

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

15 CFR Parts 732, 734, 736, 738, 740, 744, 748, 750, 770, 772, and 774

[Docket No. 210802–0157]

RIN 0694–AI24

The Export Administration Regulations; Editorial Revisions, Clarifications, and Corrections

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; corrections.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by making targeted editorial corrections and clarifications. The errors addressed by this rule were inadvertent and these corrections will provide clarity and facilitate understanding of the regulations. This rule ensures that the language and policies already set forth in the EAR remain consistent throughout.

DATES: This rule is effective October 5, 2021.

FOR FURTHER INFORMATION CONTACT: Logan Norton, Regulatory Policy Division, Logan.Norton@bis.doc.gov, (202) 812–1762.

SUPPLEMENTARY INFORMATION:

Background

This final rule updates eleven parts of the Export Administration Regulations (EAR), parts 732, 734, 736, 738, 740, 744, 748, 750, 770, 772, and 774, such that most-recent language elsewhere in the EAR is consistent with the language in these parts. These changes are minor editorial revisions that either reflect Bureau of Industry and Security (BIS) policies that were previously published in the *Federal Register* and added to the EAR or reflect the modernization of procedures implemented by BIS. These revisions do not change the substance of the EAR.

Part 732 Steps for Using the EAR

In 2004, supplement no. 2 to part 732, the “Subject to the EAR?” flowchart, was revised to make it simpler and easier to read. However, the language of the supplement is not consistent with the language in other parts of the EAR, including language implemented before and after the 2004 amendment. In 1999, paragraphs (a) and (b) of § 734.5 were amended to better represent U.S. policy objectives but the 2004 update to supplement no. 2 did not capture these changes. Further, in 2009, paragraph (c)

of § 734.5 was dropped from the EAR and in 2016, “transfer (in-country)” was added to the EAR in § 734.16. Elsewhere in this rule, § 734.3(a)(4) and (5) are being amended to align with § 736.2(b)(3) of the EAR; the changes to these sections also impact the flowchart in supplement no. 2 to part 732. This rule changes the “Subject to the EAR?” flowchart in supplement no. 2 of part 732 to reflect these changes. For example, the first text bubble of the supplement no longer mentions § 734.5(c) and the final text bubble simply refers readers to § 736.2(b)(3), rather than to any specific destinations.

Part 734 Scope of the Export Administration Regulations

Parts 734 and 736 were added to the EAR in 1996. Section 736.2 has been revised several times since then, updating the language regarding what constitutes a “foreign-produced direct product.” The most recent update to part 736 was in August of 2020. This rule amends § 734.3(a)(4) and (5) to reflect the terms currently used in § 736.2(b)(3) of the EAR. The definition for the term “direct product” is removed from § 734.3(a)(4), because it is being added to part 772, as detailed below.

Part 736

On January 15, 2021, BIS published an interim final rule (86 FR 4865) that inadvertently removed paragraphs (B) and (C) from § 736.2(b)(7)(i). Paragraphs (B) and (C) are added back by this rule. Those paragraphs dictate which schedules of chemicals listed in supplement no. 1 to part 745 a “U.S. person” may not export without complying with specific provisions and requirements of the EAR. In addition, as the January 15 interim final rule removed the definition of “U.S. person” from § 744.6(c) of the EAR (while leaving the identical definition in § 772.1 of the EAR), BIS is making conforming changes to § 736.2(b)(7)(i)(B) and (C). Specifically, BIS is revising both paragraphs to reference § 772.1, instead of § 744.6(c), for the definition of the term “U.S. person.” Quotation marks are also added around the term “U.S. person” in both paragraphs, given it is a defined term in part 772. Quotation marks are also added around the term “direct product” in § 736.2(b) for the same reason and as detailed below.

