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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR parts 740, 742, 744, 748 and 772

[Docket No.]

[RIN]

Revisions and Clarification of Export and Reexport Controls for the People's Republic of China (PRC); New License Exception Certified End-User

AGENCY: Bureau of Industry and Security, Commerce

ACTION: Proposed rule

SUMMARY:

It is the policy of the United States Government to prevent U.S. exports to the People's Republic of China (PRC) that would make a material contribution to the PRC's military

capability, while facilitating U.S. exports to legitimate civil end-users. Consistent with this policy, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) by revising and clarifying United States policy on exports and reexports of goods and technology to the PRC. The proposed amendments include a revision to the licensing review policy for items controlled on the Commerce Control List (CCL) for reasons of national security, including a new control based on positive knowledge of a military end-use on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC. In addition, this rule proposes to require exporters to obtain an End-User Certificate, issued by the PRC Ministry of Commerce, for all items that require a license to the PRC for any reason and that exceed a total value of \$5,000. Finally, this rule proposes the creation of a new License Exception for certified end-users to whom eligible items may be exported or reexported to eligible destinations, including the PRC.

DATES: Comments must be received by [INSERT 120 DAYS FROM THE PUBLICATION DATE]

ADDRESSES: Written comments on this rule may be sent to the Federal eRulemaking Portal: [http:// www.regulations.gov](http://www.regulations.gov), or by e-mail to publiccomments@bis.doc.gov.

Include RIN 0694- in the subject line of the message. Comments may be submitted by mail or hand delivery to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, N.W., Room 2705, Washington, D.C. 20230, ATTN: RIN 0694- ; or by fax to (202)482-3355.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202)395-7285.

FOR FURTHER INFORMATION CONTACT:

Bernard Kritzer, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; telephone: (202) 482-0092, or e-mail: bkritzer@bis.doc.gov.

SUPPLEMENTARY INFORMATION

Background

This rule proposes revisions and clarifications to United States policy on exports to the People's Republic of China (PRC) of goods and technologies controlled for national security and foreign policy reasons. As the PRC has increased its participation in the global economy, bilateral trade between the PRC and the United States has grown rapidly, and the PRC has emerged as a major market for U.S. exports. In addition, as the PRC also increasingly has allowed foreign investment, many U.S. companies have established significant business operations there. This greatly expanded economic relationship is beneficial for both nations. At the same time, the PRC is seeking to significantly upgrade its military capabilities. An enhanced PRC military capability could adversely affect U.S. national security and foreign policy interests. Thus, the

United States seeks to prevent trade that would make a material contribution to the PRC's military capability, while facilitating trade for confirmed civil end-uses and end-users in the PRC.

In fiscal year 2005, U.S. companies exported approximately \$39 billion worth of items to the PRC. During the same period, approximately \$3.0 billion of proposed exports were subject to U.S. Government licensing review. Of the proposed exports that required a license, \$2.4 billion were approved and \$12.5 million were denied, with the remainder returned without action. In order to strengthen U.S. Government confidence that these U.S. exports conform to U.S. policy, the U.S. Government conducts end-use visits, consisting of Pre-License Checks (PLCs) and Post-Shipment Verifications (PSVs), to determine the *bona fides* of potential and actual end-users. In April 2004, the Vice Minister of Commerce of the PRC and the U.S. Under Secretary of Commerce for Industry and Security exchanged letters transmitting an understanding on strengthened procedures for conducting such end-use visits. This end-use visit understanding has facilitated exports of items on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) by providing greater assurance that U.S. exports of controlled dual-use items are being used by their intended recipients for their intended purposes.

It is U.S. policy not to support the PRC's efforts to enhance its military capabilities. As noted in the Department of Defense's 2005 Annual Report to the Congress on the Military Power of the People's Republic of China, the PRC is undertaking a significant

military modernization program. Thus, the United States seeks to prevent the export of goods and technologies that will enhance the PRC's conventional military capabilities or that will contribute to the proliferation of nuclear, missile, chemical or biological weapons. Under current U.S. licensing policy, any export license application that would make a material contribution to the PRC's military capabilities is reviewed under a presumption of denial.

