parts or components, and that BIS revise 9A610 to reinforce this point.

Response: The issues raised by this comment potentially apply not only to ECCN 9A610, but also to ECCNs that are outside the scope of this rule. In October 2015, the Department of State and BIS published notices of inquiry seeking comments on, *inter alia*, items controlled in USML Category XIII and related ECCNs (*see* 80 FR 61137 and 80 FR 61138). This commenter made a similar comment in response to the Department of State notice. Both agencies are now planning proposed rules dealing with USML Category XIII and related ECCNs as part of the ECRI's planned regular review of USML categories and their regular controls on the CCL. BIS believes that proposed rule will be a more appropriate vehicle for comprehensively addressing the issue raised by this commenter. Therefore, BIS is making no changes to this rule in response to this comment.

Comment: One commenter stated that moving items such as “specially designed” switches between various 600 series .y lists over time creates considerable labor for industry without any corresponding change in licensing policy. The commenter recommended that if an item is enumerated in 9A610.y or 9A619.y and has an equivalent enumeration in 3A611.y, then either ECCN could be allowed. This would allow appropriate policy treatment of the item without creating an undue burden on industry.

Response: ECCN 3A611 is the military electronics ECCN. Its .y paragraph applies the specific parts listed therein if “‘specially designed’ for a commodity subject to control in a ‘600 series’ ECCN or a defense article and *not elsewhere specified in any ‘600 series’ ECCN* or the USML . . .” (emphasis added). Because all .y paragraphs in the 600 series are subject to the same level of control, the commenter’s proposal would simplify classification without compromising any of the reasons for imposing likening requirements on 600 series .y items. Accordingly this rule revises paragraph .y in ECCN 3A611 to allow, but not require,

commodities enumerated in that paragraph or in other .y paragraphs to be classified either under 3A611.y or the other .y paragraph by revising the italicized phrase noted above to read “*not elsewhere specified in any paragraph other than the .y paragraph of a ‘600 series’ ECCN*”.

To avoid an inconsistent treatment of the similarly structured .x to the .y paragraphs, the same change is being made to 3A611.x. This will not only be logically consistent with the changes made to .y, it will also simplify classification of unspecified parts and components specially designed for one 600 series item that are likely later to be used on other 600 series items. Because the licensing and control policies for all .x items are the same, the changes will not compromise any of the reasons for imposing licensing requirements on 600 series .x items. In addition, the changes will not require any party to alter the existing classification of any item. Accordingly, this final rule makes a similar revision to ECCN 3A611.x. To highlight and clarify this conforming change, a Note 3 is added to 3A611.x stating that “parts,” “components,” “accessories,” and “attachments” subject to the EAR and within the scope of any 600 series .x entry that are of a type that are or would potentially be for use in or with multiple platforms (e.g., military electronics, military vehicles, and military aircraft) may be classified under 3A611.x for the sake of convenience.

Comment: One commenter recommended that parts identified in 9A610.y or 9A619.y but unique to USML Categories XIX(f)(1) listed engines and VIII(h)(1) listed aircraft should be excluded from the ITAR and covered by the .y paragraph because they are not critical to national security.

Response: This commenter expressed the same idea in its comments on the Department of State proposed rule. Readers may check the Department of State final rule for its explanation

of its decision not to remove these parts from the USML. Because these parts remain on the USML, they may not be included in a 600 series ECCN.

Comment: One commenter recommended that the final subparagraph numbers be dropped from the .y paragraphs of ECCN 9A610 and 9A619. The commenter stated that doing so would eliminate unnecessary reclassification efforts and allow flexibility to accommodate future changes. The commenter stated that it has to reclassify thousands of parts when a .y subparagraph number changes even though the license requirements remain the same.

Response: BIS believes that including the final subparagraph designator in the .y paragraphs is essential to maintaining the structure of the CCL and is making no change in response to this comment.

Comment: Several commenters questioned whether the word “fluid” refers to liquids only or to liquids and gases when used in ECCNs 9A610.y.8, .y.10 and .y.32 and in 9A619.y.3, .y.4, and .y.8. Others said the term should encompass both liquids. Commenters pointed out that in physics and engineering, “fluid” refers to substances with no fixed shape that generally take the shape of their container and that yield readily to external pressure. That definition encompasses liquids and gases.

Response: BIS agrees that for purposes of the .y paragraphs on the CCL, including in ECCNs 9A610 and 9A619, the term “fluid” should encompass both liquids and gases. This final rule adds a related definition to both ECCNs so stating. The entries do not control fluids because the scope of the controls is limited to "parts," "components," "accessories," "attachments," and other commodities, which, by definition, are not fluids. The definition of "fluids" is nonetheless necessary to know when determining the classification status of the commodities identified in .y and any other entry involving controlled commodities that contain fluids.

Comment: One commenter recommended removing the word “fluid” from proposed ECCNs 9A610.y.8, which applies to fluid filters and filter assemblies and 9A619.y.4, which applies to fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets, so that they do not limit “.y” controls to “fluid” filters and assemblies because “pneumatic” filters and assemblies are of same or lesser technology and should enjoy “AT” only controls as well.

Response: BIS believes that its confirmation that the definition of “fluid” includes both liquids and gases addresses the concern expressed in this comment. Therefore, this final retains the adjective “fluid.”