Part 738 Commerce Control List Overview and the Country Chart

In June of 2020, License Exception Civil End Users (CIV) was removed from the EAR. After the removal, a sample Commerce Control List entry set forth in

§ 738.4(b)(2) of the EAR unintentionally retained a reference to License Exception CIV. This rule rectifies this by removing the CIV reference from § 738.4(b)(2) while retaining the remainder of the sample entry.

Part 740 License Exceptions

On December 28, 2020, BIS published a final rule (85 FR 84211) adding Cyprus and Mexico to Country Group A:6. As there were issues with the amendatory instruction to that rule, this rule corrects the amendatory instruction and adds an “X” in Column “[A:6]” in Supplement No. 1 to Part 740 for “Cyprus” and “Mexico.”

Part 744 Control Policy: End-User and End-Use Based

In April of 2020, BIS published a rule regarding military end users (85 FR 23459). In supplement no. 2 to part 744 of the EAR, paragraph (3)(viii) inadvertently reprinted out-of-date text from Export Control Classification Number (ECCN) 3A992 when referring to ECCN 3E991 technology for those 3A992 items. This rule updates the paragraph to reflect the current text in that ECCN. This edit does not change the scope of the license requirement for items controlled under the ECCN. Quotation marks are also added around the term “direct product” in supplement no. 4 to part 744, because the term is being added to part 772 by this rule, as detailed below.

Part 748 Applications (Classification, Advisory, and License) and Documentation

As has been the case for some time, the public may submit advisory opinion requests to BIS in a variety of ways in addition to through the mail (*e.g.*, the U.S. Postal Service or via a shipping and logistics delivery service). This rule revises § 748.3(c) of the EAR to include how to submit advisory opinion requests via email or through the BIS website.

Supplement no. 2 to part 748, “Unique Application and Submission Requirements,” is being clarified to reflect BIS policy regarding the letters of assurance described in paragraph (o)(3)(i), which are applicable to license applications submitted for the export of technology controlled for national security reasons to certain countries. Specifically, this clarification reflects BIS policy that license applicants must always obtain letters of assurance, which must be submitted to BIS upon request. Quotation marks are also added around the term “direct product” in supplement no. 2, because the term is being added to part 772 by this rule, as

detailed below. This rule also adds in that this applies to exports, reexports, and transfers (in-country), which is currently BIS policy regarding this paragraph.

This rule amends paragraph (b)(6) “Block 6: Ultimate Consignee,” of supplement no. 3 to part 748, “Statement by Ultimate Consignee and Purchaser Content Requirements.” Prior to publication of this rule, paragraph (b)(6) indicated that an ink signature is required on the BIS-711 “Statement by Ultimate Consignee and Purchaser” form. However, following public comments, in a March 2015 final rule, BIS confirmed that electronic signatures are permissible. This rule revises paragraph (b)(6) to more accurately reflect existing text found in § 748.11 of the EAR.

Part 750 Application Processing, Issuance and/or Denial

Sections 750.1, 750.8, and 750.9 are being updated to reflect BIS’s use of the Simplified Network Application Process—Redesign (SNAP-R) system by eliminating or rewording parts of the sections that are no longer relevant given the online nature of the system. The SNAP-R system has been in place since October of 2006 and has largely replaced the previous system that involved the submission of paper license applications, but the EAR has not been fully updated to reflect that change. Now that BIS does not mail copies of licenses to applicants with SNAP-R accounts, and almost all exporters have access to licenses electronically (via the SNAP-R system) and can therefore save and print out multiple copies of their licenses themselves, a requirement to return a revoked license or a duplicate copy of a license is, under most circumstances, unnecessary. In § 750.8, the text specific to the return of a revoked license was relevant when BIS sent validated hard copies of licenses to exporters. This rule revises § 750.8 by removing the text requiring the return of revoked or suspended licenses. The remaining text specifies that if BIS revokes or suspends a license, the licensee must retain all applicable supporting documents and records of shipments in accordance with the recording keeping provisions of part 762 of the EAR. In § 750.9, the text specific to the return of duplicate licenses was relevant when BIS sent validated hard copies of licenses to exporters. This rule revises § 750.9 regarding lost, stolen or destroyed paper licenses by removing and reserving § 750.9(a)(3) of the EAR, which required the return of either the original or duplicate paper licenses should the

original paper license be found. Doing so aligns the EAR with existing BIS policies and procedures. This rule also revises § 750.1 to reflect the changes this rule makes to §§ 750.8 and 750.9 of the EAR.

