

the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202-267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Class E airspace extending upward from 700 feet above the surface within an 8-mile radius of Wagner Municipal Airport, Wagner, SD, to accommodate new standard instrument approach procedures at the airport. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of

airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Wagner Municipal Airport, Wagner, SD.

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AGL SD E5 Wagner, SD [New]

Wagner Municipal Airport, SD  
(Lat. 43°03'51" N., long. 98°17'47" W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Wagner Municipal Airport.

Issued in Fort Worth, TX on April 11, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**15 CFR Parts 734, 736, 740, 742, 748, 758, 772, and 774**

[Docket No. 130110030-3030-01]

RIN 0694-AF87

### 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:** Proposed rule.

**SUMMARY:** This proposed rule describes how certain articles the President determines no longer warrant control under United States Munitions List (USML) Category XV—spacecraft and related items—would be controlled on the Commerce Control List (CCL). Such items would be controlled by new Export Control Classification Numbers (ECCNs) 9A515, 9B515, 9D515, and 9E515 proposed by this rule and existing ECCNs. This is one in a planned series of proposed rules describing how various types of articles the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant USML control, would be controlled on the CCL and by the EAR. This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category XV. The revisions proposed in this rule are part of Commerce's retrospective regulatory review plan under EO 13563 completed in August 2011.

**DATES:** Comments must be received by July 8, 2013.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2013-0012.

- By email directly to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include RIN 0694-AF87 in the subject line.

- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694-AF87.

Commerce's full plan can be accessed at: <http://open.commerce.gov/news/>

2011/08/23/commerce-plan-retrospective-analysis-existing-rules.

**FOR FURTHER INFORMATION CONTACT:** For questions 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, Email: [Dennis.Krepp@bis.doc.gov](mailto:Dennis.Krepp@bis.doc.gov). For general questions about the “500 series” regulatory changes, contact Robert Monjay, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202-482-2440 or [Robert.Monjay@bis.doc.gov](mailto:Robert.Monjay@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 2, 2013, President Obama signed the National Defense Authorization Act for Fiscal Year 2013 (“2013 NDAA”) (Pub. L. 112-239). Section 1261 of the 2013 NDAA amended Section 1513 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (“1999 NDAA”) by striking the requirement that all satellites and related items be subject to the export control jurisdiction of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The President is now authorized and obligated, pursuant to section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), to review the USML “to determine what items, if any, no longer warrant export controls under” the AECA.

This notice requests public comment on the changes described in this proposed rule and the corresponding State Department’s proposed revisions to the ITAR. These rulemakings are the Administration’s first step in implementing the authorities returned to the President by the 2013 NDAA to determine the proper and more tailored controls over the export of satellites and related items as recommended by the Departments of Defense (DOD) and State. These two proposed rules are part of the Administration’s larger Export Control Reform effort described, *inter alia*, in the Commerce Department’s July 15, 2011 proposed rule (76 FR 41958) (“July 15 (framework) rule”) setting up a structure to control in the EAR items that the President determines no longer warrant control under the ITAR in accordance with section 38(f) of the AECA. On November 7, 2011, BIS published a proposed rule (76 FR 68675) (“November 7 (aircraft) rule”) that proposed several changes to the framework in the July 15 proposed rule. On June 19, 2012, BIS published a

proposed rule to define the term “specially designed” (77 FR 36409) (“the June 19 (specially designed) rule”). On June 21, 2012, BIS published a rule entitled Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review, (77 FR 37524) (“the June 21 (transition) rule”). Readers may find it useful to review these four proposed rules when preparing their comments on this proposed rule. Generally following the structure of the July 15 (framework) and the November 7 (aircraft) rules, this proposed rule describes BIS’s proposal for controlling under the EAR’s CCL the “spacecraft” and related articles now controlled under Category XV of the ITAR’s United States Munitions List (22 CFR part 121) (USML) that would not be controlled under the revised USML Category XV.

In March 2012, the Departments of Defense and State filed with Congress their “Final Report” required by section 1248 of the National Defense Authorization Act of Fiscal Year 2010. See [http://www.defense.gov/home/features/2011/0111\\_nsss/docs/1248\\_Report\\_Space\\_Export\\_Control.pdf](http://www.defense.gov/home/features/2011/0111_nsss/docs/1248_Report_Space_Export_Control.pdf) (the “1248 Report”). The 1248 Report identified the types of satellites and related items that should not be designated as “defense articles” controlled under the ITAR. “For the sake of national and economic security, the Departments recommend[ed] that authority to determine the appropriate export control status of satellites and space-related items be returned to the President.” *Id.* The changes described in this proposed rule and in the State Department’s companion proposed rule on Category XV of the USML are based on a review of Category XV by the Defense Department, which, as described in the 1248 Report, worked with the Departments of State and Commerce in preparing the proposed amendments.

The Defense Department reviewed the articles in Category XV to determine which are either (i) inherently military and otherwise warrant control on the USML or (ii) if, common to non-military space applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States. If an article satisfied one or both of those criteria, the article remained on the USML. All other satellites and related items are, pursuant to the State and Commerce Department notices, proposed to move to the export control jurisdiction of the EAR. The licensing

requirements and other EAR-specific controls for such items described in this notice would enhance national security by permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end uses, and end users of greater concern than NATO allies and other multi-regime partners.

In the July 15 (framework) rule, BIS proposed creating a “600 series” for the new ECCNs to control the munitions items that would be removed from the USML and items currently on the CCL that are also on the Wassenaar Arrangement Munitions List (WAML). This rule proposes to create a new “500 series” of ECCNs to control “spacecraft” systems and associated equipment that would be removed from the USML. This new series would be created for “spacecraft” systems and associated equipment because, although these items are currently on the USML, many of them are commercial items with no military or intelligence applications, such as commercial communications satellites. It would be inappropriate to include these types of items in the “600 series,” which is, by definition, comprised of munitions items. Additionally, because many items proposed to be moved in this rule do have military or intelligence applications, it would be unnecessarily complicated and confusing to move certain “spacecraft” systems and associated equipment to new “600 series” ECCNs while moving the commercial items to existing ECCNs. The creation of a new series would provide a place for “spacecraft” systems and associated equipment transferred from the USML, and would allow BIS to apply the appropriate controls to these items. The new series would be identified as the “500 series” because the third character in each of the new ECCNs would be a “5.” The first two characters of the 500 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. In addition, it would be inappropriate to put these new controls in one of the multilateral controls of the CCL, such as the “000 series” for items controlled under the Wassenaar Arrangement, because none of the items described in proposed ECCN 9x515 in this notice are exclusively subject to multilateral United States controls.

