



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 740, 744, 748, and 774

[Docket No. 150325297-5297-01]

RIN 0694-AG59

Clarifications and Corrections to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)

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

ACTION: Final rule.

SUMMARY: This final rule makes additional clarifications and corrections to the interim final rule that was published on May 13, 2014. The May 13 rule added controls to the Export Administration Regulations (EAR) for spacecraft and related items that the President has determined no longer warrant control under United States Munitions List (USML) Category XV – spacecraft and related items.

The changes included in this final rule are limited to corrections and clarifications to what was included in the interim final rule. This is the second corrections and clarifications rule BIS has

published for the May 13 rule. These corrections and clarifications were also informed by comments received in response to the May 13 rule that included a request for comments.

The corrections and clarifications to the May 13 rule are also part of Commerce's retrospective regulatory review plan under Executive Order (EO) 13563 (see the **SUPPLEMENTARY INFORMATION** section of this rule for information on the availability of the plan).

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

FOR FURTHER INFORMATION CONTACT: For questions about the ECCNs included in this rule, contact Dennis Krepp, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: 202-482-1309, e-mail: Dennis.Krepp@bis.doc.gov. For general questions about the regulatory changes pertaining to satellites, spacecraft, and related items, contact the Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202-482-2440 or email: rpd2@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule makes corrections and clarifications to the interim final rule, *Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, that was published on May 13, 2014 (79 FR 27417) (May 13 rule). The May 13 rule added controls to the Export Administration Regulations (EAR) for spacecraft and related items that the President has determined no longer warrant control under United States Munitions List

(USML) Category XV – spacecraft and related items. The vast majority of the changes included in the May 13 rule have been implemented as published in the interim final rule and are not republished in this final rule. A full description of those changes can be found in the Background section and the regulatory text of the May 13 rule. BIS also published corrections and clarifications to the May 13 rule in a final rule published on November 12, 2014 (79 FR 67055).

The changes included in this final rule are limited to corrections and clarifications to what was included in the May 13 rule but are also informed by comments received in response to the May 13 rule. These corrections and clarifications to the May 13 rule are described below.

In § 736.2 (General Prohibitions), this final rule revises the heading of paragraph (b)(3)(iii) (Additional country scope of prohibition for 9x515 or “600 series” items) to remove the term “additional.” The country scope of prohibition of paragraph (b)(3)(iii) for the 9x515 and “600 series” items is specified in this paragraph for purposes of General Prohibition Three. The country scope of prohibition of paragraph (b)(3)(iii) for the 9x515 items applies to destinations in Country Groups D:5 and E:1 (see Supplement No. 1 to part 740 of the EAR). However, because of the use of the term “additional” in the heading of paragraph (b)(3)(iii), BIS has received questions from the public whether the country scope of prohibition specified in paragraph (b)(3)(i) also needs to be considered for purposes of the 9x515 items. The country scope of paragraph (b)(3)(i) does not apply to 9x515 items, so this final rule revises the heading of paragraph (b)(3)(iii) to clarify this point by removing the term “additional.” This rule does not change the country scope of prohibition for the 9x515 or “600 series” items. Reexporters are

reminded that the country scope of prohibition for the “600 series” items, which includes Country Groups D:1, D:3, D:4, D:5 or E:1, is broader than that for 9x515 items.

In § 740.20 under paragraph (d) (Prior Consignee Statement), this final rule revises the introductory text of paragraph (d)(2) to remove two sentences that were intended to be removed in a December 29, 2014 (79 FR 77866) final rule, but were not removed as intended because of ambiguity in the amendatory instruction. This rule removes the two outdated sentences. This final rule sets out the full text of paragraph (d)(2) to ensure the text of this paragraph accurately reflects past revisions of the EAR.

In addition, this final rule makes three minor clarifications to the text of paragraph (d)(2) to make the intent of the paragraph clearer. First, this rule removes the term “and” in the phrase “exporter, reexporter and transferor” and replaces it with “or” in two places in paragraph (d)(2). This clarification is made because the party making the export, reexport or transfer (in-country) authorized under License Exception STA is the person responsible for obtaining the prior consignee statement and maintaining a log or other record consistent with the requirements of paragraph (d)(2). The use of the term “and” may have given the misimpression that the exporter receiving the prior consignee statement would also need to obtain a prior consignee statement for subsequent transfers (in-country) or reexports authorized under License Exception STA, which is not required under paragraph (d)(2). Second, this final rule adds the parenthetical phrase “(such as documents created in the ordinary course of business)” to provide an example of an “other record” in paragraph (d)(2). Third, this final rule adds an “(S)” at the end of the terms “NAME” and “CONSIGNEE” in the bracketed text at the end of paragraph (d)(2). Making these two terms plural clarifies that multiple consignees may be included on the same prior consignee

statement, provided all of the applicable requirements of paragraph (d)(2) are met. This is an existing BIS interpretation of paragraph (d)(2) that this edit clarifies.