This rule proposes the following revisions and clarifications to licensing requirements and policies with regard to the PRC to more precisely reflect U.S. export control policy:

Revision of licensing review policy and license requirements

To strengthen U.S. efforts to prevent U.S. exports to the PRC that would make a material contribution to the PRC's military capabilities, this rule proposes revisions to the licensing review policy set forth in section 742.4(b)(7) of the EAR for items controlled on the CCL for reasons of national security (i.e., controlled pursuant to the Wassenaar Arrangement). Specifically, this rule reaffirms that the overall policy of the United States for exports to the PRC of these items is to approve those exports for civil applications but generally to deny exports that will contribute to the advancement of Chinese military capabilities.

In addition, consistent with this revised policy and U.S. obligations as a party to the Wassenaar Arrangement, this rule proposes to implement a new control on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC when the

exporter has actual or positive knowledge, or is informed, that such items are destined for military end-use in the PRC. The additional items that would be subject to the military end-use restriction are based on careful interagency review of a universe of items listed on the CCL that have potential to advance the military capabilities of the PRC. Also for purposes of serving this revised policy and U.S. obligations as a party to the Wassenaar Arrangement, this rule proposes in section 744.21(f) that "military end-use" would mean: incorporation into, or use for the production, design, development, maintenance, operation, installation, or deployment, repair, overhaul, or refurbishing of items (1) described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); (2) described on the International Munitions List (IML) (as set out on the Wassenaar Arrangement website at <http://www.wassenaar.org>); or (3) listed under Export Control Classification Numbers (ECCNs) ending in "A018" on the CCL in Supplement No. 1 to part 774 of the EAR.

Other end-use controls in part 744 of the EAR will continue to apply. In addition, BIS will also review license applications for items controlled for chemical and biological proliferation, nuclear nonproliferation and missile technology under sections 742.2, 742.3 and 742.5, respectively, of the EAR, in accordance with the licensing policies in both paragraph (b) of the particular proliferation section and section 742.4(b)(7) of the EAR when those items are destined to the PRC.

Consistent with the purpose of this rule, the actual or positive knowledge standard would apply only to the licensing requirements in sections 744.6 and 744.21 of the EAR for

exports and reexports to the PRC for military end-use and would vary from the existing definition of knowledge set forth in part 772 of the EAR. The proposed actual or positive knowledge standard is narrower in that it does not include “reason to know” or “reason to believe.” This rule proposes to amend section 772.1 of the EAR to make exporters aware that a different knowledge standard applies in this context.

Items primarily affected by this revision are items controlled for anti-terrorism reasons under the EAR. The specific items that are subject to the military end-use license requirement will be set forth, by ECCN, including specific parameters, in a list in Supplement No. 2 to part 744 of the EAR. See sections 744.6 (Restrictions on certain activities of U.S. persons), 744.21 (Restrictions on Certain Military End-uses in the People’s Republic of China (PRC), and Supplement No. 2 to part 744 (SUPPLEMENT NO. 2 TO PART 744 – LIST OF ITEMS SUBJECT TO THE MILITARY END-USE LICENSE REQUIREMENT OF SECTION 744.21) of the EAR.

Revision of End-User Certificate requirements

To strengthen implementation of the April 2004 end-use visit understanding, this rule proposes that the requirement for exporters to obtain PRC End-User Certificates from the Ministry of Commerce of the PRC be expanded to apply to all exports of controlled goods and technologies (and not merely to those exports controlled for national security reasons, as currently set forth in section 748.10 of the EAR). Specifically, exporters would be required to obtain an End-User Certificate, issued by the PRC Ministry of Commerce, for all items that require a license to the PRC for any reason and exceed a

total value of \$5,000. Consistent with the existing Regulations, BIS will continue to require End-User Certificates for all computer exports to the PRC that require license applications, regardless of the dollar value of the export. BIS anticipates that this expansion of the End-Use Certificate requirement will facilitate BIS's ability to conduct end-use checks on exports or reexports of controlled goods and technologies to the PRC, consistent with the existing end-use visit understanding with the Government of the PRC.