Comment: One commenter recommended adding a new paragraph 3A611.y.36 for “clamps and brackets (including block clamps also called line blocks, tube supports, or fairlead blocks) for wire harnesses, conduit, fluid or pneumatic hoses, lines, tubes, or pipes.” The commenter noted that the same “specially designed” clamps and brackets could be used for wire harnesses, conduit, pipes, pneumatic lines or tubes as well as on both aircraft and engine. The commenter stated that because these commodities are basic, commonly used in multiple 600 series and other items, they do not warrant national security controls and should thus be in 3A611.y if specially designed not for a defense article or 600 series item. The commenter suggested that, as an alternative, these commodities would be appropriate for inclusion in the (b)(2) release within the “specially designed” definition.

Response: ECCN 3A611.y is unique among 600 series .y paragraphs in that it applies to commodities subject to the EAR named therein if the commodity is specially designed for an ITAR controlled defense article or any 600 series item, not just those in ECCN 3A611. As noted above, this final rule expands the scope of ECCN 3A611.y so that parties may classify a commodity under 3A611.y if it is described in both 3A611.y and the .y paragraph of some other

ECCN. Thus adopting the commenter's proposal to add clamps and brackets (including block clamps also called line blocks, tube supports, or fairlead blocks) for wire harnesses, conduit, fluid or pneumatic hoses, lines, tubes, or pipes to ECCN 3A611.y would have the effect of making all such items in any 600 series ECCN controlled under 3A611.y unless enumerated in some other 600 series ECCN or on the USML. BIS is not adopting this proposal because doing so would remove license requirements for commodities that are unrelated to military aircraft and military gas turbine engines and, thus, outside the scope of this rule. In addition, the commenter is, in effect, asserting that all "clamps and brackets" used for any purpose on any 600 series commodity and on many ITAR defense articles have the same level of sensitivity. Without specific evidence that such is the case, BIS is not yet willing to make such a sweeping broadening of ECCN 3A611.y

Comment: One commenter recommended adding a new paragraph 9A610.y.33 and revising 9A619.y.5 to cover "Clamps for hoses, lines, tubes and wires." The commenter stated that this change would make clear that all clamps are controlled at the .y level whereas the placement in 9A610.y.10 in the proposed rule implied that only clamps for fluid lines were controlled at that the .y level. The commenter stated that this change would align aircraft clamps in ECCN 9A610.y.33 with engine clamps in ECCN 9A619.y.5.

Response: BIS is making no changes to ECCN 9A610.y in response to this comment. However, for reasons described below, this final rule revises 9A619.y.5 to apply to gas turbine engine clamps of all types. Such a change is not warranted for aircraft clamps controlled in ECCN 9A610 because some such clamps carry significant loads and should be subject the reasons for control that apply to ECCN 9A610.x. Clamps for engines generally do not carry such loads. Therefore, this rule limits the applicability of ECCN 9A610.y.10 to clamps for

commodities in that entry or defense articles in USML Category VIII. This final rule also limits the applicability of ECCN 9A619.y to clamps for commodities in that entry and defense articles in USML Category XIX.

Comment: One commenter noted that the proposed rule would move certain clamps from 9A619.y.5 to 9A619.y.3, a move that would require re-classification of a large number of clamps for no technical advantage. The proposed rule also would have added check valves to ECCN 9A619.y.5. The commenter stated that because "check valves" are new to ECCN 9A619.y, it would be better to move them to a new entry (ECCN 9A619.y.9) rather than displace clamps from 9A619.y.5.

Response: BIS agrees with the commenter. As proposed, the rule would have caused unnecessary reclassifications. Therefore, this final rule places clamps of all types in 9A619.y.5 and check valves for fluid systems in 9A619.y.9.

Comment: One commenter recommended replacing proposed ECCN 9A619.y.2 (Oil lines and tubes) and ECCN 9A619.y.3 (Fluid hoses, straight and unbent lines, fittings, couplings clamps and brackets) with one paragraph for "fluid lines, tubes, and hoses, and related fittings of all types" and another paragraph for clamps and brackets. The commenter's reason noted that the proposed rule assigned higher control to certain items such as bent lines when related to fluids other than oil, while allowing .y benefits to all lines (straight or bent) when related to oil (see proposed 9A619.y.3 vs 9A619.y.2). The commenter also noted that the proposed rule would remove a particular set of clamp types, namely V-band, cushion, broomstick, hinged and loop clamps, that currently are in ECCN 9A619.y.5 and would add unspecified clamps to 9A619.y.3, creating a new ambiguity. The commenter asserted that it is not clear whether the clamps from

the previous 9A619.y.5 that are not for fluid lines now are covered by 9A619.x, or whether all clamps are now to be covered by 9A619.y.3.

Response: As noted above, this final rule includes a paragraph designated .y.5 for clamps of all types in ECCN 9A619. The absence of any modifiers in that paragraph signifies that the paragraph applies to clamps of all types that are specially designed for commodities in ECCNs 9A619 or USML Category XIX and not elsewhere specified on the USML or CCL. This final rule also removes the adjectives “straight” and “unbent” from the proposed text of ECCN 9A619.y.3. This proposed rule does not remove those adjectives from ECCN 9A610.y.10 because some of the aircraft fluid lines must withstand high internal pressure levels when configured in the shape that will be used in the aircraft. Fluid lines used in engines generally do not need to withstand very high pressures.