Although the items in the proposed new 9x515 ECCNs would not be listed in the 600 series, the order of review for

the new ECCNs is similar to that for 600 series ECCNs. That is, when determining whether an item that is now controlled under USML Category XV would be controlled on the EAR if it is not within the scope of the revised USML Category XV, one must first look to the 9x515 ECCNs. Only if it is not controlled in one of the new ECCNs would one then look to the remaining ECCNs in the CCL to determine whether the item is on the CCL or, if not, an EAR99 item. The order of review guidance in Supplement No. 4 to Part 774 is proposed to be amended accordingly.

The ECCNs created in this rule would begin with “9,” because that is the corresponding CCL category for controls on “spacecraft.” The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the “500 series,” the third character is the number 5. The final two characters of the ECCNs would be fifteen to identify the corresponding USML category that had covered the items in the new ECCN. The ECCNs that would be created or revised by this proposed rule are described more fully below.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

The revisions proposed in this rule are part of Commerce’s retrospective regulatory review plan under EO 13563 completed in August 2011. Commerce’s full plan can be accessed at: <http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

#### Detailed Description of Changes Proposed by This Rule

This rule proposes changes to the text of the EAR as modified by the Initial Implementation Rule of April 16, 2013 (78 FR 22660). BIS made changes to the EAR in the Initial Implementation Rule that provide the framework for the “500 series.” The changes made to the EAR in the Initial Implementation Rule will be effective on October 15, 2013.

#### *New 9X515 Series of ECCNs*

This proposed rule would create four new “500 series” ECCNs in CCL Category 9 (ECCNs 9A515, 9B515, 9D515, and 9E515) to describe the EAR controls over the items the President determines no longer warrant control under the USML Category XV and that are not otherwise within the scope of an existing ECCN. Terms such as “part” and “component” and “accessories” and “attachments” are applied in the same manner in this rule as those terms are defined in the Initial Implementation Rule of April 16, 2013 (78 FR 22660). This rule would also add a new definition for the “500 series” to § 772.1. The new “500 series” would not include the International Space Station, which remains under ECCN 9A004.

This rule also proposes to amend the related controls paragraph of eighteen ECCNs—i.e., 3A001, 3A002, 3A611, 3D001, 3E001, 3E003, 5A001, 5A991, 5E001, 6A002, 6A004, 6D001, 6D002, 6E001, 6E002, 7A004, 7A104 and 9A004. The cross references to the USML for items listed in the proposed USML Category XV would be revised. The cross references to the USML for items that are proposed to transition from Category XV of the USML would be removed. This rule additionally proposes to remove paragraph .b from the List of Items Controlled in ECCN 9A004. Paragraph .b was added to the CCL on March 15, 1999, when all satellites, including commercial communications satellites, and related items were transferred to the USML pursuant to the 1999 NDAA. Paragraph .b provided a space on the CCL to control specific “spacecraft” related items that were determined to be not subject to the ITAR through the commodity jurisdiction procedure administered by the Department of State. The new “500 series” ECCNs, specifically 9A515, would control all “spacecraft” and related items that are not otherwise enumerated on the USML or CCL. Therefore, it is appropriate to delete 9A004.b and bring these “spacecraft” related items into the orbit of 9A515.

#### *New ECCN 9X515*

Proposed ECCN 9A515 paragraph .a would control “spacecraft,” including satellites, manned or unmanned space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV. Paragraph 9A515.b would control ground control systems and training simulators “specially designed” for telemetry, tracking, and control of

the “spacecraft” in paragraph 9A515.a. Paragraph .c would be reserved.

Paragraph .d would control certain radiation hardened microelectronic circuits that are “specially designed” for defense articles on the USML, “600 series” items, or items controlled by 9A515 that meet or exceed five specific characteristics. A reminder note is proposed for ECCN 9A515.d that “space qualified” microelectronic circuits that do not meet the radiation-hardening or other criterion of 9A515.d are controlled by ECCN 9A515.x. A third note is proposed for ECCN 9A515.d to refer to controls in 3A001.a for microelectronic circuits that are “subject to the EAR” and not controlled by 9A515. A fourth note is proposed for ECCN 9A515.d to state that microelectronic circuits “specially designed” for defense articles on the USML (other than Category XV) or “600 series” items that do not meet the radiation hardening criteria of paragraph .d would be controlled by the proposed “600 series” ECCN 3A611.

Paragraphs .e through .w would be reserved.

Paragraph .x would control “parts,” “components,” “accessories,” and “attachments” that are “space qualified” and not controlled on the USML, elsewhere within ECCN 9A515, or in one of the existing ECCNs that has “space qualified” as a control criterion. A note is proposed for ECCN 9A515.x to remind readers that “parts,” “components,” and “accessories” and “attachments” specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of the USML.

#### *New ECCN 9B515*

Proposed ECCN 9B515 paragraph .a would control test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 9A515 or USML Category XV.

Paragraph .b would control “equipment,” cells, and stands “specially designed” for testing, analysis and fault isolation of commodities enumerated in ECCN 9A515, 9A004 or USML Category XV.

Paragraph .c would control environmental test chambers capable of pressures below  $(10^{-4})$  Torr, and “specially designed” “components” therefor.

*New ECCN 9D515*

Proposed ECCN 9D515 would control “software” “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCNs 9A515 and 9B515.

*New ECCN 9E515*

Proposed ECCN 9E515 paragraph .a would control “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of items controlled by ECCN 9A515, 9B515, or 9D515.

The appendix to the 1248 Report referred to a possible need to control technology required for passenger participation in space travel (e.g., sub-orbital, orbital, lunar, interplanetary or habitat) for space tourism, research or scientific endeavors, or transportation from one point to another for commercial purposes. The Departments of Defense and State have since reviewed such technology and concluded that it is not per se subject to USML Category XV. There is thus no proposed inclusion of such technology as a general matter in either the proposed USML Category XV or the proposed 9E515. To the extent other technology described in either the proposed USML XV or 9E515 would be released to a foreign person during such activities, then it would be controlled according to the requirements of the relevant paragraph.

Applicable controls for new “500 series” ECCNs.

All items in the 9X515 ECCNs, as proposed in this rule, would be subject to national security (NS Column 1) and regional stability (RS Column 1) controls, as well as antiterrorism (AT Column 1) controls. Some of the items would be subject to missile technology (MT) controls in some cases. The licensing policy would be a case-by-case review to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. However, applications for “500 series” items destined to a country listed in Country Group D:5 (Supplement No. 1 to Part 740) as a country subject to a U.S. arms embargo will be reviewed consistent with United States arms embargo policies. Country Group D:5 (Supplement No. 1 to Part 740) is set out in the Initial Implementation Rule of April 16, 2013 (78 FR 22660). The U.S. Government has long considered U.S. arms embargo policies when reviewing license applications to export items subject to

the EAR. BIS has now explicitly stated that the review policy for all “600 series” items will be consistent with U.S. arms embargos. DOD and the State Department recommended in the 1248 Report to Congress that BIS explicitly adopt this review policy for items transitioning from the USML to ensure that exporters are aware that all items subject to embargo remain so on the CCL. BIS agrees with this recommendation and would amend §§ 742.4(b)(1)(ii) and 742.6(b)(1) to add the term “500 series.” Additionally, as required by Section 1261 of the 2013 NDAA, applications for “500 series” items destined to the People’s Republic of China, North Korea, or any country that is a state sponsor of terrorism, would be subject to a policy of denial.