In § 744.21 (Restrictions on certain ‘military end uses’ in the People’s Republic of China (PRC) or for a ‘military end use’ or ‘military end user’ in Russia or Venezuela), this final rule revises the general prohibition in paragraph (a)(2) in § 744.21 for the 9x515 and “600 series” ECCNs to clarify that the use in, with, or for the International Space Station (ISS) for exports, reexports, or transfers within Russia of these 9x515 and “600 series” items is not within the scope of the general prohibition, including launch to the ISS. Exports, reexports, and transfers (in-country) to China and Venezuela are not eligible for the ISS exclusion from the § 744.21 license requirements in paragraph (a)(2) because China and Venezuela are not ISS partner countries, unlike Russia, which is an ISS partner country.

In Supplement No. 2 to part 748 (Unique application and submission requirements), this final rule revises the introductory text of paragraphs (y)(1) and (y)(2) to clarify that for purposes of the license applications for satellite exports, the requirements specified in paragraphs (y)(1)(i) and (ii) and (y)(2)(i) and (ii), respectively, can be met either at the time of application or prior to export or reexport.

ECCN 3A611. This final rule makes a clarification to the Related Controls paragraph (6) in ECCN 3A611 by adding two references to the 9x515 ECCNs. These references added in this rule clarify that electronic items “specially designed” for military application that are not controlled in any USML category but are within the scope of a 9x515 ECCN are controlled by

that 9x515 ECCN. This Related Controls paragraph (6) already established this relationship between 3A611 and other “600 series” ECCNs, but references to the 9x515 ECCNs also need to be added to clarify the relationship between 3A611 and the 9x515 ECCNs. This clarification will help exporters determine when they should review ECCN 3A611 or a 9x515 ECCN when classifying electronic items. Lastly, this final rule corrects the last sentence of the Related Controls paragraph (6) to replace ECCN 0A604 that is referenced at the end of the paragraph with the correct ECCN 9A604. This change corrects a mistake in the cross reference for the ECCN referenced in this Related Controls paragraph (6).

ECCN 9A515. This final rule makes six corrections and clarifications to ECCN 9A515. Specifically, these corrections and clarifications are made to the MT Control in the License Requirement table, to the Related Definitions paragraph and to “items” paragraphs (d), (e), (x) and (y) in the List of Items Controlled section, as described below.

ECCN 9A515 – MT Control. This final rule revises the MT Control paragraph in the License Requirements section to add the phrase “microcircuits in” before the reference to 9A515.d and adds the new 9A515.e.2 to the MT controls. This final rule makes this change to add greater specificity regarding what parts of ECCN 9A515.d and 9A515.e.2 are controlled for MT reasons. This clarification also addresses questions BIS has received from the public and will align the ECCN’s text more closely with the MTCR Annex.

ECCN 9A515 – Related Definitions. This final rule adds a definition of ‘microcircuit’ to clarify how the term is understood in the context of ECCN 9A515. This rule clarifies that for purposes

of ECCN 9A515 a ‘microcircuit’ means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit. The addition of the Related Definition will make the intent of this ECCN clearer. This ECCN 9A515 specific definition of ‘microcircuit’ does not change the meaning or interpretation of microcircuit under the EAR. The definition of ‘microcircuit’ this final rule adds to ECCN 9A515 is the same definition as found in ECCN 3A001 and also as defined by the Missile Technology Control Regime (MTCR) Annex. The ECCN 9A515 definition is limited to providing guidance on the application of the definition based on current BIS practice and past interpretive guidance BIS has provided, including how the term is defined in that ECCN on the CCL and by the MTCR.

ECCN 9A515.d. This final rule also revises items paragraph (d) in the List of Items Controlled section of ECCN 9A515 to conform to the intended commodities classified under this paragraph. In the introductory text of paragraph (d), this final rule adds MOSFETS to the parenthetical phrase that provides examples for microelectronic circuits classified under paragraph (d). Importantly, such MOSFETS are already classified under 9A515.d. In response to the public’s questions, however, this addition provides clarity without changing the scope of the ECCN. This final rule also adds the phrase “and discrete electronic components” to ECCN 9A515.d to help the public self-classify such items and avoid the need to submit classification requests. Lastly, this final rule removes the hyphen in the term “micro-circuits” in the introductory text of paragraph (d) in the List of Items Controlled section of ECCN 9A515 to

conform to the other uses of “microcircuits” in 9A515, including the clarifications being made in this rule where the term “microcircuits” is used in 9A515.