Comment: Several commenters recommended removing “shims” from proposed ECCN 9A619.y.6 and explicitly mentioning shims in paragraph (b)(2) of the definition of “specially designed,” found in § 772.1 of the EAR. Paragraph (b)(2) identifies several items that are excluded from the definition and, thus, from any ECCN paragraph that includes the term “specially designed” as a control parameter. The commenters noted that “spacers” are currently in paragraph (b)(2). One commenter asserted that shims are a type of spacer. Another commenter noted that shims are used to align parts, make them fit, or reduce wear. The commenter said that these functions are also performed by washers, spacers, and bushings, which are already identified in paragraph (b)(2) of the specially designed definition. Because of this equivalency of function, including shims in 9A619.y.6 causes confusion. One commenter recommended that if shims are retained in a .y paragraph they should be clearly differentiated from spacers. One commenter asserted that shims are by definition spacers and meet the release

criteria in the definition of specially designed, but recommended that the release be made specific, by adding shims to paragraph (b)(2).

Response: Although many shims are simple spacing devices, some shims that are used in military gas turbine engines have particular characteristics that warrant control albeit at the .y level. Therefore, BIS is not making any changes to the rule in response to this comment.

Comment: One commenter recommended that identification plates, fluid hoses, straight and unbent lines, fittings, couplings, clamps brackets and cockpit or cabin mirrors should be released from the specially designed definition because they do not contain any military functionality or performance.

Response: Releasing a part from the specially designed definition would, in many cases, remove that part from all coverage on the CCL regardless of the end item into which that part is incorporated. In the case of 600 series items, doing so would remove all U.S. government visibility into the export or reexport of the released parts in connection with military related items, not just the items that are the subject of this rule. Such an action would be beyond the scope of the proposed rule. Accordingly, BIS is making no changes in response to this comment.

Comment: One commenter proposed replacing the phrase “Fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets” with “Fluid lines, tubes, and hoses, and fittings, couplings and mounting brackets thereof” in ECCN 9A610.y.10.

The same commenter also proposed removing the text of proposed 9A619.y.2 and revising the text of 9A619.y.3 to read the same as commenter’s proposed text for ECCN 9A610.y.10, i.e., “Fluid lines, tubes, and hoses, and fittings, couplings and mounting brackets thereof.”

The commenter noted that the proposed revision would clarify that hoses and lines are for fluid and that any couplings, fitting or brackets are specific to those lines or hoses. The commenter stated that the current ". y" entries for engine and aircraft lines are inconsistent. Parts common to the airframe and engine should be treated at the same level of control. The current and proposed text of 9A619.y.2 "Oil lines and hoses" could be removed as unnecessary.

Response: BIS agrees with the commenter that adding a qualifier to ECCNs 9A610.y.10 and 9A619.y.3 would clarify the meaning of those paragraphs and this final rule adds the word "therefor" at the end of those paragraphs. This final rule does not make any other change to the proposed rule text of ECCN 9A610.y.10. This final rule does, however, make two changes ECCN 9A619.y.3, from what was proposed in the February 9 rule: it removes the terms "straight and unbent" and "clamps." The term "straight and unbent" is removed because gas turbine engine fluid lines are typically low to moderate pressure lines that do not warrant control under 9A610.x or 9A619.x. whereas fluid lines used elsewhere in aircraft may be required to contain very high pressures after being bent or formed into their final shape and do warrant control under ECCN 9A610.x Accordingly, this final rule limits the applicability of ECCN 9A610.y to lines for commodities in that entry or defense articles in USML Category VIII. This final rule also limits the applicability of ECCN 9A619.y to lines for commodities in that entry and defense articles in 9A619.y and USML Category XIX.

Comment: One commenter suggested deleting the phrase "cockpit or cabin" from the description of "aircraft mirrors" in ECCN 9A610.y.10 because the technology for mirrors does not change.

Response: BIS is making no changes to the rule in response to this comment. BIS construes cockpit and cabin as used in ECCN 9A610.y.10 to encompass all areas of the aircraft to which the crew has access while in flight. BIS believes that further clarification is not needed.

Comment: One commenter recommended removing and reserving 9A610.y.23 (filtered and unfiltered panel knobs) and .y.31 (identification plates) along with 9A619.y.7 (identification plates) because they are duplicates to entries in 3A611.y.

Response: ECCN 3A611.y.33 controls identification plates and nameplates, .y.21 controls filtered and unfiltered mechanical switches, and .y.34 controls knobs. As noted above, this final rule revises ECCN 3A611.y to allow commodities that are controlled in 3A611.y and in another ECCN .y paragraph to be classified under 3A611.y. Removing and reserving the ECCN 9A610 and 9A619 paragraphs suggested by this commenter would have the effect of making this optional procedure mandatory – likely compelling some parties to reclassify existing parts. In addition, removing ECCN 9A610.y.23 – filtered and unfiltered panel knobs, indicators, switches, buttons, and dials and, in effect replacing it with ECCN 3A611.y.21 – filtered and unfiltered mechanical switches and .y.34 – knobs would change the scope of items covered. Therefore, this final rule does not remove and reserve any paragraph of ECCNs 9A610 or 9A619. However, BIS agrees that the scope of ECCN 3A611.y.33 (identification plates and nameplates) should be identical with ECCNs 9A610.y.31 and 9A619.y.7, which were proposed in the February 9 rule as identification plates. Therefore, this final rule adds nameplates to ECCNs 9A610.y.31 and 9A619.y.7.