*“Space-Qualified”*

In December 2012, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (“Wassenaar Arrangement”) amended its definition of “space-qualified” to be “[d]esigned, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth. **Note:** A determination that a specific item is “space qualified” by virtue of testing does not mean that other items in the same production run or model series are “space qualified” if not individually tested.” BIS plans to adopt this definition in the EAR when it publishes its amendments to the EAR to implement the amendments agreed to by the Wassenaar Arrangement. To comment on the proposed changes to the EAR in this notice that pertain to the meaning of “space-qualified,” the public should use the above definition.

The Wassenaar Arrangement adopted the revised definition after the Departments of State and Defense submitted to Congress the 1248 Report, describing the proposed controls on “space qualified” items not controlled elsewhere. In addition, the revised definition was adopted after the U.S. Government had received and considered public comments on its proposed definition of “specially designed,” which would be the control parameter in its other “.x” catch-all controls. In order to (i) maintain the “space qualified” control scope described in the 1248 Report, (ii) maintain consistency between this catch-all control and the other “space qualified” controls in the CCL, and (iii) limit the ambiguity between the scope of this catch-all approach and the other new “.x” catch-alls that use “specially designed,” BIS is proposing the addition

of a note to the new “space qualified” definition. The note would state that, for purposes of these controls, the terms ‘designed’ and ‘manufactured’ in the Wassenaar’s definition of “space qualified” are synonymous with the EAR’s new definition of “specially designed.” Thus, for example, an item that is “specially designed” for a spacecraft is deemed to be ‘designed’ or ‘manufactured’ for operation at altitudes greater than 100 km and an item that is not “specially designed” for a spacecraft is not deemed to have been so ‘designed’ or ‘manufactured.’ An implication of this note would be that an item that becomes “space qualified” by virtue of successful testing would be “space qualified” regardless of whether it would be considered “specially designed.” This note does not constitute a modification of the Wassenaar definition of the term, only a comment about how it is relates to the EAR’s definition of “specially designed.”

**Effects of This Proposed Rule***De minimis*

Items made outside the United States that incorporate items subject to the EAR are subject to the EAR if they exceed a *de minimis* percentage of controlled U.S.-origin content, as described in § 734.3 of the EAR. The Initial Implementation Rule of April 16, 2013 (78 FR 22660) established the *de minimis* threshold for a foreign-made item that incorporates U.S.-origin “600 series” items at zero percent when the foreign-made item is destined for a country subject to a U.S. arms embargo and 25 percent for destinations that are not subject to a U.S. arms embargo. This rule proposes to adopt the same *de minimis* thresholds for the “500 series” as is proposed for the “600 series.” Foreign-made items that incorporate any amount of U.S.-origin “500 series” items would be subject to the EAR when destined to a country that is subject to a U.S. arms embargo (i.e., Afghanistan, Belarus, Burma, China, Cote d’Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe). A foreign-made item that incorporates U.S.-origin “500 series” items, destined to a country that is not subject to a U.S. arms embargo, would be eligible for *de minimis* treatment and would not be subject to the EAR if the value of all of its U.S.-origin controlled content does not exceed 25 percent of foreign-made item’s value.

### *Foreign-Produced Direct Product*

The Initial Implementation Rule of April 16, 2013 (78 FR 22660) expanded the foreign-produced direct products of U.S. “technology” that are subject to the EAR. Foreign-produced direct products of U.S.-origin “600 series”

“technology,” or of a plant or major component of a plant that is a direct product of U.S.-origin “600 series” “technology,” that are “600 series” items are proposed to be subject to the EAR when reexported or exported from abroad to countries listed in Country Groups D:1 (national security countries of concern), D:3 (chemical and biological countries of concern), D:4 (missile technology countries of concern), or E:1 (countries that support terrorism) in Supplement No. 1 to part 740 or countries subject to a U.S. arms embargo. Foreign-made items subject to the EAR because of this rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin. This rule proposes to extend the “600 series” direct product rule to items in the “500 series” as well.

### *Use of License Exceptions*

Most “500 series” items would be eligible for several license exceptions, including STA, which would be available for exports to certain countries that are NATO members or multi-regime close allies. Certain items described in ECCNs 9D515 and 9E515, however, would not be eligible for export under STA, as described in those ECCNs. Additionally, the MT controlled commodities in 9A515 and some types of technology in 9E515 would not be eligible for any license exceptions, including STA. The use of STA for “500 series” items would require the consignee to consent to an end-user check by the U.S. Government in addition to the standard consignee statement required for all STA transactions. “600 series” items are subject to additional criteria for the use of License Exception STA. Specifically, the Ultimate Consignee must be in an A:5 country and either (a) the ultimate end user must be the government of an A:5 country or the United States Government, or (b) the items must be for the “development” or “production” of an item in that will ultimately be used by any such government agencies, the United States Government, or a person in the United States. BIS is not proposing to make this “600 series” specific STA requirement applicable to the “500 series.” “500 series” items are not munitions items and are generally not intended for ultimate end use by

governmental end users. The majority of the items in the “500 series” are commercial items, and while many of the “parts” and “components” have military or intelligence applications, they are dual-use items that have commercial applications. Therefore, the application of this requirement to the “500 series” would be inappropriate.

Items controlled under proposed ECCNs 9A515 and 9B515 would also be eligible for License Exception LVS (limited value shipments) up to a value of \$1,500 (\$5,000 for 9B515.c), TMP (temporary exports), GOV (U.S. Government), and RPL (servicing and replacement parts). The use of license exceptions for “500 series” items generally would be prohibited to any destination subject to a U.S. arms embargo, except to the U.S. Government under License Exception GOV.

### *License Applications*

In a license application for a transaction involving “500 series” items that is equivalent to a transaction that was previously approved by the State Department under the ITAR, the applicant may report the ITAR license or other approval number to BIS in Block 24 of the license application. Only those license applications where the particulars (e.g., the function, performance capabilities, form and fit of the item, the purchaser, ultimate consignee and end user(s)) are the same in both the EAR license application and the previously issued ITAR authorization would receive full consideration under this paragraph. For example, if a U.S. company had an ITAR authorization to export certain radiation hardened microchips that will be controlled under 9A515.d to a governmental end user in Japan, the company may list that authorization in Block 24 if it plans to export more of the same chips to the same end user in Japan. However, if the company wishes to export the same chip to a commercial end user or the next generation of chip to the same government end user, it may not list the prior authorization as precedent. Block 24 would alert BIS and the other U.S. Government agencies reviewing a particular “500 series” license application that this new application to BIS concerns a transaction that is equivalent to a previously approved transaction. This information may be relevant to review of the transaction and may result in an expedited determination.