Section 750.7(a) is corrected by adding a sentence that directs readers to more detailed information regarding the release of “technology” authorized by the issuance of a BIS license, which is set forth within § 734.20 of the EAR. Section 750.7(a) is also broken up into subparagraphs (1), (2), and (3) to make it easier to read.

Part 770 Interpretations

“Release” as it is used in the context of the EAR is defined in § 734.15, which was added to the EAR in 2016. However, § 770.3(d)(1)(ii) was never updated to reflect the definition. This rule rectifies this omission by amending § 770.3(d)(1)(ii) to direct readers to the definition of a “release” in § 734.15 and by altering the language in paragraph (d)(1)(ii) such that it answers the preceding question in § 770.3(d)(1)(i) correctly given the 2016 change in the definition of “release.”

Part 772 Definitions of Terms

This final rule removes the definition of the term “direct product” from § 734.3(a)(4) and adds it to § 772.1. Given the changes to part 734 detailed above, the term “direct product” is better suited to appear as a defined term in part 772. This rule does not alter the definition of “direct product” or the BIS policy specific to the term.

BIS is also amending paragraph (a) of the definition of “U.S. person” in § 772.1 of the EAR to clarify that the definition applies for purposes of §§ 732.3(j), 736.2(b)(7), and 745.2(a)(1) of the EAR. This change does not alter BIS policy, but does bring the definition of “U.S. person” in line with the rest of the EAR.

Part 774 The Commerce Control List

This final rule corrects ECCN 0D617 to remove text that was inadvertently included from 0D606 and published as part of a revision of 0D617 on June 3, 2020 (85 FR 34306). In ECCN 0D617, this final rule removes references to 0x606 ECCNs and adds in its place text referencing the 0x617 ECCNs. This final rule also revises the Related Controls paragraph and Items paragraph (a) in the List of Items Controlled section of ECCN 0D617 to remove text that was inadvertently included from 0D606 and to add in its place the intended text from 0D617. The publication of this correction does not change existing BIS policy.

This final rule corrects a reference in the control chart for ECCN 7A611 from “§ 724.6(a)(7)” to “§ 742.6(a)(7)” in supplement no. 1 to part 774.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. Sections 4801–4852. ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

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 not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person may be required to respond to or be 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 Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications and commodity classification, and carries a burden estimate of 29.6 minutes for a manual or electronic submission for a total burden estimate of 31,835 hours. BIS does not expect the burden hours associated with this collection to change.

3. This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to Section 4821 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of

proposed rulemaking, opportunity for public participation and delay in effective date.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 732

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Part 738

Exports.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 740, 748 and 750

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

15 CFR Parts 736, 770, and 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 732, 734, 736, 738, 740, 744, 748, 750, 770, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 732—[AMENDED]