To minimize the impact that this expanded support documentation requirement will have on exporters, this rule also proposes to eliminate the requirement that exporters submit PRC End-User Certificates to BIS as required support documentation provided with the license application. Instead, this rule would require exporters to include the serial number of the PRC End-User Certificate in an appropriate field of the license application, and to retain the PRC End-User Certificate in accordance with the recordkeeping provisions of the EAR. See section 762.3 (Records exempt from recordkeeping requirements) of the EAR. This revision and conforming changes would be set forth in sections 748.9 (Support Documents for License Applications), 748.10 (Import and End-User Certificates), and 748.12 (Special Provisions for Support Documents) of the EAR.

New License Exception for Certified End-Users

To facilitate permitted exports to civil end-users, BIS proposes to establish a new License Exception for Certified End-Users (License Exception CEU) in section 740.20 of the EAR. This License Exception would authorize the export, reexport, and transfer of eligible items to certified end-users in an eligible destination, including the PRC.

Certified end-users would be those who have a demonstrated record of engaging only in civil end-use activities and who have not contributed to the proliferation of weapons of mass destruction or otherwise engaged in activity contrary to U.S. national security or foreign policy interests.

In conjunction with other relevant agencies, BIS will evaluate prospective certified end-users on the basis of a range of specific factors, which include the party's record of exclusive engagement in civil end-use activities; the party's compliance with U.S. export controls; the party's capability to comply with the requirements of License Exception CEU; the party's agreement to on-site compliance reviews by representatives of the United States Government; and the party's relationships with U.S and foreign companies. In addition, when evaluating the eligibility of an end-user, agencies will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination. Requests to be listed as a certified end-user should be submitted in the form of an advisory opinion request as described in proposed section 740.20(a)(1) of the EAR. Such requests will be accepted from exporters and end-users. A list of certified end-users and eligible destinations will appear in new Supplement No. 4 to part 740 (SUPPLEMENT NO. 4 TO PART 740 – LICENSE EXCEPTION CERTIFIED END-USER (CEU): LIST OF CERTIFIED END-USERS AND LIST OF ITEMS NOT ELIGIBLE FOR EXPORT OR REEXPORT UNDER LICENSE EXCEPTION CEU) of the EAR.

Some items will not be eligible for export, reexport, or transfer under this license

exception. Ineligible items are either those restricted by statute or those that, in consultation with other interested agencies, have been determined to merit review by the U.S. Government. A list of ineligible items under License Exception CEU also will appear, by ECCN, in new Supplement No. 4 to part 740 of the EAR. Note that as proposed in section 740.20(c) of the EAR exporters may not self-classify items to determine if they are eligible for License Exception CEU purposes. Exporters must either obtain a valid Commodity Classification, as set forth in section 748.3, or have obtained a license for the same item prior to exporting or reexporting under License Exception CEU.

Finally, under new section 740.20, exporters, reexporters and end-users who use License Exception CEU would be required to comply with recordkeeping and reporting requirements, as described in sections 740.20 (e) (Certification and recordkeeping) and (f) (Reporting and auditing requirements) of the EAR. As required in section 740.20(e), prior to exporting or reexporting under License Exception CEU, exporters or reexporters must receive and retain certifications from eligible end-users that state they are informed of and will abide by all License Exception CEU end-use restrictions; they have written procedures in place to ensure compliance with License Exception CEU destination and end-use restrictions; they will not use items obtained under License Exception CEU in any of the prohibited activities described in part 744 of the EAR; and they agree to allow on-site visits by U.S. Government officials to verify their compliance with the conditions of License Exception CEU.

Those users also will be audited on a routine basis, as described in section 740.20(f)(2) (Audits). Upon request by BIS, exporters, reexporters, and certified end-users would have to allow inspection of records or on-site compliance review. For audit purposes, records and information identified in section 740.20 should be retained in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

[Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), continues the Regulations in effect under the International Emergency Economic Powers Act. BIS amends the EAR in this rule under the provisions of the EAA as continued in effect under IEEPA and Executive Order 13222.]