### *Export Clearance*

This rule proposes to adopt the “600 series” export clearance requirements proposed in the June 21 (transition)

rule. This rule would revise § 758.1 to require that information on all exports of “500 series” items be filed in AES regardless of value or destination. BIS is required to report to Congress on all “500 series” exports and would only be able to obtain information on low value unlicensed shipments if an AES filing is made. This rule would also revise § 758.2 to preclude the option of post-departure filing for exports of “500 series” items. This revision would maintain the current status of these items under the ITAR as ineligible for post-departure filing. Finally, this rule would revise § 758.6 to require that the ECCN for each “500 series” item being shipped be provided on the same documents on which the Destination Control Statement is required. This would require that the ECCN for each “500 series” item be entered on the invoice and on the bill of lading, air waybill, or another export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad.

### *Order of Review*

Supplement No. 4 to Part 774 would be amended to include a reference to the new 9x515 ECCNs so that those engaging in classification analyses of items formerly in USML Category XV but no longer controlled under the amended USML Category XV know to review the new 9X515 ECCNs before reviewing other potentially applicable ECCNs in the CCL.

### *Request for Comments*

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before July 8, 2013. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via [Regulations.gov](http://Regulations.gov), leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

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

under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

### Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

BIS believes that the effect of adding items to the EAR that would be removed from the ITAR as a result of this rule as part of the administration’s Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 1,500 annually, resulting in an increase in burden hours of 425 (1,500 transactions at 17 minutes each) under control number 0694–0088.

Most “spacecraft” and ground control systems, “space qualified” “parts,” “components,” “accessories” and “attachments,” and related “software” and “technology” formerly on the USML would become eligible for License Exception STA under this rule. BIS believes that the increased use of License Exception STA resulting from the effect of adding items to the EAR that would be removed from the ITAR as a result of this rule as part of the administration’s Export Control Reform

Initiative would increase the burden associated with control number 0694–0137 by about 2,258 hours (1,935 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. The largest impact of the proposed rule would likely apply to exporters of parts, components, accessories, and attachments specifically designed or modified for satellite and other “spacecraft” items that would have been approved for export under the ITAR pursuant to a license for export to NATO allies and regime partners. Because, with few exceptions, the ITAR allows exemptions from license requirements only for certain exports to Canada, most exports of such parts, even when destined to NATO and other allied countries, require specific State Department authorization. Under the EAR, as proposed in this notice, such “parts” and “components” would become eligible for export to NATO and other multi-regime allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration understands that complying with the burdens of STA is likely less burdensome than applying for licenses or other approval from the State Department. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship, rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both.

Even in situations in which a license would be required under the EAR, the burden is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of “technology” controlled by ECCN 9E515 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled “technology,” *i.e.*,

Manufacturing License Agreements and Technical Assistance Agreements.

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

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule will not have a significant impact on a substantial number of small entities. A summary of the factual basis for this certification follows.

### Number of Small Entities

BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

### Economic Impact

This proposed rule is part of the Administration’s Export Control Reform Initiative. Under that initiative, the USML (22 CFR part 121) would be revised to be a “positive” list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article’s military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the CCL. “Spacecraft” and related items so designated will be identified in specific ECCNs known as the “500 series” ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the

USML but would become subject to the EAR.

Many “spacecraft” and specific parts and components would remain on the USML. However, “parts,” “components,” “accessories,” and “attachments” for such “equipment” would be included on the CCL unless expressly enumerated on the USML. Such “parts” and “components” are more likely to be produced by small businesses than complete “spacecraft,” which would in many cases become subject to the EAR. Moreover, officials at the Department of State have informed BIS that license applications for such “parts” and “components” are a high percentage of the license applications for USML articles reviewed by that department. The proposed changes in this rule will not result in the decontrol of such items, but will reduce administrative and collateral regulatory burdens by, for example, allowing for the use of License Exception STA for exports to NATO and other multi-regime allied countries.

Thus, changing the jurisdictional status of certain Category XV articles would reduce the burden on small entities (and other entities as well) through: Elimination of some license requirements, greater availability of license exceptions, simplification of license application procedures, and reduction (or elimination) of registration fees. In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item, discouraging foreign buyers from incorporating such U.S. content.

Exporters and reexporters of the Category XV articles, particularly “parts” and “components,” that would be placed on the CCL by this rule would need fewer licenses because their transactions would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than \$1,500, “parts” and “components” being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA). License Exceptions under the EAR would allow suppliers to send routine parts and low level parts to NATO and other export control regime partner countries without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply

with the EAR and other applicable U.S. laws.

Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports in which a license would be required, the process would be simpler and less costly under the EAR than under the USML. When a USML Category XV article moves to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex, and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval, and is more likely to have to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license (normally four years, but may be longer if circumstances warrant a longer period), reducing the total number of licenses for which the applicant must apply.

In addition, many applicants, who are exporting or reexporting items that this rule would transfer from the USML to the CCL, would realize cost savings through the elimination of some or all registration fees currently assessed under the USML’s licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at \$2,250 per year, increase to \$2,750 for organizations

applying for one to ten licenses per year and further increases to \$2,750 plus \$250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year.

There are no registration costs or application processing fees for applications to export items listed on the CCL. Once the Category XV articles that are the subject to this rulemaking are added to the CCL and removed from the USML, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity’s entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated and it would no longer incur that expense.

*De minimis* treatment under the EAR would also become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product, regardless of the percentage of U.S. content in that foreign-made product. Foreign-made products that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 25 percent for most destinations. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin “parts” and “components,” a development that potentially would mean greater sales for U.S. suppliers, including small entities.

#### Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin “parts” and “components,” which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to



the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Parts 734, 740, 748 and 758

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

15 CFR Parts 736 and 772

Exports.

15 CFR Parts 742 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730-774), as amended by the final rule published April 16, 2013 (78 FR 22660), effective October 15, 2013, are proposed to be further amended as follows:

PART 734—[AMENDED]

1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 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; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

2. Section 734.4 is amended by revising paragraph (a)(6) to read as follows:

§ 734.4 De minimis U.S. content.

(6) There is no de minimis level for foreign-made items that incorporate U.S.-origin "500 series" or "600 series" items when destined to a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR.

PART 736—[AMENDED]

3. 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 May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

4. Section 736.2 is amended by revising paragraph (b)(3)(iii) through (v) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

(b) (3) (iii) Additional country scope of prohibition for "500 series" or "600 series" items. You may not, except as provided in paragraphs (b)(3)(v) or (vi) of this section, reexport or export from abroad without a license any "500 series" or "600 series" item subject to the scope of this General Prohibition Three to a destination in Country Groups D:1, D:3, D:4, D:5 or E:1 (See Supplement No.1 to part 740 of the EAR).