Comment: One commenter stated that identification plates do not merit control in the 600 series unless they convey “technology” or “technical data” and recommended that ECCNs

9A610.y.31 and 9A619.y.7 be revised to control only identification plates that convey “technology” or “technical data.”

Response: Increasingly identification plates for defense articles are required to contain codes linking the plate with on-line technical data. Therefore, this final rule does not make any changes in response to this comment.

Comment: One commenter stated that marine gas turbine engines are not covered by CCL Category 9. The commenter recommended that marine gas turbine engines be added to ECCN 9A991.c by removing the word “Aero” or creating a new ECCN in Category 9. The commenter noted that USML Category XIX applies to all gas turbine engines and CCL Category 9 does not.

Response: Some marine gas turbine engines were controlled in ECCN 9A002 at the time the proposed rule was published and continue to be controlled in that ECCN. Marine gas turbine engines not controlled in ECCN 9A002 are EAR99. Therefore, BIS did not follow the commenter’s suggestion to list marine gas turbine engines in ECCN 9A991. However, BIS agrees that more fully specifying where and how marine gas turbine engines are controlled under the EAR is desirable. To that end, this rule adds a related control note to ECCN 8A992 informing readers that marine gas turbine engines are not controlled in paragraph .g of ECCN 8A992. Rather, such engines may be controlled in ECCNs 9A002 or 9A619.a or may be designated EAR99. Paragraph .g of ECCN 8A992 controls certain inboard and outboard marine engines other than gas turbine engines.

Comment: One commenter stated that the word “equipment” should be removed from the related controls paragraphs in ECCNs 9B610 and 9B619 to be consistent with the removal of that word from USML Categories VIII(h) and XIX(f) in the State Department’s proposed rule.

Response: BIS agrees and this final rule makes those changes

Comment: One commenter suggested that the reference in ECCN 9B610 to Category VIII(h) paragraphs (2) – (26) should be revised to read paragraphs (2) – (30) and that the reference in ECCN 9B619 to Category XIX(f) paragraphs (2) – (7) should be revised to read paragraphs (2) – (17) to be consistent with the addition of paragraphs (h)(27) through (h)(30) and (f)(8) through (f)(12) in the DDTC proposed rule.

Response: BIS agrees. However, the paragraph numbering in Categories VIII(h) and XIX(f) have changed from what was in the proposed rule. In this final rule, the related control note in 9B610 refers to USML Category VIII(h) paragraphs (2) – (28) and the related control note in 9B619 refers to Category XIX(f) paragraphs (2) – (11) to be consistent with the Department of State final rule.

Comment: ECCN 9C610 controls materials specially designed for commodities controlled in ECCN 9A610. The proposed rule would have added materials specially designed for commodities controlled in USML Category VIII. ECCN 9C619 controls materials specially designed for commodities controlled in ECCN 9A619. The proposed rule would have added materials specially designed for commodities controlled in USML Category XIX.

One commenter stated that the proposed change could cause materials developed decades ago and that are in widespread commercial use to be controlled as military items because companies may not be able to definitively prove that these materials were not developed to have properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or USML paragraph. The commenter cited Alloy 454, DS 1000 and yttrium oxide stabilized zirconium oxide as examples of such materials. This commenter made a similar comment regarding USML Category XIX in the Department of

State proposed rule. The commenter asserted that paragraphs (f)(13) through (15) in that category would place on the USML materials that are currently controlled in ECCN 9A619 or even materials that are EAR99.

Response: BIS does not believe the changes proposed in this comment are necessary because ECCNs 9C610 and 9C619 already contain notes stating: “Materials enumerated elsewhere in the CCL . . . are controlled pursuant to controls of the applicable ECCN.” In addition, this final rule includes a new paragraph .b of ECCN 9C619 to reference the materials proposed by the Department of State in USML Category XIX(f)(13) through (15). This final rule also adds a new note 3 to ECCN 9C619, which provides that materials that are used in engines that are or have been in production and are not enumerated or otherwise described on the USML or ECCN 9A619 are not subject to ECCN 9C619. To avoid confusion, this final rule makes clear that existing note 2 to ECCN 9C619, which states that materials used in engines controlled in USML Category XIX and ECCN 9A619 are controlled in ECCN 9C619, applies only to materials described in paragraph .a of that entry.

This rule also adds technology for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of materials controlled in ECCN 9C619.b to ECCN 9E619.b, which imposes the national security (NS Column 1), regional stability (RS Column 1), antiterrorism (AT Column 1) and United Nations embargo reasons for control on the technology and limits use of License Exception STA to “build to print” technology.

Comment: One commenter questioned the criteria in Category VIII(a)(14) of the Department of State proposed rule, which applies to certain cargo and transport aircraft. The commenter noted that L-100 aircraft manufactured prior to 2013 were expressly excluded from

Category VIII(a)(14) and expressly included in ECCN 9A610.b even though the L-100 is just as capable as the LM-100J in carrying payloads over 35,000 lbs. to ranges over 2,000 nautical miles with the same roll-on / roll-off and landing / takeoff capability. The commenter suggested that similar treatment would be appropriate for the planned but not yet produced LM-100J. The commenter stated that the LM-100J is a modern version of the L-100. The commenter questioned whether the criteria of a roll-on/roll-off ramp, range, payload and ability to land on short or unimproved airfields are appropriate for distinguishing military from civil cargo aircraft and pointed out that the L-100 is capable of meeting those criteria, but would be controlled on the CCL under the proposed rules. The commenter cited several potential civil end uses including: “heavy equipment and fuel delivery; firefighting and search & rescue.” The commenter also noted that certain military related items do not appear on the LM-100J but do appear on the military C-130J from which it is derived. Those items relate to radar, communications, protection from ground fire, and paratroop operations.