[The following language will apply at the point the rule passes the proposed stage: This action is taken after consultation with the Secretary of State. BIS submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on [INSERT DATE.]]

Rulemaking Requirements

1. This proposed rule has been determined to be economically significant for purposes of E.O. 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person 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 proposed rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748, and 0694-0093, “Import Certificates and End-User Certificates,” which carries a burden of 15 minutes per submission. This proposed rule is expected to result in an increase in the number of license applications submitted to BIS. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202)395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

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

4. Pursuant to 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a general statement of policy and rule of agency procedure. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this 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. However, in view of the importance of this proposed rule, which represents the first comprehensive statement of BIS's approach toward these issues, BIS is seeking public comments before these revisions take effect. The period for submission of comments will close on [INSERT 120 DAYS AFTER DATE OF PUBLICATION]. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying at the Federal eRulemaking Portal: <http://www.regulations.gov> and on the BIS Freedom of Information Act (FOIA) web site at <http://www.bis.doc.gov/foia>. BIS does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration at (202)482-0500 for assistance.

5. This rule has been determined to be major for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*).

List of Subjects

15 CFR Parts 740 and 748

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

Accordingly, parts 740, 742, 744, 748 and 772 of the Export Administration Regulations (15 CFR parts 730-799) are proposed to be amended as follows:

PART 740 – [AMENDED]

1. 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.*; Sec. 901-911, Pub. L. 106-387; 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 2, 2005, 70 FR 45273 (August 5, 2005).

2. Add new §740.20 to read as follows:

§740.20 LICENSE EXCEPTION FOR CERTIFIED END-USERS (LICENSE EXCEPTION CEU)

License Exception CEU permits the export, reexport, and transfer to certified end-users of any eligible items that will be used in an eligible destination. Certified end-users are those who have been approved in advance pursuant to the requirements of this section. To be eligible for License Exception CEU, exporters, reexporters, and certified end-users located in eligible destinations must adhere to the conditions and restrictions set forth in paragraphs (a) – (f) of this section.

(a) *Eligible end-users.* The only end-users to whom items may be exported, reexported, or transferred under License Exception CEU are those certified end-users identified in Supplement No. 4 to part 740.

(1) In evaluating an end-user for eligibility under this license exception, BIS, in consultation with the Departments of State, Energy, and Defense and other agencies, as appropriate, will consider a range of information, including such factors as: the party's record of exclusive engagement in civil end-use activities; the party's compliance with U.S. export controls; the party's capability to comply with the requirements of License Exception CEU; the party's agreement to on-site compliance reviews by representatives of the United States Government; and the party's relationships with U.S and foreign companies. In addition, when evaluating the eligibility of an end-user, agencies will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination.

(2) Requests for certifications should be submitted in the form of an advisory opinion request, as described in section 748.3(c), submitted to:

The Office of Exporter Services, Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW, Room 2075,
Washington, DC 20230; or to

The Office of Exporter Services, Bureau of Industry and Security
U.S. Department of Commerce
P.O. Box 273,
Washington, DC 20044.

Mark the package sent to either address “Request for Certification/License Exception CEU”.

Requests for certifications will be accepted from exporters and end-users.

(3) Exports, reexports, or transfers made under License Exception CEU may only be made to an end-user listed in Supplement No. 4 to Part 740 if the items will be consigned to and for use by the certified end-user.

(b) Eligible Destinations. License Exception CEU may be used for the following destinations:

(1) The People’s Republic of China.

(2) [RESERVED]

(c) Item restrictions.

(1) Items controlled under the EAR for missile technology (MT) and crime control (CC) reasons may not be exported or reexported under this License Exception. The items listed in Supplement No. 4 to part 740 also may not be exported or reexported under License Exception CEU. Furthermore, no technology requiring a license to an eligible destination may be exported or reexported under this License Exception unless it is eligible for export under any other license exception set forth in part 740.