(iv) Product scope of "500 series" and "600 series" items subject to this prohibition. This General Prohibition Three applies if a "500 series" or "600 series" item meets either of the following conditions:

(A) Conditions defining direct product of "technology" or "software" for "500 series" and "600 series" items. Foreign-made "500 series" and "600 series" items are subject to this General Prohibition Three if the foreign-made items meet both of the following conditions:

(1) They are the direct product of "technology" or "software" that is in the "500 series" or "600 series" as designated on the applicable ECCN of the Commerce Control List in Supplement No. 1 to part 774 of the EAR; and

(2) They are in the "500 series" or "600 series" as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(B) Conditions defining direct product of a plant for "500 series" and "600 series" items. Foreign-made "500 series" and "600 series" items are also subject to this General Prohibition Three if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(1) Such plant or major component is the direct product of "500 series" or "600 series" "technology" as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR, and

(2) Such foreign-made direct products of the plant or major component are in the "500 series" or "600 series" as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(v) "500 series" and "600 series" foreign-produced direct products of U.S.

"technology" or "software" subject to this General Prohibition Three do not require a license for reexport or export from abroad to the new destination unless the same item, if exported from the U.S. to the new destination would have been prohibited or made subject to a license requirement by part 742, 744, 746, or 764 of the EAR.

PART 740—[AMENDED]

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

6. Section 740.2 is amended by revising paragraph (a)(12) and adding paragraph (a)(17) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(12) The item is described in a "500 series" or "600 series" ECCN and is destined to, shipped from, or was manufactured in a destination listed in Country Group D:5 (see Supplement No.1 to part 740 of the EAR), except that such items are eligible for License Exception GOV (§ 740.11(b)(2) of the EAR) unless otherwise restricted by that paragraph.

(17) "500 series" items that are controlled for missile technology (MT) reasons may not be exported, reexported, or transferred (in-country) under License Exception STA (§ 740.20 of the EAR). Items controlled under ECCNs 9D515.b through .g and 9E515.b are not eligible for license exceptions except for License Exception GOV (§ 740.11(b)(2) of the EAR).

7. Section 740.9 is amended by revising the last sentence of paragraph (a) introductory text to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

(a) The references to various countries and country groups in these TMP-specific provisions do not limit or amend the prohibitions in § 740.2 of the EAR on the use of license exceptions generally, such as for exports of "500 series" or "600 series" items to destinations in Country Group D:5.

8. Section 740.10 is amended by revising paragraphs (a)(3)(viii), (a)(4)(ii), (b)(3)(i)(F) to read as follows:



**§ 740.10 License Exception Servicing and replacement of parts and equipment (RPL).**

(a) \* \* \*

(3) \* \* \*

(viii) “Parts,” “components,” “accessories,” and “attachments” classified in “500 series” or “600 series” ECCNs may not be exported or reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to this part).

(4) \* \* \*

(ii) The conditions described in paragraph (a)(3) relating to replacement of “parts,” “components,” “accessories,” or “attachments” (excluding “500 series” and “600 series” ECCNs) do not apply to reexports to a foreign country of “parts,” “components,” “accessories,” or “attachments” as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the foreign-origin product is not subject to the EAR pursuant to § 734.4.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

(F) Commodities or “software” “subject to the EAR” and classified in “500 series” or “600 Series” ECCNs may not be exported or reexported to a destination identified in Country Group D:5 (see Supplement No. 1 to this part).

\* \* \* \* \*

■ 9. Section 740.20 is amended by adding a sentence to the end of paragraph (d)(2) introductory text to read as follows:

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

(d) \* \* \*

(2) \* \* \* Paragraph (d)(2)(vii) is also required for transactions including “500 series” items.

**PART 742—[AMENDED]**

■ 10. The authority citation for 15 CFR part 742 continues to read as follows:

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

■ 11. Section 742.4 is amended by revising paragraph (b)(1)(ii) and adding paragraph (b)(1)(iii) to read as follows:

**§ 742.4 National security.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) When destined to a country listed in Country Group D:5 in Supplement No. 1 to Part 740 of the EAR, however, items classified under “500 series” or “600 series” ECCNs will be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR).

(iii) When destined to the People’s Republic of China or a country listed in Country Group E:1 in Supplement No. 1 to Part 740 of the EAR, items classified under any “500 series” ECCN will be subject to a policy of denial.

\* \* \* \* \*

■ 12. Section 742.6 is amended by revising the first and fourth sentence and adding a sentence to the end of paragraph (b)(1) to read as follows:

**§ 742.6 Regional stability.**

\* \* \* \* \*

(b) \* \* \*

(1) Applications for exports and reexports of “500 series” and “600 series” items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. \* \* \* Applications for export or reexport of items classified under any “500 series” or “600 series” ECCN requiring a license in accordance with paragraph (a)(1) of this section will also be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR) if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. \* \* \* When destined to the People’s Republic of China or a country listed in Country Group E:1 in Supplement No. 1 to Part 740 of the EAR, items classified under any “500 series” ECCN will be subject to a policy of denial.

\* \* \* \* \*

**PART 748—[AMENDED]**

■ 13. 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 15, 2012, 77 FR 49699 (August 16, 2012).

■ 14. Section 748.8 is amended by revising paragraph (x) to read as follows:

**§ 748.8 Unique application and submission requirements.**

\* \* \* \* \*

(x) License application for a transaction involving a “500 series” and “600 series” item that is equivalent to a transaction previously approved under an ITAR license or other approval.

■ 15. Supplement No. 1 to part 748 (BIS–748P, BIS–748P–A: Item Appendix, and BIS–748P–B: End-User Appendix; Multipurpose Application Instructions) is amended by revising the first and fifth sentences of Block 24 to read as follows:

**Supplement No. 1 to Part 748—Item Appendix, and Bis–748P–B: End-User Appendix; Multipurpose Application Instructions**

\* \* \* \* \*

**Block 24: Additional Information**

This Block should be completed if your application includes a “500 series” or “600 series” item that is equivalent to a transaction previously approved under an ITAR license or other approval. \* \* \* The classification of the “500 series” or “600 series” item in question will no longer be the same because the item would no longer be “subject to the ITAR,” but all other aspects of the description of the item must be the same in order to be reviewed under this expedited process under paragraph (x) of Supplement No. 2 to part 748 of the EAR.

\* \* \* \* \*

■ 16. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by revising paragraph (x) to read as follows:

**Supplement No. 2 to Part 748—Unique Application and Submission Requirements**

\* \* \* \* \*

(x) *License application for a transaction involving a “500 series” or “600 series” item that is equivalent to a transaction previously approved under an ITAR license or other approval.* To request that the U.S. Government review of a license application for a “500 series” or “600 series” item also take into consideration a previously approved ITAR license or other approval, applicants must also include the State license number or other approval identifier in Block 24 of the BIS license application (see the instructions in Supplement No. 1 to part 748 under Block 24).