Response: The criteria of a roll-on/roll-off ramp, range, payload and ability to land on short or unimproved airfields are valuable military capabilities that enable supplying troops operating in areas that lack modern infrastructure. As noted above, the classification of L-100s manufactured prior to 2013 under ECCN 9A610.b was a measure adopted to promote consistency with prior classifications of a small number of airplanes, all of which are more than 20 years old. The LM-100J is a new design, derived from the C-130J that incorporates many modern features common to both aircraft.

To resolve the LM-100J classification issues while still maintaining an appropriate level of control over the export of such aircraft, this final rule revises the Note 1 in ECCN 9A610 to expressly include the LM-100J in paragraph .a, thereby treating it as a 600 series military

aircraft. The Department of State final rule explicitly excludes the LM-100J from Category VIII(a)(14). This classification will retain the license requirement for all destinations except Canada and, like all other aircraft controlled under ECCN 9A610.a, License Exception STA will not be available for the LM-100J aircraft unless such use is approved pursuant to the procedures set forth in § 740.20(g) of the EAR.

Comment: The proposed rule would have removed related control note number 2 from ECCN 9E619. That note reads: “Technology described in ECCN 9E003 is controlled by that ECCN.” BIS made this proposal because of concerns that including that non-600 series ECCN might mislead readers into thinking that the order of review might not apply in this instance. One commenter expressed approval of this change stating that it “will simplify the Order of Review analysis.” Further, the commenter believed that the change will have no significant impact on licensing requirements because the technologies of concern in ECCN 9E003 are mirrored in ECCN 9E619.c, which has similar licensing requirements.

Response: BIS agrees and the final rule adopts the removal of that text.

Comment: In the Department of State proposed rule, USML category VIII(h)(7) read: “Damage or failure-adaptive flight control systems, that do not consist solely of redundant internal circuitry, specially designed for aircraft controlled in [Category VIII of the USML] . . . and specially designed parts and components therefor.” One commenter on that rule stated that the phrase “specially designed parts and components therefor” would effectively re-control on the USML parts that had previously been moved to ECCN 9A610.x.

Response: The Department of State agreed and its final rule removes the phrase “specially designed parts and components therefor” from Category VIII(h)(7). As a result, BIS retains control of such parts and components controlled in ECCN 9A610.x. The technology for

the development or production of such parts and components is retained under ECCN 9E610. However, this rule revises ECCN 9E610 because of the sensitivity of the technology for the development or production of those parts and components. This final rule makes 9E610 technology (other than “build-to-print” technology) required for either the “development” or “production” of “specially designed” parts or components controlled in 9A610.x for damage or failure-adaptive flight control systems controlled in USML Category VIII(h)(7) ineligible for License Exception STA. Currently the technology required for the “development” and “production” of “specially designed” parts or components controlled in 9A610.x or failure-adaptive flight control systems controlled in Category VIII(h)(7) of the USML is controlled in ECCN 9E610.a. Upon its effective date, this rule will specifically enumerate that technology in ECCN 9E610.b, limiting its STA eligibility to “build to print” technology.

Comment: Two commenters proposed that a transition plan be published. One commenter noted that implementing the proposed changes would require resources and effort and noted that a transition period would not only permit US applicants to submit the appropriate ITAR export authorizations, but also allow foreign companies to request authorizations from the US applicants. The other commenter recommended one year to implement regulatory changes. It stated that one year will be needed because of the volume of items that will have to be reclassified. This commenter also recommended a three-year period during which EAR licenses, license exceptions and NLR may be used for items moving from the EAR to the ITAR.

Response: The Department of State will be publishing a transition plan.

Technical and conforming changes.

This rule also updates the text of ECCN 9A610.w to reflect amendments made to that paragraph since the February 9 rule was published by adding references to “pneumatic” and “fly-

by-light” flight control systems (*see* 81 FR 19026, April 4, 2016). These additions were made to align the descriptions in ECCN 9A610.w with the description of such systems in the current Equipment, Software And Technology Annex of the MTCR.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, 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 4, 2016, 81 FR 52587 (August 8, 2016) has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This 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 one approved collection: Simplified Network Application Processing + System (control number 0694-0088), which includes, among other things, license applications. This collection carries an annual burden hour estimate of 31,833 hours. BIS believes that this final rule will not materially affect the total number of burden hours. This rule makes certain aircraft and parts, components, accessories and attachments that currently are subject to the ITAR subject to the EAR. To the extent that this change results in an increase in the number of export license applications submitted to BIS, there is likely to be a corresponding reduction in the number of license applications submitted to the Department of State, Directorate of Defense Trade Controls. This rule also creates a license requirement to only eight destinations for some aircraft and engine parts and components that currently require a license to all destinations other than Canada. To the extent that this affects the annual burden hours associated this collection, the effect is likely to be a reduction in burden hours. Send comments regarding this burden estimate or any other aspect of this collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at jseehra@omb.eop.gov or by fax to (202) 395-7285 and to William Arvin, BIS, at william.arvin@bis.doc.gov.