ECCN 9A515.e. This final rule also revises items paragraph (e) in the List of Items Controlled section of ECCN 9A515 to conform to the intended commodities classified under this paragraph. Because of an oversight in the control parameter added in the May 13 rule, certain commodities that were intended to be classified under this paragraph (e) were not classified under this ECCN 9A515. In order to address this oversight and provide additional clarity regarding the scope of this control parameter, this final rule makes the following changes to paragraph (e). In the introductory text of paragraph (e), this final rule adds MOSFETS to the parenthetical phrase that provides examples for microelectronic circuits classified under paragraph (e). Importantly, such MOSFETS are already classified under 9A515.e, so the impact of the addition of MOSFETS to the parenthetical phrase is limited to providing additional specificity to the phrase, in order to make it easier for the public to determine that such MOSFETS are classified under 9A515.e. BIS had received questions from the public on why BIS had not included MOSFETS in the illustrative parenthetical phrase and so, to assist the public and add greater specificity, BIS adds MOSFETS to the illustrative list. This final rule also adds the phrase “and discrete electronic components” to ECCN 9A515.e. Although BIS already classifies discrete electronic components under 9A515.e, the agency has received questions on this issue. The additional text will assist the public with self-classifying such items and avoid the submission of unneeded classification requests. This final rule also adds to ECCN 9A515 a definition of ‘microcircuit’ in the Related Definition as described above. Lastly, in the introductory text of paragraph (e), this final rule removes the term “all” before “characteristics” and adds in its place the phrase “meeting or exceeding the characteristics in either paragraph e.1

or e.2” to clarify that the control parameters specified in paragraph (e)(1) and (e)(2) are applied in the disjunctive. As a conforming change to the introductory text of paragraph (e), this final rule consolidates the control parameter of (e)(2) with paragraph (e)(1), removes the term “and” at the end of paragraph (e)(1) and adds in its place the term “or”. This final rule removes the “AND”, but because of the consolidation of the control parameters of (e)(2) with paragraph (e)(1) and the use of “or” between the two control parameters in the revised paragraph (e)(1), this aspect of the clarification does not substantively change what is classified under paragraph (e).

Lastly, for the changes to paragraph (e), this final rule adds a new paragraph (e)(2) to clarify that microelectronic circuits and discrete components that meet the scope of the introductory text of paragraph (e), have a total dose $\geq 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)), and are not described in 9A515.d are also within the scope of ECCN 9A515.e. This is a correction to the control parameter of paragraph (e) that addresses questions BIS has received from the public regarding the classification of the commodities described under this revised paragraph (e)(2). Specifically, the commodities that meet the new control parameter under paragraph (e)(2) that this final rule adds to ECCN 9A515 are commodities that would have been classified under the United States Munitions List (USML) prior to the effective date of the May 13 rule. The Summary of the May 13 rule states that “New Export Control Classification Numbers (ECCNs) 9A515, 9B515, 9D515, and 9E515 created by this rule and existing ECCNs on the Commerce Control List (CCL) will control such items.” In other words, any item that was formerly classified under USML Category XV that was moved to the CCL would be classified under a 9x515 ECCN or in another ECCN on the CCL (such as one of the ECCNs that use space qualified). However, because of a mistake in the control parameter under paragraph (e) of ECCN 9A515, certain commodities that were intended to be classified in this ECCN

inadvertently dropped to an EAR99 designation, which was contrary to the May 13 rule's description of where the commodities formerly classified under USML Category XV would be classified on the CCL. As noted above, BIS has received inquiries from the public questioning the odd result and asking for clarification whether such commodities are intended to be EAR99, or if, as specified in the May 13 rule, the intent is for such items to be classified in 9A515.e. The questioners are correct that the intent was for such commodities to be classified under 9A515, and this final rule adds a control parameter to 9A515.e.2 to ensure consistency with the stated intent of the May 13 rule.