\* \* \* \* \*

**PART 758—[AMENDED]**

■ 17. The authority citation for 15 CFR part 758 continues to read as follows:

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

■ 18. Section 758.1 is amended by revising paragraph (b)(3) to read as follows:

§ 758.1 The Automated Export System (AES) record.

\* \* \* \* \*

(b) \* \* \*

(3) For all exports of "500 series" or "600 series" items enumerated in paragraphs .a through .x of a "500 series" or "600 series" ECCN regardless of value or destination, including exports to Canada;

\* \* \* \* \*

■ 19. Section 758.2, as amended April 16, 2013, at 78 FR 22726, is further amended by revising paragraph (c)(4) to read as follows:

§ 758.2 Automated Export System (AES).

\* \* \* \* \*

(c) \* \* \*

(4) Exports are made under License Exception Strategic Trade Authorization (STA); are made under Authorization Validated End User (VEU); or are of "500 series" or "600 series" items.

\* \* \* \* \*

■ 20. Section 758.6, as amended April 16, 2013, at 78 FR 22726, is further amended by revising paragraph (b) to read as follows:

§ 758.6 Destination control statement and other information furnished to consignees.

\* \* \* \* \*

(b) Additional Requirement for "500 series" and "600 series" items. In addition to the DCS as required in paragraph (a) of this section, the ECCN for each "500 series" or "600 series" item being exported must be printed on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad.

■ 21. The authority citation for 15 CFR part 772 continues to read as follows:

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

■ 22. Section 772.1 is amended by adding, in alphanumerical order, a definition for the term "500 series" and revising the definition for the term "space-qualified" as set forth below:

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

\* \* \* \* \*

500 series. ECCNs in the "xY5zz" format on the Commerce Control List (CCL) that control "dual use" "spacecraft" and related items on the CCL that were previously controlled on the United States Munitions List. The "5" indicates the entry is a "spacecraft" entry on the CCL. The "x" represents the CCL category and "Y" the CCL

product group. The "500 series" constitutes the "spacecraft" ECCNs within the larger CCL. The "500 series" does not include items designated in ECCNs 0A521, 0B521, 0C521, 0D521, or 0E521.

\* \* \* \* \*

"Space-qualified". (Cat 3, 6, and 9) Designed, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth.

Note: A determination that a specific item is "space qualified" by virtue of testing does not mean that other items in the same production run or model series are "space qualified" if not individually tested.

Note: The terms 'designed' and 'manufactured' in this definition are synonymous with "specially designed." Thus, for example, an item that is "specially designed" for a spacecraft is deemed to be 'designed' or 'manufactured' for operation at altitudes greater than 100 km and an item that is not "specially designed" for a spacecraft is not deemed to have been so 'designed' or 'manufactured.'

\* \* \* \* \*

PART 774—[AMENDED]

■ 23. 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 15, 2012, 77 FR 49699 (August 16, 2012).

■ 24. In Supplement No. 1 to Part 774, Category 3, revise the MT paragraph of the License Requirements section and the Related Controls paragraphs (1) and (2) and add a new sentence to the beginning of the Related Definitions paragraph of Export Control Classification Number (ECCN) 3A001 to read as follows:

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\* \* \* \* \*

3A001 Electronic "components" and "specially designed" "parts" and "components" therefor, as follows (see List of Items Controlled).

License Requirements

\* \* \* \* \*

MT applies to 3A001.a.1.a for 'microcircuits' "usable in" 'missiles" for protecting "missiles" against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects) and to 3A001.a.5.a when "designed or modified" for military use, hermetically sealed and rated for operation in the temperature range from below -54 °C to above +125 °C.

\* \* \* \* \*

List of Items Controlled

\* \* \* \* \*

Related Controls: (1) See Category XV of the USML for certain "space qualified" electronics "subject to the ITAR" (see 22 CFR parts 120 through 130). (2) See also 3A101, 3A201, 3A991, and 9A515. \* \* \*

\* \* \* \* \*

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. \* \* \*

■ 25. In Supplement No. 1 to Part 774, Category 3, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 3A002 to read as follows:

3A002 General purpose electronic "equipment" and "accessories" therefor, as follows (see List of Items Controlled).

\* \* \* \* \*

List of Items Controlled

\* \* \* \* \*

Related Controls: See Category XV(e)(9) of the USML for certain "space qualified" atomic frequency standards "subject to the ITAR" (see 22 CFR parts 120 through 130). See also 3A292 and 3A992.

\* \* \* \* \*

■ 26. In Supplement No. 1 to Part 774, Category 3, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 3D001 to read as follows:

3D001 "Software" "specially designed" for the "development" or "production" of "equipment" controlled by 3A001.b to 3A002.g or 3B (except 3B991 and 3B992).

\* \* \* \* \*

List of Items Controlled

\* \* \* \* \*

Related Controls: "Software" "specially designed" for the "development" or "production" of certain "space qualified" atomic frequency standards described in Category XV(e)(9) of the USML is "subject to the ITAR" (see 22 CFR parts 120 through 130). See also 3D101.

\* \* \* \* \*

■ 27. In Supplement No. 1 to Part 774, Category 3, revise the License Exception TSR and Related Controls paragraphs of

Export Control Classification Number (ECCN) 3E001 to read as follows:

**3E001 “Technology” according to the General Technology Note for the “development” or “production” of “equipment” or “materials” controlled by 3A (except 3A292, 3A980, 3A981, 3A991, 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).**

\* \* \* \* \*

#### License Exceptions

\* \* \* \* \*

TSR: Yes, except N/A for MT, and “technology” specially designed for the “development” or “production” of: (a) Traveling Wave Tube Amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz; and (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) “assemblies,” solar arrays and/or solar panels described in 3A001.e.4.

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* “Technology” according to the General Technology Note for the “development” or “production” of certain “space qualified” atomic frequency standards described in Category XV(e)(9) of the USML is “subject to the ITAR” (see 22 CFR parts 120 through 130). See also 3E101 and 3E201.

\* \* \* \* \*

■ 28. In Supplement No. 1 to Part 774, Category 3, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 3E003 to read as follows:

**3E003 Other “technology” for the “development” or “production” of the following (see List of Items Controlled).**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* See 3E001 for the “development” or “production” related to radiation hardening of integrated circuits, including silicon-on-insulation (SOI) “technology.”

\* \* \* \* \*

■ 29. In Supplement No. 1 to Part 774, Category 5, revise the Related Controls paragraph and remove the second note to Items paragraph (a.3) of Export Control Classification Number (ECCN) 5A001 to read as follows:

**5A001 Telecommunications “systems,” “equipment,” “parts,” “components” and “accessories,” as follows (see List of Items Controlled).**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* (1) See USML Category XI for direction finding “equipment” defined in 5A001.e that are “subject to the ITAR”

(see 22 CFR parts 120 through 130). (2) See also 5A101 and 5A991.

\* \* \* \* \*

■ 30. In Supplement No. 1 to Part 774, Category 5, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 5A991 to read as follows:

**5A991 Telecommunication “equipment,” not controlled by 5A001 (see List of Items Controlled).**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* See also 5E101, 5E980 and 5E991.