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. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration at the proposed rule stage that this rule would not have a significant impact on a substantial number of small entities. The rationale for that certification is at 81 FR 6793 (February 9, 2016) and is not repeated here. BIS received no comments on the certification. Consequently, BIS has not prepared a final regulatory flexibility analysis.

List of Subjects

15 CFR Part 770

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 770 and 774 of the Export Administration Regulations (15 CFR parts 730 – 774) are amended as follows:

PART 770 – [AMENDED]

1. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

2. Section 770.2 is amended by adding paragraph (n) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(n) *Interpretation 14: Unfinished “600 series” commodities.* 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 any Product Group A (“End Items,” “Equipment,” “Accessories,” “Attachments,” “Parts,” “Components” and “Systems”) “600 series” ECCN are controlled in that “600 series” ECCN.

PART 774 – [AMENDED]

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

Authority: 50 U.S.C. 4601 *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; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 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 4, 2016, 81 FR 52587 (August 8, 2016).

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

ECCN 0A604 – [Amended]

4. In Supplement No. 1 to part 774, ECCN 0A604, remove Note 1 to 0A604.x and redesignate Note 2 to 0A604.x as Note to 0A604.x.

ECCN 0A614 – [Amended]

5. In ECCN 0A614, remove Note 3 to 0A614.

6. In ECCN 3A611, in the “List of Items Controlled” section, “Items” paragraph, revise paragraph .x and revise paragraph .y, introductory text, to read as follows:

3A611 Military electronics, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * *

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity controlled by this entry or for an article controlled by USML Category XI, and not enumerated or described in any USML category or in any paragraph other than the .x paragraph of another 600 series ECCN or in paragraph .y of this entry.

Note 1 to ECCN 3A611.x: ECCN 3A611.x includes “parts,” “components,” “accessories,” and “attachments” “specially designed” for a radar, telecommunications, acoustic system or

equipment or computer “specially designed” for military application that are neither controlled in any USML category nor controlled in any paragraph other than the .x paragraph of another “600 series” ECCN.

***Note 2 to ECCN 3A611.x:** ECCN 3A611.x controls “parts” and “components” “specially designed” for underwater sensors or projectors controlled by USML Category XI(c)(12) containing single-crystal lead magnesium niobate lead titanate (PMN-PT) based piezoelectrics.*

***Note 3 to ECCN 3A611.x:** “Parts,” “components,” “accessories,” and “attachments” subject to the EAR and within the scope of any 600 series .x entry that are of a type that are or would potentially be for use in or with multiple platforms (e.g., military electronics, military vehicles, and military aircraft) may be classified under 3A611.x.*

y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in a “600 series” ECCN or a defense article and not elsewhere specified in any paragraph other than the .y paragraph of a “600 series” ECCN or the USML as follows, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:

* * * * *

7. In ECCN 8A992, revised the related controls paragraph to read as follows:

8A992 Vessels, marine systems or equipment, not controlled by 8A001 or 8A002, and “specially designed” “parts” and “components” therefor, and marine boilers and “parts,” “components,” “accessories,” and “attachments” therefor (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: 1. See also 8A002. 2. Marine gas turbine engines are not controlled in paragraph .g of this entry. See ECCN 9A619 for possible controls on marine gas turbine engines specially designed for a military use. See ECCN 9A002 for possible controls on marine gas turbine engines not specially designed for a military use. Marine gas turbine engines subject to the EAR that are not controlled in ECCNs 9A002 or 9A619 are designated EAR99.

* * * * *

8. Revise ECCN 9A115 to read as follows:

9A115 Apparatus, devices and vehicles, designed or modified for the transport, handling, control, activation and launching of rockets, missiles, and unmanned aerial vehicles capable of achieving a “range” equal to or greater than 300 km. (Some of these items are controlled in ECCN 9A610; others are “subject to the ITAR.” See 22 CFR parts 120 through 130.)

ECCN 9A604 – [Amended]

9. In ECCN 9A604, remove Note 1 to 9A604.x and redesignate Note 2 to 9A604.x as Note to 9A604.x.

10. In ECCN 9A610, revise the “Control(s)” table in the “License Requirements” section and the “List of Items Controlled” section to read as follows:

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

License Requirements

* * * * *

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y	NS Column 1
RS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y	RS Column 1
MT applies to 9A610.t, .u, .v, and .w	MT Column 1

AT applies to entire entry	AT Column 1
UN applies to entire entry except 9A610.y	See § 746.1(b) for UN controls

* * * * *

List of Items Controlled

Related Controls: (1) Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for controls on foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content. (3) See USML Category XIX and ECCN 9A619 for controls on military aircraft gas turbine engines and related items.

Related Definitions: In paragraph .y of this entry, the term ‘fluid’ includes liquids and gases.

Items: a. ‘Military Aircraft’ “specially designed” for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: For purposes of paragraph .a the term ‘military aircraft’ means the LM-100J aircraft and any aircraft “specially designed” for a military use that are not enumerated in USML paragraph VIII(a). The term includes: trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft; and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are “unmodified” for the purposes of this paragraph .a.