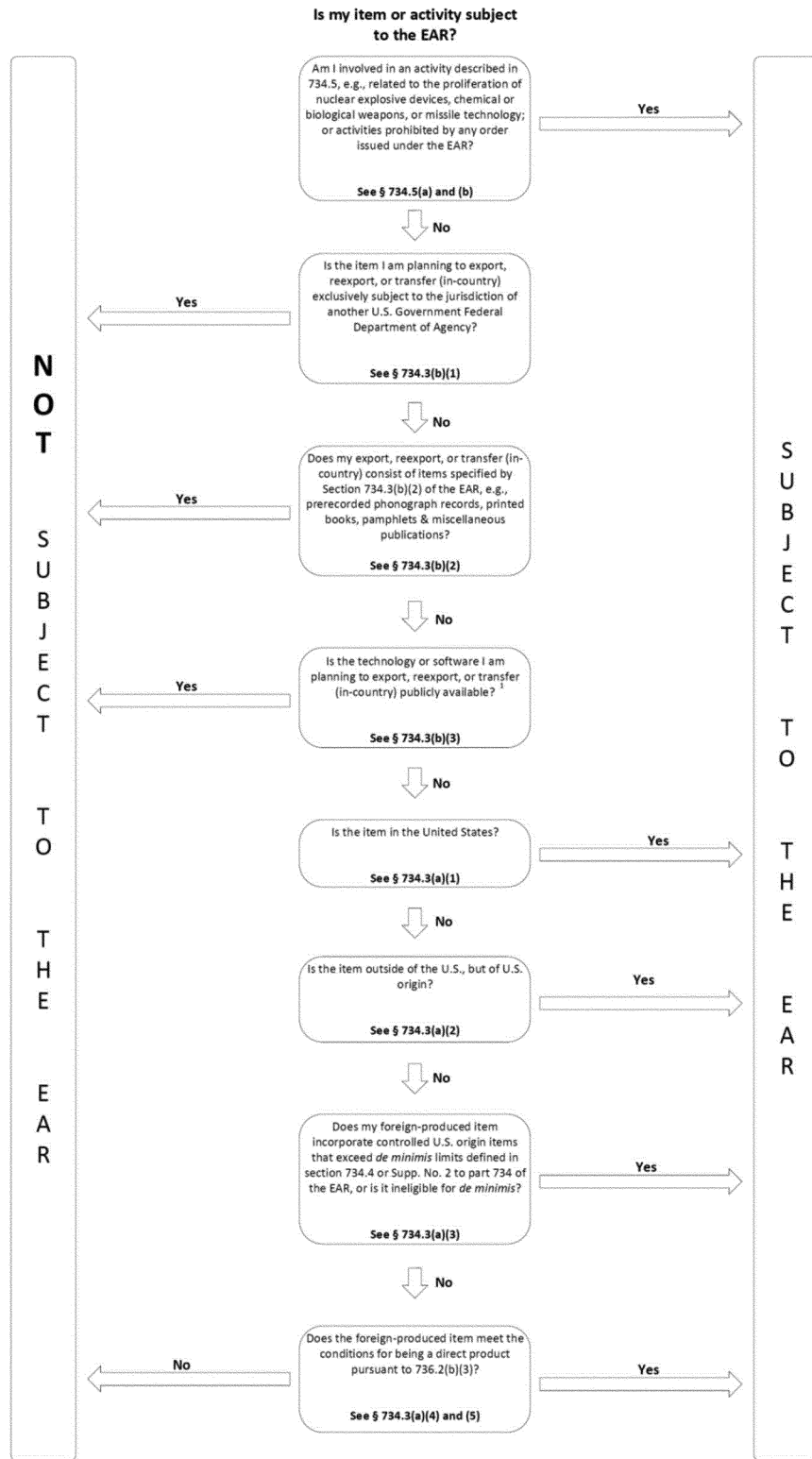
■ 1. The authority citation for part 732 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *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.

■ 2. Supplement no. 2 to part 732 is revised to read as follows:

Supplement No. 2 to Part 732—Subject to the EAR?

BILLING CODE 3510–33–P



¹ Encryption source code in electronic form or media (e.g., computer diskette or CD-ROM) remains subject to the EAR (see §734.17). Publicly available encryption object code "software" classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in §742.15(b) of the EAR.

BILLING CODE 3510-33-C

PART 734—[AMENDED]

■ 3. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *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

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PART 744—[AMENDED]

■ 11. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *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. 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 September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

■ 12. Supplement no. 2 to part 744 is amended by revising paragraph (3)(viii) to read as follows:

Supplement No. 2 to Part 744—List of Items Subject to the Military End Use or End User License Requirement of § 744.21

* * * * *

(3) * * *

(viii) 3E991 Limited to “technology” according to the General Technology Note for the “development,” “production,” or “use” of digital oscilloscopes and transient recorders using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at successive intervals of less than 1 ns (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution and storing 256 or more samples.