\* \* \* \* \*

■ 31. In Supplement No. 1 to Part 774, Category 5, revise the Related Controls paragraph of Export Control Classification Number 5E001 (ECCN) to read as follows:

**5E001 “Technology” as follows (see List of Items Controlled).**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* See also 5E101, 5E980, and 5E991.

\* \* \* \* \*

■ 32. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6A002 to read as follows:

**6A002 Optical sensors and “equipment,” “parts” and “components” therefor, as follows (see List of Items Controlled).**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* (1) See USML Categories XII and XV for controls on “image intensifiers” defined in 6A002.a.2 and “focal plane arrays” defined in 6A002.a.3 that are “subject to the ITAR” (see 22 CFR parts 120 through 130). (2) See also 6A102, 6A202, and 6A992.

\* \* \* \* \*

■ 33. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6A004 to read as follows:

**6A004 Optical “equipment,” “parts” and “components,” as follows (see List of Items Controlled).**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* (1) For optical mirrors or ‘aspheric optical elements’ “specially designed” for lithography “equipment,” see ECCN 3B001. (2) See also 6A994.

\* \* \* \* \*

■ 34. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6D001 to read as follows:

**6D001 “Software” “specially designed” for the “development” or “production” of “equipment” controlled by 6A004, 6A005, 6A008 or 6B008.**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* See also 6D991, and ECCN 6E001 (“development”) for “technology” for items controlled under this entry.

\* \* \* \* \*

■ 35. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6D002 to read as follows:

**6D002 “Software” “specially designed” for the “use” of “equipment” controlled by 6A002.b, 6A008 or 6B008.**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* “Software” “specially designed” for the “use” of “space qualified” LIDAR “equipment” “specially designed” for surveying or for meteorological observation, released from control under the note in 6A008.j, is controlled in 6D991. See also 6D102, 6D991, and 6D992.

\* \* \* \* \*

■ 36. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6E001 to read as follows:

**6E001 “Technology” according to the General Technology Note for the “development” of “equipment,” “materials” or “software” controlled by 6A (except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).**

\* \* \* \* \*

#### List of Items Controlled

\* \* \* \* \*

*Related Controls:* See also 6E101, 6E201, and 6E991.

\* \* \* \* \*

■ 37. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6E002 to read as follows:

**6E002 “Technology” according to the General Technology Note for the “production” of “equipment” or “materials” controlled by 6A (except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).**

\* \* \* \* \*

**List of Items Controlled**

\* \* \* \* \*  
*Related Controls:* See also 6E992.  
 \* \* \* \* \*

■ 38. In Supplement No. 1 to Part 774, Category 7, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 7A004 to read as follows:

**7A004 ‘Star trackers’ and components therefor, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

\* \* \* \* \*  
*Related Controls:* 1) See USML Category XV for certain ‘Star trackers’ that are “subject to the ITAR” (see 22 CFR parts 120 through 130).  
 \* \* \* \* \*

■ 39. In Supplement No. 1 to Part 774, Category 7, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 7A104 to read as follows:

**7A104 Gyro-astro compasses and other devices, other than those controlled by 7A004, which derive position or orientation by means of automatically tracking celestial bodies or satellites and specially designed components therefor.**

\* \* \* \* \*

**List of Items Controlled**

\* \* \* \* \*  
*Related Controls:* (1) See USML Categories IV and XV for certain ‘Star trackers’ that are “subject to the ITAR” (see 22 CFR parts 120 through 130). (2). \* \* \* \* \*  
 \* \* \* \* \*

■ 40. In Supplement No. 1 to Part 774, Category 9, revise the Related Controls paragraphs (1) and (3) through (5), and remove items paragraph (b) from the Items paragraph in the List of Items Controlled of Export Control Classification Number (ECCN) 9A004 to read as follows:

**9A004 Space launch vehicles and “spacecraft”.**

\* \* \* \* \*

**List of Items Controlled**

\* \* \* \* \*  
*Related Controls:*  
 (1) See also 9A104, 9A515, and 9B515.  
 (2) \* \* \* \* \*  
 (3) Spacecraft, launch vehicles and related articles that are enumerated in the USML are “subject to the ITAR” (see 22 CFR parts 120 through 130).  
 (4) All other “spacecraft” and related commodities not controlled under 9A004 or enumerated in the USML are controlled under ECCN 9A515 and 9B515.  
 (5) Technical data required for the detailed design, development, manufacturing, or production of the international space station remains “subject to the ITAR” (see 22 CFR

parts 120 through 130). All technical data and all defense services, including all technical assistance, for launch of the international space station, including launch vehicle compatibility, integration, or processing data, are “subject to the ITAR” (see 22 CFR parts 120 through 130).  
 \* \* \* \* \*

■ 41. In Supplement No. 1 to Part 774, between the entries for ECCNs 9A120 and 9A980, add new entry for ECCN 9A515 to read as follows:

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

**License Requirements**

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

<i>Control(s)</i>	<i>Country chart</i>
NS applies to entire entry .....	NS Column 1
RS applies to entire entry .....	RS Column 1
MT applies to 9A515.d when “usable in” “missiles” for protecting “missiles” against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). AT applies to entire entry .....	MT Column 1  AT Column 1

**License Exceptions**

*LVS:* \$1500  
*GBS:* N/A  
*CIV:* N/A  
*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

**List of Items Controlled**

*Unit:* End items in number; “parts,” “components,” “accessories,” and “attachments” in \$ value  
*Related Controls:* Spacecraft, launch vehicles and related articles that are enumerated in the USML, and technical data (including “software”) directly related thereto, launch services, and launch failure analysis for items in 9A515.a, are “subject to the ITAR.” A license is required under the ITAR for a “U.S. person” to provide “defense services” to a foreign person for a “spacecraft” to be launched from outside the United States, even if that “spacecraft” may be exported under License Exception STA. See 22 CFR 120.9. All other “spacecraft,” as enumerated below and defined in section 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific “space-qualified” items and 9A004 for the International Space Station.  
*Related Definitions:* N/A.  
*Items:*

a. “Spacecraft,” including satellites, manned or unmanned space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV.  
*Note:* ECCN 9A515.a includes commercial communications satellites, remote sensing satellites not identified in USML Category

XV, planetary rovers, and planetary and interplanetary probes.

b. Ground control systems and training simulators “specially designed” for telemetry, tracking, and control of the “spacecraft” in paragraph 9A515.a.

c. [Reserved]  
 d. Microelectronic circuits 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:

- (1) A total dose of 5 × 10<sup>5</sup> Rads (Si) (5 × 10<sup>3</sup> Gy (Si));
- (2) A dose rate upset threshold of 5 × 10<sup>8</sup> Rads (Si)/sec (5 × 10<sup>6</sup> Gy (Si)/sec);
- (3) A neutron dose of 1 × 10<sup>14</sup> n/cm<sup>2</sup> (1 MeV equivalent);
- (4) An uncorrected single event upset sensitivity of 1 × 10<sup>-10</sup> errors/bit/day or less, for the CRÈME-MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and
- (5) An uncorrected single event upset sensitivity of 1 × 10<sup>-3</sup> errors/part or less for a fluence of 1 × 10<sup>7</sup> protons/cm<sup>2</sup> for proton energy greater than 50 MeV.