Note 2: 9A610.a does not control 'military aircraft' that:

a. Were first manufactured before 1946;

b. Do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and

c. Do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. L-100 aircraft manufactured prior to 2013.

c. - d. [Reserved]

e. Mobile aircraft arresting and engagement runway systems for aircraft controlled by either USML Category VIII(a) or ECCN 9A610.a

f. Pressure refueling equipment and equipment that facilitates operations in confined areas, “specially designed” for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete parachute canopies, harnesses, platforms, electronic release mechanisms, “specially designed” for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and “equipment” “specially designed” for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, “specially designed” for use by a military.

k. through s. [Reserved]

t. Composite structures, laminates, and manufactures thereof “specially designed” for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.

Note to paragraph .t: Composite structures, laminates, and manufactures thereof “specially designed” for unmanned aerial vehicles controlled under USML Category VIII(a) with a maximum range less than 300 km are controlled in paragraph .x of this entry.

u. Apparatus and devices “specially designed” for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

Note to paragraph .u: Apparatus and devices “specially designed” for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a with a maximum range less than 300 km are controlled in paragraph .x of this entry.

v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .v: Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a. that are not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

w. Pneumatic hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or

modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .w. Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML or in 9A610.y, 9A619.y, or 3A611.y.

y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in this entry, ECCN 9A619, or for a defense article in USML Categories VIII or XIX and not elsewhere specified in the USML or the CCL, and other aircraft commodities “specially designed” for a military use, as follows, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:

y.1. Aircraft tires;

y.2. Analog gauges and indicators;

y.3. Audio selector panels;

y.4. Check valves for hydraulic and pneumatic systems;

y.5. Crew rest equipment;

y.6. Ejection seat mounted survival aids;

y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);

- y.8. Fluid filters and filter assemblies;
- y.9. Galleys;
- y.10. Fluid hoses, straight and unbent lines (for a commodity subject to control in this entry or defense article in USML Category VIII), and fittings, couplings, clamps (for a commodity subject to control in this entry or defense article in USML Category VIII) and brackets therefor;
- y.11. Lavatories;
- y.12. Life rafts;
- y.13. Magnetic compass, magnetic azimuth detector;
- y.14. Medical litter provisions;
- y.15. Cockpit or cabin mirrors;
- y.16. Passenger seats including palletized seats;
- y.17. Potable water storage systems;
- y.18. Public address (PA) systems;
- y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);
- y.20. Underwater locator beacons;
- y.21. Urine collection bags/pads/cups/pumps;
- y.22. Windshield washer and wiper systems;
- y.23. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;
- y.24. Lead-acid and Nickel-Cadmium batteries;
- y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;
- y.26. Fire extinguishers;
- y.27. Flame and smoke/CO₂ detectors;
- y.28. Map cases;

y.29. ‘Military Aircraft’ that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; *and* do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation;

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

y.31. Identification plates and nameplates; and

y.32. Fluid manifolds.

11. In ECCN 9A619, the List of Items Controlled section is amended by:

a. Revising the “Related Controls” paragraph;

b. Revising the “Related Definitions” paragraph;

c. Removing the note that immediately follows paragraph .e in the “Items” paragraph;

d. Revising paragraph .x in the “Items” paragraph; and

e. Revising paragraph .y in the “Items” paragraph.

The revisions read as follows:

9A619 Military gas turbine engines and related commodities (see List of Items Controlled).

* * * * *

List of Items controlled

Related Controls: (1) Military gas turbine engines and related articles that are enumerated or otherwise described in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations

(ITAR). (2) Gas turbine engines designated 501-D22 are controlled in ECCN 9A991.d regardless of the aircraft type into which they will be installed. (3) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content. (4) “Parts,” “components,” “accessories,” and “attachments” specified in USML Category XIX(f) are subject to the controls of that paragraph. (5) “Parts,” “components,” “accessories,” and “attachments” specified in ECCN 9A619.y are subject to the controls of that paragraph.

Related Definitions: In paragraph .y of this entry, the term ‘fluid’ includes liquids and gases.

* * * * *

Items:

* * *

x. Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity controlled by this ECCN 9A619 (other than ECCN 9A619.c) or for a defense article enumerated in USML Category XIX and not specified elsewhere on the USML or in ECCN 3A611.y, 9A610.y or 9A619.y.

Note to paragraph .x: “Parts,” “components,” “accessories,” and “attachments” specified in USML subcategory XIX(f) are subject to the controls of that paragraph. “Parts,” “components,” “accessories,” and “attachments” specified in ECCN 3A611.y, 9A610.y or 9A619.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 entry, ECCN 9A610, or for a defense article in USML Category VIII or Category XIX and not elsewhere specified on the USML or in the CCL, and

other commodities, as follows, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:

y.1. Oil tank and reservoirs;

y.2. Oil lines and tubes;

y.3. Fluid hoses, and lines (for a commodity subject to control in this entry or a defense article in USML Category XIX), fittings, couplings, and brackets therefor;

y.4. Fluid filters and filter assemblies;

y.5. Clamps (for a commodity subject to control in this entry or a defense article in USML Category XIX);

y.6. Shims;

y.7. Identification plates and nameplates;

y.8. Fluid manifolds; and

y.9. Check valves for fluid systems.