ECCN 9A515.x. This final rule revises paragraph (x) in the List of Items Controlled section. This final rule revises the existing exclusions under paragraphs (1), (2) and (4) to clarify what commodities are not within the scope of paragraph (x). Specifically, under paragraph (1) this final rule adds a reference to ECCN 9A004 to clarify that commodities enumerated or controlled in 9A004 are not within the scope of 9A515.x. This final rule revises the existing exclusion under paragraph (2) by adding the phrase "discrete electronic components" to clarify that, in addition to microelectronic circuits, discrete electronic components are not within the scope of ECCN 9A515.x, a change that also conforms with the clarification being made to 9A515.e.2 described above. This final rule revises the existing exclusion under paragraph (4) to add ECCN 7A003.d.2 to the list of ECCNs containing "space-qualified" as a control criterion that are not within the scope of 9A515.x and deletes 3A002.a.3 because it is no longer needed. This final rule also revises the list of items excluded from paragraph (x) by adding paragraphs (5), (6), and (7). These additional exclusions clarify that the following commodities are also not within the scope of 9A515.x: microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 for controls on these items); traveling wave tube amplifiers (refer to ECCN

3A001.b.8 for controls on these items); and commodities elsewhere specified in ECCN 9A515.y. These clarifications to the exclusions from paragraph (x) will address questions BIS has received from the public that asked whether certain commodities that were excluded from USML Category XV (on the basis of the former Note to USML Category XV) were classified in ECCN 9A515.x. General Order No. 5 in Supplement No. 1 to part 736 of the EAR under paragraph (e)(3) (Prior commodity jurisdiction determinations) already provides guidance that such commodities would not be classified under a 9A515 entry, but this final rule makes this reading explicit in the context of 9A515.x. This clarification makes no change to the scope of items classified under 9A515.x and merely provides additional guidance to assist the public in understanding the scope of 9A515, in particular as it relates to commodities that previously were determined to not be subject to the ITAR on the basis of the former Note to USML Category XV(e).

ECCN 9A515.y. This final rule adds a paragraph 9A515.y.1 as the first commodity specified under paragraph (y) in this ECCN. As noted in the introductory text of paragraph (y), the U.S. Government through the section 748.3(e) process will identify the items that warrant being classified under 9A515.y items, such as the commodities being specified under 9A515.y.1 in this final rule. Specifically, discrete electronic “components” not specified in 9A515.e have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.1. This final rule also reserves paragraph (y.2) to conform to *Federal Register* drafting requirements.

The addition described above for ECCN 9A515.y.1 is the first approved population of a .y control being added to 9A515. As stated in the May 13 rule, BIS (along with State and

Defense) will continue to populate the 9A515.y with additional entries as additional classification determinations are made in response to requests from the public under § 748.3(e).

ECCN 9D001. This final rule revises the NS Controls paragraph in the License Requirements section of ECCN 9D001 to add 9A004. ECCN 9A004 is included in the heading of 9D001, but is not included in the range of ECCNs identified in the NS Controls paragraph. ECCN 9A004 should have been added to the NS Controls paragraph in 9D001 to conform to the changes made to 9A004 in the May 13 rule. This final rule corrects this by adding ECCN 9A004 to the NS Controls paragraph for 9D001. In addition, for the purposes of clarification, this final rule revises the heading of ECCN 9D001 to remove the parenthetical phrase that follows 9A004 and revises the Related Controls paragraph of ECCN 9D001 to remove the reference to 9A004. These clarifications are made because there are no longer commodities that are subject to the ITAR in ECCN 9A004, so there is no need for the parenthetical phrase when referencing 9A004 in the heading of 9D001 and there is no need to reference 9A004 in the Related Controls paragraph of 9D001. Lastly, this final rule removes the parenthetical phrase “(see 22 CFR parts 120 through 130)” after the defined term “Subject to the ITAR” in the Related Controls paragraph of ECCN 9D002 because the text is redundant. The citation information is already included in the definition of “subject to the ITAR” in § 772.1 of the EAR and therefore does not need to be restated on the CCL.

ECCN 9D002. This final rule revises the NS Controls paragraph in the License Requirements section of ECCN 9D002 to add 9A004. ECCN 9A004 is included in the heading of 9D002, but is not included in the range of ECCNs identified in the NS Controls paragraph. ECCN 9A004

should have been added to the NS Controls paragraph in 9D002 to conform to the changes made to 9A004 in the interim final rule. In addition, for the purposes of clarification, this final rule revises the heading of ECCN 9D002 to remove the parenthetical phrase that follows 9A004 and revises the Related Controls paragraph of ECCN 9D002 to remove the reference to 9A004. These clarifications are made because there are no longer commodities that are subject to the ITAR in ECCN 9A004, so there is no need for the parenthetical phrase when referencing 9A004 in the heading of 9D002 and there is no need to reference 9A004 in the Related Controls paragraph of 9D002. Lastly, this final rule removes the parenthetical phrase “(see 22 CFR parts 120 through 130)” after the defined term “Subject to the ITAR” in the Related Controls paragraph of ECCN 9D002 because the text is redundant as already noted above.