*Note 1:* Application specific integrated circuits (ASICs) “specially designed” for defense articles are controlled by Category XI(c) of the USML regardless of characteristics.

*Note 2:* See 9A515.x for controls on “space qualified” microelectronic circuits that are not rated certified, or otherwise specified or described as meeting or exceeding the characteristics in paragraph .d.

*Note 3:* See 3A001.a for controls radiation-hardened microelectronic circuits “subject to the EAR” that are not controlled by 9A515.d or 9A515.x.

*Note 4:* Microelectronic circuits that are “specially designed” for defense articles on the USML or for “600 series” items are controlled under 3A611.x.

e. through w. [Reserved]  
 x. “Parts,” “components,” “accessories” and “attachments” that are “space qualified” and not enumerated or controlled in the USML, elsewhere within ECCN 9A515, or an ECCN containing “space-qualified” as a control criterion, i.e., 3A001.b.1, 3A001.e.4, 3A002.a.3, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1, 6A002.e, 6A004.c and .d, 6A008.j.1, or 6A998.b.

*Note 1:* “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.

■ 42. In Supplement No. 1 to Part 774, between the entries for ECCNs 9B117 and 9B990, add new entry for ECCN 9B515 to read as follows:

**9B515 Test, inspection, and production “equipment” “specially designed” for “spacecraft” and related commodities, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, AT

Control(s)	Country chart
NS applies to entire entry .....	NS Column 1
RS applies to entire entry .....	RS Column 1
AT applies to entire entry .....	AT Column 1

**License Exceptions**

LVS: \$1500; \$5000 for 9B515.c.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9B515.

**List of Items Controlled**

Unit: N/A.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 9A515 or USML Category XV.

b. “Equipment,” cells, and stands “specially designed” for testing, analysis and fault isolation of commodities enumerated in ECCN 9A515, 9A004 or USML Category XV.

c. Environmental test chambers capable of pressures below (10<sup>-4</sup>) Torr, and “specially designed” “components” therefor.

■ 43. In Supplement No. 1 to Part 774, between the entries for ECCNs 9D105 and 9D990, add a new entry for ECCN 9D515 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**

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry .....	NS Column 1
RS applies to entire entry .....	RS Column 1
AT applies to entire entry .....	AT Column 1

**License Exceptions**

CIV: N/A.

TSR: N/A.

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9D515.b through .g. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “software” in 9D515.

**List of Items Controlled**

Unit: \$ value.

Related Controls: “Software” directly related to articles enumerated in USML Category XV is subject to the control of USML paragraph XV(f). See also ECCNs 3D001, 6D001, 6D002, and 6D991 for controls of specific software “specially designed” for certain “space qualified” items.

Related Definitions: N/A.

Items:

a. “Software” (other than “software” controlled in paragraphs .b through .g of this entry) “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A515 or “equipment” controlled by 9B515.

b. “Source code” that contains the algorithms or control principles (e.g., clock management), precise orbit determination (e.g., ephemeris, pseudo range), signal construct (e.g., pseudo-random noise (PRN) anti-spoofing) “specially designed” for items controlled by ECCN 9A515.

c. “Source code” “specially designed” for the integration, operation, or control (i.e., use) of items controlled by ECCN 9A515.

d. “Source code” that contains algorithms or modules “specially designed” for system, subsystem, component, part, or accessory calibration, manipulation, or control of items controlled by ECCN 9A515.

e. “Source code” “specially designed” for data assemblage, extrapolation, or manipulation of items controlled by ECCN 9A515.

f. “Source code” that contains the algorithms or control laws “specially designed” for attitude, position, or flight control of items controlled in ECCN 9A515.

g. “Source code” “specially designed” for built-in test and diagnostics for items controlled by ECCN 9A515.

■ 44. In Supplement No. 1 to Part 774, between the entries for ECCNs 9E102 and 9E990, add new entry for ECCN 9E515 to read as follows:

**9E515 “Technology” “required” 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**

Reason for Control: NS, MT, RS, AT

Control(s)	Country chart
NS applies to entire entry .....	NS Column 1
MT applies to technology for items in 9A515.d controlled for MT reasons.	MT Column 1
RS applies to entire entry .....	RS Column 1
AT applies to entire entry .....	AT Column 1

**License Exceptions**

CIV: N/A.

TSR: N/A.

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E515.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “technology” in 9E515.

**List of Items Controlled**

Unit: \$ value.

Related Controls: Technical data directly related to articles enumerated in USML

Category XV are subject to the control of USML paragraph XV(f). See also ECCNs 3E001, 3E003, 6E001, and 6E002 for specific “space-qualified” items.

Related Definitions: N/A.

Items:

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 9A515, “equipment” controlled by 9B515, or “software” controlled by 9D515.

**Note:** “Build-to-print technology” excluded from paragraph b. is classified under 9E515.a.

b. “Technology” (other than “build-to-print technology”) “required” for the “development,” “production,” design verification, manufacturability, or quality control for items in ECCN 9A515, except items in ECCN 9A515.b.

■ 45. In Supplement No. 4 to Part 774, add three sentences to the conclusion of paragraph (a)(3) and one sentence to the conclusion of paragraph (a)(4) and revise the first sentence of paragraph (a)(5), to read as follows:

**Supplement No. 3 to Part 774—Commerce Control List Order of Review**

\* \* \* \* \*

(a) \* \* \*

(3) Step 3. \* \* \* The 9x515 ECCNs describe satellites, related items, and some types of radiation-hardened microelectronic circuits that were once subject to the ITAR under USML Category XV. Similarly, the first step when determining the classification status of such items that are no longer listed on USML Category XV is to determine whether they are controlled in a 9x515 ECCN. If so, the item is classified under that 9x515 ECCN paragraph. If not, then one needs to review the rest of the CCL to determine whether the item is within the scope of another ECCN.

(4) Step 4. \* \* \* Similarly, if a satellite, related item, or radiation-hardened microelectric circuit are not described in 9A515, then review 9A515.x to determine if it is controlled there as a result of being “space qualified.”

\* \* \* \* \*

(5) Step 5. If an item is not classified by a “600 series” or “500 series” ECCN, then starting from the beginning of the product group analyze each ECCN to determine whether any other ECCN in that product group describes the item. \* \* \*

\* \* \* \* \*

Dated: May 14, 2013.

**Kevin J. Wolf,**

Assistant Secretary of Commerce for Export Administration.

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