ECCN 9A620 – [Amended]

12. In ECCN 9A620, remove the note to 9A620.b that immediately follows paragraph .x.

13. In ECCN 9B610, revise the “Related Controls” paragraph in the List of Items Controlled section to read as follows:

9B610 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated or otherwise described in ECCN 9A610 or USML Category VIII (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: USML Category VIII(h)(1) controls “parts,” “components,” “accessories,” and “attachments” “specially designed” for the aircraft enumerated or otherwise described in Category VIII(h)(1), but does not control the commodities enumerated or otherwise described in ECCN 9B610. USML Category VIII(h)(2)-(28) controls other aircraft “parts,” “components,” “accessories,” “attachments,” and “systems.”

* * * * *

14. In ECCN 9B619, revise the “Related Controls” paragraph in the List of Items Controlled section to read as follows:

9B619 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated or otherwise described in ECCN 9A619 or USML Category XIX (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: USML Category XIX(f)(1) controls “parts,” “components,” “accessories,” and “attachments” “specially designed” for the engines described in Category XIX(f)(1), but does not control the commodities enumerated or otherwise described in ECCN 9B619. USML Category XIX(f)(2)-(11) controls other engine “parts,” “components,” “accessories,” “attachments,” and “systems.”

* * * * *

15. In ECCN 9C610, revise the heading, and the “Items” paragraph of the “List of Items Controlled” section to read as follows:

9C610 Materials “specially designed” for commodities controlled by USML Category VIII or ECCN 9A610 and not elsewhere specified in the CCL or the USML (see List of Items Controlled).

* * * * *

List of Items Controlled

* * *

Items: a. Materials not elsewhere specified in the USML or the CCL and “specially designed” for commodities enumerated or otherwise described in USML Category VIII or ECCN 9A610 (except 9A610.y).

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

Note 2: Materials “specially designed” for both aircraft enumerated in USML Category VIII and aircraft enumerated in ECCN 9A610 are subject to the controls of this ECCN.

b. [Reserved]

16. In ECCN 9C619, revise the heading, and the “Items” paragraph of the “List of Items Controlled” section to read as follows:

9C619 Materials “specially designed” for commodities controlled by USML Category XIX or ECCN 9A619 and not elsewhere specified in the CCL or on the USML (see List of Items Controlled).

* * * * *

List of Items Controlled

* * *

Items:

a. Materials not controlled by paragraph .b of this entry and not elsewhere specified in the CCL or on the USML, and “specially designed” for commodities enumerated or otherwise described in USML Category XIX or ECCN 9A619 (except 9A619.y).

b. Materials “specially designed” for use in certain gas turbine engines, as follows:

b.1. Powders “specially designed” for thermal or environmental barrier coating of defense articles enumerated or described in USML Category XIX paragraphs (f)(1) – (f)(4) for engines listed in (f)(1);

b.2. Superalloys (i.e., nickel, cobalt or iron based), used in directionally solidified or single crystal casting, “specially designed” for defense articles enumerated or described in USML Category XIX paragraphs (f)(1) – (f)(4) for engines listed in paragraph (f)(1); or

b.3. Imide matrix, metal matrix, or ceramic matrix composite material (i.e., reinforcing fiber combined with a matrix) “specially designed” for defense articles enumerated or described in USML Category XIX paragraphs (f)(1) – (f)(4) for engines listed in paragraph (f)(1).

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

Note 2: Materials described in paragraph .a of this entry that are “specially designed” for both an engine enumerated in USML Category XIX and an engine enumerated in ECCN 9A619 are subject to the controls of this ECCN 9C619.

Note 3: Materials described in this entry that are or have been used in gas turbine engines in production (i.e., not in development) that are not enumerated or otherwise described on the USML or ECCN 9A619 are not controlled by this entry.

17. In ECCN 9E610, in the “List of Items Controlled” section, the “Items” paragraph is amended by:

- a. Removing the word “or” from the end of paragraph .b.13;
- b. Removing the period from the end of paragraph .b.14 and adding in its place a semicolon followed by the word “or”; and
- c. Adding paragraph .b.15.

The addition reads as follows.

9E610 Technology “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, materials controlled by 9C610, or software controlled by 9D610 (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

b.15. Technology “required” for the “development” or “production” of “parts” or “components” controlled in 9A610.x and “specially designed” for damage or failure-adaptive flight control systems controlled in Category VIII(h)(7) of the USML.

* * * * *

18. In ECCN 9E619, the “List of Items Controlled” section is amended by revising the “Related Controls” paragraph, and in the “Items” paragraph:

- a. Revising the Note that immediately follows paragraph .a;
- b. Removing the word “or” from the end of paragraph .b.8;
- c. Removing the period from the end of paragraph .b.9 and adding in its place a semicolon followed by the word “or”; and
- d. Adding paragraph b.10.

The revision and addition read as follows:

9E619 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619 (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category XIX are subject to the control of USML Category XIX(g).

* * * * *

Items:

* * *

Note: *“Build-to-print technology” “required” for the “production” of items described in paragraphs b.1 through b.10 of this entry is classified under 9E619.a.*

b. * * *

b.10. Materials controlled by ECCN 9C619.b.

Dated: November 8, 2016

Kevin J. Wolf

Assistant Secretary for Export Administration

[FR Doc. 2016-27777 Filed: 11/18/2016 8:45 am; Publication Date: 11/21/2016]