ECCN 9D515. This final rule reserves the “items” paragraphs (f) through (x) in the List of Items Controlled section and adds a new “items” paragraph (y) in ECCN 9D515. This change is made to conform to the changes made to 9A515.y. In addition, this final rule revises the NS and RS Controls paragraph in the License Requirements section to exclude software classified under 9D515.y from these controls. Similar to the “600 series” ECCNs, the (y) software and technology entries for the 9x515 items will be controlled at the same level as the related (y) commodities.

ECCN 9E001. This final rule revises the NS Controls paragraph in the License Requirements section of ECCN 9E001 to add 9A004. ECCN 9A004 is included in the heading of 9E001, but is not included in the range of ECCNs identified in the NS controls paragraph. ECCN 9A004 should have been added to the NS Controls paragraph in 9E001 to conform to the changes made

to 9A004 in the interim final rule. This final rule corrects this by adding ECCN 9A004 to the NS Controls paragraph for 9E001. In addition, for the purposes of clarification, this final rule revises the heading of ECCN 9E001 to remove the parenthetical phrase that follows 9A004 and revises Related Controls paragraph (2) to remove the reference to 9A004. These clarifications are made because there are no longer commodities that are subject to the ITAR in ECCN 9A004, so there is no need for the parenthetical phrase when referencing 9A004 in the heading of 9E001 and there is no need to reference 9A004 in the Related Controls paragraph of 9E001. Lastly, this final rule removes the parenthetical phrase “(see 22 CFR parts 120 through 130)” after the defined term “Subject to the ITAR” in the Related Controls paragraph of ECCN 9E001 because the text is redundant as already noted above.

ECCN 9E002. Similar to the changes described above for ECCN 9E001, this final rule for clarification revises the heading of 9E002 to remove the parenthetical phrase that follows 9A004. In addition, for the purposes of clarification revises Related Controls paragraph (3) to remove the reference to 9A004. These clarifications are made because there are no longer commodities that are subject to the ITAR in ECCN 9A004, so there is no need for the parenthetical phrase when referencing 9A004 in the heading of 9E002 and there is no need to reference 9A004 in the Related Controls paragraph of 9E002. Lastly, this final rule removes the parenthetical phrase “(see 22 CFR parts 120 through 130)” after the defined term “Subject to the ITAR” in the Related Controls paragraph of ECCN 9E002 because the text is redundant as already noted above.

ECCN 9E515. This final rule reserves “items” paragraphs (f) through (x) in the List of Items Controlled section and adds a new “items” paragraph (y) to ECCN 9E515. This change is made to conform to the changes made to 9A515.y. In addition, this final rule revises the NS and RS Controls paragraph in the License Requirements section to exclude technology classified under 9E515.y from the controls in ECCN 9E515. Similar to the “600 series” ECCNs, the (y) software and technology entries for the 9x515 items will be controlled at the same level as the related (y) commodities. Lastly, this final rule revises the MT Control paragraph in the License Requirements section to add 9A515.e.2 to the MT controls. This final rule makes this change to conform to the changes described above for the MT controls in ECCN 9A515.e.2 and to conform to the MTCR Annex. The rule specifies that the control applies to technology for items in 9A515.d and 9A515.e.2 controlled for MT reasons.

Addressing public comments received

The May 13 rule requested public comment by November 10, 2014. BIS is still in the process of reviewing the comments received at that time and will address them through a subsequent rulemaking.

As required by Executive Order (EO) 13563, BIS intends to review this rule’s impact on the licensing burden on exporters. Commerce’s full plan is available at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>. Data are routinely collected on an ongoing basis, including through the comments to be submitted and as a result of new information and results from AES data. These results and data have been, and will continue to form, the basis for ongoing reviews of the rule and assessments

of various aspects of the rule. As part of its plan for retrospective analysis under EO 13563, BIS intends to conduct periodic reviews of this rule and to modify, or repeal, aspects of this rule, as appropriate, and after public notice and comment. With regard to a number of aspects of this rule, assessments and refinements will be made on an ongoing basis. This is particularly the case with regard to possible modifications that will be considered based on public comments described above.

Export Administration Act

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 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations 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 final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor 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 regulation involves collections previously approved by the OMB under control numbers 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. This rule does not alter any information collection requirements; therefore, total burden hours associated with the PRA and OMB control number 0694-0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to Jasmeet_K._Seehra@omb.eop.gov, or by fax to (202) 395-7285.