* * * * *

Supplement 4 to Part 744 [Amended]

■ 13. Supplement no. 4 to part 744 is amended in footnote 1 by adding double quotation marks around the terms “direct product” and “Direct product” wherever they appear.

PART 748—[AMENDED]

■ 14. The authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *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 6, 2021, 86 FR 43901 (August 10, 2021).

■ 15. Section 748.3 is amended by revising the introductory text of paragraph (c) and the introductory text of paragraph (c)(1) to read as follows:

§ 748.3 Classification requests and advisory opinions.

* * * * *

(c) *Advisory Opinions.* Advisory opinion requests must be made in writing, and may be delivered to BIS by mail, by email, or through the BIS website. If delivering a request by mail, submit to the address listed in § 748.1(d)(2). Both your letter and envelope must be marked “Advisory Opinion.” If submitting by email, submit to RPD2@bis.doc.gov with the subject title “Advisory Opinion.” If submitting through the BIS website, see <http://www.bis.doc.gov>.

(1) Your submission must contain the following information if you are requesting guidance regarding interpretations of the EAR:

* * * * *

■ 16. Supplement no. 2 to part 748 is amended by revising paragraph (o)(3)(i) to read as follows:

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

* * * * *

(o) * * *

(3) * * *

(i) *Technology controlled for national security reasons.* If you are submitting a license application to export, reexport, and transfer (in-country) technology controlled for national security reasons to a country *not* listed in Country Group D:1, E:1, or E:2 (see Supplement No. 1 to part 740 of the EAR), you must obtain the letter from the ultimate consignee verifying that, unless prior authorization is obtained from BIS, the consignee will not knowingly reexport the technology to any destination, or export the “direct product” of the technology, directly or indirectly, to a country listed in Country Group D:1, E:1, or E:2 (see Supplement No. 2 to part 740 of the EAR). If you are unable to obtain this letter of assurance from your consignee, you must state in your license application why the assurances could not be obtained. BIS may request a copy of this letter. * * *

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■ 17. Supplement no. 3 to part 748 is amended by revising paragraph (b)(6) to read as follows:

Supplement No. 3 to Part 748—Statement by Ultimate Consignee and Purchaser Content Requirements

* * * * *

(b) * * *

(6) Block 6: Ultimate Consignee. Enter the requested information and sign the statement digitally or in ink. (For a

definition of ultimate consignee, see § 748.5(e) of this part.)

* * * * *

PART 750—[AMENDED]

■ 18. The authority citation for part 750 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 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. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320.

■ 19. Section 750.1 is revised to read as follows:

§ 750.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the Bureau of Industry and Security’s (BIS) process for reviewing your application for a license and the applicable processing times for various types of applications. Information related to the issuance, revocation, or suspension of a license and the denial of a license application is provided along with the procedures on obtaining a duplicate or replacement license (limited to those which BIS has validated and issued in hardcopy), the transfer of a license, and the shipping tolerances available on licenses. This part also contains instructions on obtaining the status of a pending application.

■ 20. Section 750.7 is amended by revising paragraph (a) to read as follows:

§ 750.7 Issuance of licenses.

(a) *Scope.* (1) Unless limited by a condition set out in a license, the export, reexport, or transfer (in-country) authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant must inform the other parties identified on the license, such as the ultimate consignees and end users, of the license’s scope and of the specific conditions applicable to them.

(2) BIS grants licenses in reliance on representations the applicant made or submitted in connection with the license application, letters of explanation, and other documents submitted. Any license obtained in which a false or misleading representation was made, or a material fact was falsified or concealed on the license application, letters of explanation, or any document submitted in connection with the license application, shall be deemed void as of

the date of issuance. See § 750.8(a) of the EAR, which provides that all licenses are subject to revocation, in whole or in part, without notice. See part 764 of the EAR for other sanctions that may result in the event a violation occurs.