(2) All other items are eligible.

Note to paragraph (c) of this section: Exporters may not self-classify items to determine if they are eligible for License Exception CEU purposes. Exporters must either obtain a valid Commodity Classification, as set forth in §748.3, or have obtained a license for the same item prior to exporting or reexporting under License Exception CEU.

(d) End-use restrictions. Items obtained under License Exception CEU may not be used for military end-uses, as defined in §744.21(f) of the EAR. Eligible end-users who obtain items under License Exception CEU may only:

(1) Use such items at the end-user's own facility located in an eligible destination or at a facility located in an eligible destination over which the end-user demonstrates effective control;

(2) Consume such items during use; or

(3) Dispose of or reexport such items only after receiving authorization to do so from BIS.

(e) Certification and recordkeeping. Prior to exporting or reexporting under License Exception CEU, exporters or reexporters must receive and retain end-use certifications from eligible end-users stating that:

(1) They are informed of and will abide by all License Exception CEU end-use restrictions;

(2) They have written procedures in place to ensure compliance with License Exception CEU destination and end-use restrictions;

(3) They will not use items obtained under License Exception CEU in any of the prohibited activities described in part 744 of the EAR; and

(4) They agree to allow on-site visits by U.S. Government officials to verify the end-users' compliance with the conditions of License Exception CEU.

Note to paragraph (e) of this section: This certification must be retained by exporters or reexporters in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

(f) Reporting and auditing requirements.

(1) *Reports.* Exporters and reexporters who use License Exception CEU are required to submit annual reports to BIS. These reports must include, for each certified end-user to whom the exporter or reexporter exported or reexported eligible items: (1) the name and address of any certified end-users to whom the exporters or reexporters

exported or reexported eligible items; (2) the eligible destination to which the items were exported or reexported; (3) the quantity of such items; (4) the value of such items; and (5) the ECCN(s) of such items. Reports are due by February 15 of each year, and must cover the period of January 1 through December 31 of the prior year. Reports should be sent to:

Office of Export Enforcement, Bureau of Industry and Security,
U.S. Department of Commerce,
14th Street and Constitution Avenue, N.W.,
Room H-4520,
Washington, DC 20230.

Packages containing such reports should be marked "License Exception CEU Reports."

(2) *Audits*. Users of License Exception CEU will be audited on a routine basis.

Upon request by BIS, exporters, reexporters, and certified end-users must allow inspection of records or on-site compliance reviews. For audit purposes, records, including information identified in paragraphs (e), (f)(1) and the note to paragraph (c) of this section, should be retained in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

3. Supplement No. 4 to part 740 is added to read as follows:

**SUPPLEMENT NO. 4 TO PART 740 – LICENSE EXCEPTION CERTIFIED
END-USER (CEU): LIST OF CERTIFIED END-USERS AND LIST OF**

**ITEMS NOT ELIGIBLE FOR EXPORT OR REEXPORT UNDER LICENSE
EXCEPTION CEU.**

**(a) Eligible Certified End-Users and Eligible Destinations for Exports and
Reexports Under License Exception CEU:**

Certified End-User

Eligible Destination

**(b) The following items, listed by category, may not be exported or reexported
under License Exception CEU. See section 740.20(c)(1) for item restrictions under
License Exception CEU.**

(1) Category 1 – Materials, Chemicals, Microorganisms, and Toxins

- (i) 1A002.a “Composite” structures or laminates having an organic “matrix” and made from materials listed under 1C010.c or 1C010.d
- (ii) 1A202 "Composite" structures.
- (iii) 1A225 Platinized catalysts for the recovery of tritium from heavy water or for the production of heavy water.
- (iv) 1A226 Specialized packings for use in separating heavy water from ordinary water.
- (v) 1B226 Electromagnetic isotope separators.
- (vi) 1B230 Pumps circulating solutions of diluted or concentrated potassium amide catalyst in liquid ammonia (KNH₂/NH₃).
- (vii) 1B231 Tritium facilities, plants and equipment.
Hydrogen or helium refrigeration units.
Hydrogen isotope storage and purification systems.