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

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity

for public comment because they are either unnecessary or contrary to the public interest. The following revisions are non-substantive or are limited to ensure consistency with the intent of the May 13, 2014 interim final rule, and thus prior notice and the opportunity for public comment is unnecessary. Sections 736.2 and 740.20 and ECCNs 9D001, 9D002, 9E001, 9E002 were revised to make corrections to the EAR that resulted from mistakes or other ambiguity in amendatory instructions in past rulemakings. In addition to the revisions above, BIS revises § 744.21, ECCNs 3A611, 9A515, 9D515 and 9E515 to provide guidance on existing interpretations of current EAR provisions and necessary conforming changes, and thus prior notice and the opportunity for public comment is contrary to the public interest. Finally, as contemplated in the May 13 rule, BIS has added an entry to the .y paragraph of ECCN 9A515, which was added as a result of the § 748.3(e) process. For purposes of the APA, there is good cause and it is in the public interest to incorporate this change so the public can benefit from understanding the classification of the item. These revisions are important to get in place as soon as possible so the public will be aware of the correct text and meaning of current EAR provisions.

BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). As mentioned previously, the revisions made by this rule consist of both technical corrections and clarifications that need to be in place as soon as possible to avoid confusion by the public regarding the intent and meaning of changes to the EAR.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for these amendments by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects

15 CFR Part 736

Exports.

15 CFR Parts 740 and 748

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

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730-774) are amended as follows:

PART 736 - [AMENDED]

1. The authority citation for 15 CFR part 736 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. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR

44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014); Notice of May 6, 2015, 80 FR 26815 (May 8, 2015).

2. Section 736.2 is amended by revising the heading of paragraph (b)(3)(iii) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

(b) ***

(3) ***

(iii) *Country scope of prohibition for 9x515 or “600 series” items.* ***

PART 740 - [AMENDED]

3. The authority citation for 15 CFR 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 7, 2014, 79 FR 46959 (August 11, 2014).

4. Section 740.20 is amended by revising the introductory text of paragraph (d)(2) and the bracketed text at the end of the introductory text of paragraph (d)(2) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

(d) ***

(2) *Prior Consignee Statement.* The requirements in this paragraph (d)(2) apply to each party using License Exception STA to export, reexport or transfer (in-country), including reexporters and transferors of items previously received under License Exception STA. The exporter, reexporter, or transferor must obtain the following statement in writing from its consignee prior to shipping the item and must retain the statement in accordance with part 762 of the EAR. One statement may be used for multiple shipments of the same items between the same parties so long as the party names, the description(s) of the item(s) and the ECCNs are correct. The exporter, reexporter, or transferor must maintain a log or other record (such as documents created in the ordinary course of business) that identifies each shipment made pursuant to this section and the specific consignee statement that is associated with each shipment. Paragraphs (d)(2)(i) through (vi) of this section are required for all transactions. In addition, paragraph (d)(2)(vii) is required for all transactions in “600 series” items and paragraph (viii) of this section is required for transactions in “600 series” items if the consignee is not the government of a country listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR). Paragraph (d)(2)(viii) is also required for transactions including 9x515 items.

[INSERT NAME(S) OF CONSIGNEE(S)]:

PART 744 - [AMENDED]

5. The authority citation for 15 CFR part 744 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; 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. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of September 17, 2014, 79 FR 56475 (September 19, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014); Notice of January 21, 2015, 80 FR 3461 (January 22, 2015).

6. Section 744.21 is amended by revising paragraph (a)(2) to read as follows:

§ 744.21 Restrictions on certain ‘Military end uses’ in the People's Republic of China (PRC) or for a ‘Military end use’ or ‘Military end user’ in Russia or Venezuela.

(a) ***

(2) *General prohibition.* In addition to the license requirements for 9x515 and “600 series” items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) any 9x515 or “600 series” item, including items described in a .y paragraph of a 9x515 or “600 series” ECCN, to the PRC, Russia or Venezuela without a license. The use in, with, or for the International Space Station (ISS) for exports, reexports or transfers within Russia is not within the scope of this paragraph’s general prohibition, including launch to the ISS. (*See* § 740.11(e)(1) of the EAR for a definition of the ISS).

PART 748 - [AMENDED]

7. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *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 7, 2014, 79 FR 46959 (August 11, 2014).

8. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by revising the introductory text of paragraph (y)(1) and the introductory text of paragraph (y)(2) to read as follows:

SUPPLEMENT NO. 2 TO PART 748 – UNIQUE APPLICATION AND SUBMISSION REQUIREMENTS

(y) ***

(1) A license application to export a satellite controlled by ECCN 9A515.a for launch in or by a country that is not a member of the North Atlantic Treaty Organization (NATO) or a major non-NATO ally of the United States (as defined in 22 CFR 120.31 and 120.32), must include a statement affirming that at the time of application or prior to export or reexport the following will be in place:

(2) A license application to export a satellite controlled by ECCN 9A515.a for launch in or by a country that is a member of the North Atlantic Treaty Organization (NATO) or that is a major non-NATO ally of the United States (as defined in 22 CFR 120.31 and 120.32), must include a statement affirming that at the time of application or prior to export or reexport the following will be in place:

PART 774 - [AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

10. In Supplement No. 1 to Part 774, Category 3 –Electronics, Export Control Classification Number (ECCN) 3A611 is amended by revising Related Controls paragraph (6) in the List of Items Controlled section to read as follows:

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

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

List of Items Controlled

Related Controls: *** (6) Electronic items “specially designed” for military application that are not controlled in any USML category but are within the scope of another “600 series” ECCN or a 9x515 ECCN are controlled by that “600 series” ECCN or 9x515 ECCN. For example, electronic components not enumerated on the USML or a “600 series” other than 3A611 that are “specially designed” for a military aircraft controlled by USML Category VIII or ECCN 9A610 are controlled by the catch-all control in ECCN 9A610.x. Electronic components not enumerated on the USML or another “600 series” entry that are “specially designed” for a military vehicle controlled by USML Category VII or ECCN 0A606 are controlled by ECCN 0A606.x. Electronic components not enumerated on the USML that are “specially designed” for a missile controlled by USML Category IV are controlled by ECCN 9A604. ***

11. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A515 is amended:

- a. By revising the fourth entry in the License Requirements table;
- b. By revising the Related Definitions paragraph in the List of Items Controlled section;
- c. By revising the introductory text of paragraph d. in the Items section;
- d. By revising paragraphs e. introductory text, e.1, and e.2 in the Items section; and
- e. By revising paragraphs x. and y. in the Items section to read as follows.

9A515 “Spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Control(s)	Country Chart (see Supp. No. 1 to part 738).

MT applies to microcircuits in 9A515.d and 9A515.e.2 when “usable in” “missiles” for protecting “missiles” against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects).	MT Column 1

List of Items Controlled

Related Definitions: ‘Microcircuit’ means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

Items:

- d. Microelectronic circuits (e.g., integrated circuits, microcircuits, MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or

exceeding all the following characteristics and that are “specially designed” for defense articles, “600 series” items, or items controlled by 9A515:

e. Microelectronic circuits (e.g., integrated circuits, microcircuits, MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described as meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND “specially designed” for defense articles controlled by USML Category XV or items controlled by 9A515:

e.1. A total dose $\geq 1 \times 10^5$ Rads (Si) (1×10^3 Gy(Si)) and $< 5 \times 10^5$ Rads (Si) (5×10^3 Gy(Si)); and a single event effect (SEE) (i.e., single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) ≥ 80 MeV-cm²/mg; or

e.2. A total dose $\geq 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)) and not described in 9A515.d.

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for defense articles controlled by USML Category XV or items controlled by 9A515, and that are NOT:

1. Enumerated or controlled in the USML or elsewhere within ECCNs 9A515 or 9A004;
2. Microelectronic circuits and discrete electronic components;
3. Described in ECCNs 7A004 or 7A104;

4. Described in an ECCN containing “space-qualified” as a control criterion (i.e., 3A001.b.1, 3A001.e.4, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1, 6A004.c and .d, 6A008.j.1, 6A998.b , or 7A003.d.2);

5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 for controls on these items);

6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 for controls on these items); or

7. Elsewhere specified in ECCN 9A515.y.

Note to 9A515.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of that paragraph or category.

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.

y.1. Discrete electronic components not specified in 9A515.e; and

y.2. [RESERVED]

12. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D001 is amended:

a. By revising the heading;

b. By revising the first entry in the License Requirements table; and

b. By revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

9D001 “Software” “specially designed” or modified for the “development” of equipment or “technology” controlled by ECCN 9A001 to 9A004, 9A012, 9A101 (except for items in 9A101.b that are “subject to the ITAR,” see 22 CFR part 121), 9A106.d. or .e, 9A110, or 9A120, 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991), or ECCN 9E003.