(3) A BIS license authorizing the release of “technology” to an entity also authorizes the release of the same “technology” to the entity’s foreign persons who are permanent and regular employees (and who are not proscribed persons) of the entity’s facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the “technology” to foreign persons of specific countries or country groups. See § 734.20 of the EAR for additional information regarding the release of “technology” authorized by a BIS license.

* * * * *

■ 21. Section 750.8 is amended by revising paragraph (b) to read as follows:

§ 750.8 Revocation or suspension of licenses.

* * * * *

(b) *Revoked or suspended licenses.* If BIS revokes or suspends a license, the licensee must retain all applicable supporting documents and records of shipments in accordance with the recordkeeping provisions of part 762 of the EAR.

■ 22. Section 750.9 is amended by revising paragraph (a) to read as follows:

§ 750.9 Duplicate licenses.

(a) *Lost, stolen or destroyed.* For licensees whom BIS authorized the submission of paper applications, if a license is lost, stolen or destroyed, you, as the licensee, may obtain a duplicate of the license by submitting a letter to the BIS at the address listed in § 748.1(d)(2) of the EAR, Attention: Duplicate License Request.” You must certify in your letter:

(1) That the original license ([number] issued to [name and address of licensee]) has been lost, stolen or destroyed; and

(2) The circumstances under which it was lost, stolen or destroyed.

* * * * *

PART 770—[AMENDED]

■ 23. The authority citation for 15 CFR part 770 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 24. Section 770.3 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.

* * * * *

(d) * * *
(1) * * *

(ii) *Answer 1.* Export of technology includes release of U.S.-origin data in a foreign country as defined in § 734.15 of the EAR. So long as the circumstances described here would not exceed that permitted under the License Exception TSU for operation technology and software, as described in § 740.13(a) of the EAR, this is not a “release” of technology and a license would not be required.

* * * * *

PART 772—[AMENDED]

■ 25. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 26. Section 772.1 is amended by:
■ a. Adding a definition for “direct product” in alphabetical order; and
■ b. Revising paragraph (a) introductory text of the definition of “U.S. person”.

The addition and revision read as follows:

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

* * * * *

Direct product. The immediate product (including processes and services) produced directly by the use of technology or software.

* * * * *

U.S. Person. (a) For purposes of §§ 732.3(j), 736.2(b)(7), 740.21(e)(1), 744.6, 744.10, 744.11, 744.12, 744.13, 744.14, and 745.2(a)(1) of the EAR, the term U.S. person includes:

* * * * *

PART 774—[AMENDED]

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

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 28. Supplement No. 1 to Part 774 is amended by revising ECCN 0D617 and ECCN 7A611 to read as follows:

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

* * * * *

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

License Requirements

Reason for Control: NS, RS, AT, UN

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
NS applies to entire entry, except 0D617.y.	NS Column 1.
RS applies to entire entry, except 0D617.y.	RS Column 1.
RS applies to 0D617.y.	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry.	AT Column 1.
UN applies to entire entry, except 0D617.y.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “software” in 0D617.

List of Items Controlled

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

Related Definitions: N/A
Items:

- a. “Software” (other than “software” controlled in paragraph .y of this entry) “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCNs 0A617 (except 0A617.y), 0B617, or 0C617.
- b. to x. [Reserved].
- y. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities controlled by ECCN 0A617.y.

* * * * *

7A611 Military fire control, laser, imaging, and guidance equipment, as follows (see List of Items Controlled).

License Requirements

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

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
NS applies to entire entry except 7A611.y.	NS Column 1.
MT applies to commodities in 7A611.a that meet or exceed the parameters in 7A103.b or .c.	MT Column 1.
RS applies to entire entry except 7A611.y.	RS Column 1.
RS applies to 7A611.y.	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry.	AT Column 1.
UN applies to entire entry except 7A611.y.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: \$1500

GBS: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 7A611.