- (viii) 1C001 Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers.
- (ix) 1C012 Nuclear Materials (plutonium, previously separated neptunium-237).
- (x) 1C202 Aluminum and titanium alloys.
- (xi) 1C216 Maraging steel.
- (xii) 1C225 Boron and boron compounds, mixtures, and loaded materials.
- (xiii) 1C230 Beryllium.
- (xiv) 1C231 Hafnium.
- (xv) 1C232 Helium-3 or helium isotopically enriched in the helium-3 isotope.
- (xvi) 1C233 Lithium.
- (xvii) 1C235 Tritium, tritium compounds, mixtures containing tritium.
- (xviii) 1C237 Radium-226, radium-226 compounds.
- (xix) 1C239 High explosives, other than those controlled by the U.S. Munitions List, or substances or mixtures containing more than 2% by weight thereof, with a crystal density greater than 1.8g/cm³ and having a detonation velocity greater than 8,000 m/s.
- (xx) 1C240 Nickel powder and porous nickel metal other than 0C006.
- (xxi) 1E001 "Technology" for the development or production of equipment and materials listed in 1A001.b, 1A001.c., 1A002, 1A003, 1A005, 1B or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992 and 1C995).
- (xxii) 1E001 "Technology" for items controlled by 1C350 and for chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a, 1C351, 1C352, 1C353, or 1C354.

(2) Category 2 - Materials Processing

- (i) 2B206 Dimensional inspection machines, devices, or systems other than those controlled by 2B006.

- (ii) 2B215 Flow-forming and spin-forming machines other than those controlled by 2B115, and rotor-forming mandrels
- (iii) 2B225 Remote manipulators that can be used to provide remote actions in radiochemical separation operations and hot cells
- (iv) 2B228 Rotor fabrication and assembly equipment and bellows-forming mandrels and dies
- (v) 2B229 Centrifugal balancing machines, fixed or portable, horizontal or vertical
- (vi) 2B232 Multistage light gas guns or other high-velocity gun systems
- (vii) 2B350.a Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m³ (100 liters) and less than 20 m³ (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the materials listed in paragraphs a.1 – a.7.
- (viii) 2B350.b Agitators for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the materials listed in paragraphs b.1 – b.7.
- (ix) 2B350.c Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m³ (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the materials listed in paragraphs c.1 – c.7.
- (x) 2B350.f Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the materials listed in paragraphs f.1. and f.2.
- (xi) 2B350.h Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the materials listed in paragraphs h.1. – h.8.
- (xii) 2B350.j Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000°C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the materials listed in paragraphs j.1. – j.3.

- (xiii) 2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor.
- (xiv) 2B352.a Complete containment facilities at P3 or P4 containment level.
- (xv) 2B352.b Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 20 liters.
- (xvi) 2B352.c Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols.
- (xvii) 2B352.d.1 Cross (tangential) flow filtration equipment capable of separation of pathogenic microorganisms, viruses, toxins or cell cultures, without the propagation of aerosols.
- (xviii) 2B352.e Steam sterilizable freeze-drying equipment with a condenser capacity of 10 kgs of ice or greater in 24 hours, but less than 1,000 kgs of ice in 24 hours.
- (xix) 2B352.f Protective and containment equipment.
- (xx) 2B352.h Spraying or fogging systems and components therefor.
- (xxi) 2E001 "Technology" for the "development" of equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.
- (xxii) 2E002 "Technology" for the "production" of equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.
- (xxiii) 2E301 "Technology" for "use" of items controlled by 2B350, 2B351 and 2B352.

(3) Category 3 – Electronics Design, Development and Production

- (i) 3A001.f. Lithography equipment.
- (ii) 3A201 Electronic components, other than those specified in 3A001
Capacitors.
Superconducting solenoidal electromagnets.
Flash X-ray generators or pulsed electron accelerators.
- (iii) 3A226 Direct current high-power supplies.
- (iv) 3A227 High-voltage direct current power supplies.