License Requirements

Control(s)	Country Chart (see Supp. No. 1 to part 738).
NS applies to “software” for equipment controlled by 9A001 to 9A004, 9A012, 9B001 to 9B010, and technology controlled by 9E003.	NS Column 1

List of Items Controlled

Related Controls: “Software” that is “required” for the “development” of items specified in ECCNs 9A005 to 9A011, 9A101.b (except for items that are subject to the EAR), 9A103 to

9A105, 9A106.a, .b, and .c, 9A107 to 9A109, 9A110 (for items that are “specially designed” for use in missile systems and subsystems), and 9A111 to 9A119 is “subject to the ITAR.”

13. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D002 is amended:

- a. By revising the heading;
- b. By revising the first entry in the License Requirements table; and
- c. By revising the Related Controls paragraph in the List of Items Controlled section to

read as follows:

9D002 “Software” “specially designed” or modified for the “production” of equipment controlled by ECCN 9A001 to 9A004, 9A012, 9A101 (except for items in 9A101.b that are “subject to the ITAR,” see 22 CFR part 121), 9A106.d or .e, 9A110, or 9A120, 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991).

License Requirements

Control(s)	Country Chart (see Supp. No. 1 to part 738).
NS applies to “software” for equipment controlled by 9A001 to 9A004, 9A012, 9B001	NS Column 1

to 9B010.	

List of Items Controlled

Related Controls: “Software” that is “required” for the “production” of items specified in ECCNs 9A005 to 9A011, 9A101.b (except for items that are subject to the EAR), 9A103 to 9A105, 9A106.a, .b, and .c, 9A107 to 9A109, 9A110 (for items that are “specially designed” for use in missile systems and subsystems), and 9A111 to 9A119 is “subject to the ITAR.”

14. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D515 is amended:

- a. By revising the License Requirements table;
- b. By adding and reserving items paragraphs f. through x. in the Items section; and
- c. By adding paragraph y. in the Items section to read as follows:

9D515 “Software” “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Control(s)	Country Chart (see Supp. No. 1 to part 738).
NS applies to entire entry except 9D515.y	NS Column 1
RS applies to entire entry except 9D515.y	RS Column 1
AT applies to entire entry	AT Column 1

List of Items Controlled

Items:

f. through x. [RESERVED]

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 9A515.y.

15. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E001 is amended:

- a. By revising the heading;
- b. By revising the first entry in the License Requirements table;
- c. By revising Related Controls paragraph (2) in the List of Items Controlled section to

read as follows:

9E001 “Technology” according to the General Technology Note for the “development” of equipment or “software”, controlled by 9A001.b, 9A004, 9A012, 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990 and 9B991), or ECCN 9D001 to 9D004, 9D101, or 9D104.

License Requirements

Control(s)	Country Chart (see Supp. No. 1 to part 738).
NS applies to “technology” for items controlled by 9A001.b, 9A004, 9A012, 9B001 to 9B010, 9D001 to 9D004 for NS reasons	NS Column 1

List of Items Controlled

Related Controls: ***** (2) “Technology” required for the “development” of equipment described in ECCNs 9A005 to 9A011 or “software” described in ECCNs 9D103 and 9D105 is “subject to the ITAR.”

16. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E002 is amended:

a. By revising the heading; and

b. By revising Related Controls paragraph (3) in the List of Items Controlled section to read as follows:

9E002 “Technology” according to the General Technology Note for the “production” of “equipment” controlled by ECCN 9A001.b, 9A004 or 9B (except for ECCNs 9B117, 9B604, 9B610, 9B619, 9B990, and 9B991).

List of Items Controlled

Related Controls: ***** (3) “Technology” that is required for the “production” of equipment described in ECCNs 9A005 to 9A011 is “subject to the ITAR.”

17. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E515 is amended:

- a. By revising the License Requirements table;
- b. By adding and reserving paragraphs f. through x. in the Items section; and
- c. By adding paragraph y. in the items paragraph in the Items section to read as follows:

9E515 “Technology” “required” for the “development,” “production,” operation, installation, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Control(s)	Country Chart (see Supp. No. 1 to part 738).
NS applies to entire entry except 9E515.y	NS Column 1
MT applies to technology for items in 9A515.d and 9A515.e.2 controlled for MT reasons	MT Column 1
RS applies to entire entry except 9E515.y	RS Column 1
AT applies to entire entry	AT Column 1

f. through x. [RESERVED]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A515.y or 9D515.y.

Dated: July 2, 2015.

Kevin J. Wolf,

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