List of Items Controlled

Related Controls: (1) Military fire control, laser, imaging, and guidance equipment that are enumerated in USML Category XII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See Related Controls in ECCNs 0A504, 2A984, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 6A107, 7A001, 7A002, 7A003, 7A005, 7A101, 7A102, and 7A103. (3) See ECCN 3A611 and USML Category XI for controls on countermeasure equipment. (4) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S. origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. Guidance or navigation systems, not elsewhere specified on the USML, that are “specially designed” for a defense article on the USML or for a 600 series item.

b. to w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments,” including accelerometers, gyros, angular rate sensors, gravity meters (gravimeters), and inertial measurement units (IMUs), that are “specially designed” for defense articles controlled by USML Category XII or items controlled by 7A611, and that are NOT:

x.1. Enumerated or controlled in the USML or elsewhere within ECCN 7A611;

x.2. Described in ECCNs 6A007, 6A107, 7A001, 7A002, 7A003, 7A101, 7A102 or 7A103; or

x.3. Elsewhere specified in ECCN 7A611.y or 3A611.y.

y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control

in this ECCN or a defense article in Category XII and not elsewhere specified on the USML or in the CCL, as follows, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:

y.1 [Reserved]

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 210928–0198]

RIN 0694–AI08

Commerce Control List: Expansion of Controls on Certain Biological Equipment “Software”

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the decision made at the Australia Group (AG) Virtual Implementation Meeting session held in May 2021, and later adopted pursuant to the AG’s silence procedure. This decision updated the AG Common Control List for dual-use biological equipment by adding controls on nucleic acid assembler and synthesizer “software” that is capable of designing and building functional genetic elements from digital sequence data. Prior to this AG decision, BIS, consistent with the interagency process described in the Export Control Reform Act of 2018 (ECRA), identified this “software” as a technology to be evaluated as an emerging technology. The decision by BIS to amend the CCL to include this “software” complies with the requirements of ECRA and also reflects the decision of the AG to add it to the regime’s Common Control List, thereby making exports of this “software” subject to multilateral control through the implementation of these changes by individual AG participating countries (including the United States).

DATES: This rule is effective October 5, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Wesley Johnson, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty

Compliance, Bureau of Industry and Security, Telephone: (202) 482–0091, Email: Wesley.Johnson@bis.doc.gov.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the decision made at the Australia Group (AG) Virtual Implementation Meeting session held in May 2021, and subsequently adopted pursuant to the AG silence procedure (the AG silence procedure provides for the adoption of a measure, subsequent to its provisional acceptance at an AG plenary or intersessional meeting, provided that no participating country submits an objection on or before a specified date). The AG is a multilateral forum consisting of 42 participating countries and the European Union. These participants maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments’ national controls and to achieve greater harmonization among these controls.

Addition of New Export Control Classification Number (ECCN) 2D352—“Software” for Nucleic Acid Assemblers/Synthesizers

This final rule amends the Commerce Control List (CCL), in Supplement No. 1 to part 774 of the EAR, to add a new ECCN 2D352 to reflect a decision made at the May 2021 Virtual Implementation Meeting session to modify the AG biological equipment list to add controls on “software” that is: (1) Designed for nucleic acid assemblers and synthesizers described on this AG Common Control List; and (2) capable of designing and building functional genetic elements from digital sequence data. Specifically, new ECCN 2D352 controls “software” designed for nucleic acid assemblers and synthesizers controlled by ECCN 2B352.j that is capable of designing and building functional genetic elements from digital sequence data.

This “software,” as controlled under new ECCN 2D352, requires a license for chemical and biological weapons (CB) reasons and anti-terrorism (AT) reasons to the destinations indicated under CB Column 2 and AT Column 1, respectively, on the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR (also see the AT license requirements described in part 742 that apply to Iran, North Korea and Syria). A license also is required to certain