- (v) 3A229 Firing sets and equivalent high-current pulse generators (for detonators controlled by 3A232).
Explosive detonator firing sets.
Modular electrical pulse generators (pulsers).
- (vi) 3A230 High-speed pulse generators.
- (vii) 3A232 Detonators and multipoint initiation systems (exploding bridge wire, slapper, etc.).
Electrically driven explosive detonators.
- (viii) 3A233 Mass spectrometers.
Inductively coupled plasma mass spectrometers (ICP/MS).
Glow discharge mass spectrometers (GDMS).
Thermal ionization mass spectrometers (TIMS).
Electron bombardment mass spectrometers.
Molecular beam mass spectrometers.

(4) Category 5 – (Part 1) Telecommunications

- (i) 5A001b.4 Digitally controlled radio receivers
- (ii) 5D001.a Software designed or modified for the development, production, or use of equipment, functions or features controlled by 5A001 or 5B001.
- (iii) 5E001.a Technology for the development, production or use (excluding operation) of equipment, functions, or feature or software controlled by 5A001, 5B001 or 5D001.

(5) Category 6 – Sensors and Lasers

- (i) 6A001.a.1.b Object detection or location systems.
- (ii) 6A001.a.2.a Hydrophones.
- (iii) 6A002 Optical sensors.
- (iv) 6A003 Cameras.
- (v) 6A008 Radars.
- (vi) 6A202 Photomultiplier tubes with a photocathode area of greater than 20cm² having an anode pulse rise time of less than 1 ns.
- (vii) 6A203 Cameras and components not controlled by ECCN 6A003.

- (viii) 6A225 Velocity interferometers.
- (ix) 6A226 Pressure sensors.
Manganin gauges.
Quartz pressure transducers.
- (x) 6B008 Pulse radar cross-section measurement systems having transmit pulse widths of 100ns or less and specifically designed components therefor.
- (xi) 6D001 Software specially designed for the development or production of equipment controlled by 6A004, 6A005, 6A008 or 6B008.
- (xii) 6E001 “Technology” for the development of equipment, materials, or software controlled by 6A, 6B, 6C, or 6D.
- (xiii) 6E002 “Technology” for the production of equipment or materials controlled by 6A, 6B, 6C or 6D.

(6) Category 7 – Navigation and Avionics

7D003 Other Software (See List of Items Controlled).

(7) Category 8 - Marine

- (i) 8A001.a
- (ii) 8A001.b
- (iii) 8A001.c
- (iv) 8A001.d
- (v) 8D001 Software specially designed or modified for the development, production, or use of equipment and materials controlled by 8A, 8B, or 8C
- (vi) 8D002 Specific software specially designed or modified for the development, production, repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.
- (vii) 8E001 “Technology” for the development, production, or use of equipment and materials controlled by 8A, 8B, or 8C.
- (viii) 8E002 Other marine technology (See List of Items Controlled).

(8) Category 9 – Propulsion Systems, Space Vehicles and Related Equipment

- (i) 9D001 Software required for the development of equipment or technology controlled by 9A, 9B, or 9E003
- (ii) 9D002 Software required for the production of equipment controlled by 9A or 9B.
- (iii) 9D003 Software required for the use of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A or equipment controlled by 9B.
- (iv) 9D004 Other aero software (See List of Items Controlled).
- (v) 9E001 Technology for the development of equipment or software controlled by 9A001.c., 9A004 to 9A011, 9B, or 9D.
- (vi) 9E002 Technology for the production of equipment controlled by 9A001.c., 9A004 to 9A011, or 9B.
- (vii) 9E003 Other aero technology (See List of Items Controlled).

PART 742 - [AMENDED]

4. 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.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; 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 2, 2005, 70 FR 45273 (August 5, 2005); Notice of October 25, 2005, 70 FR 62027 (October 27, 2005).
5. Section 742 is amended

- (a) By adding paragraph (4) to section 742.2(b);
- (b) By adding paragraph (4) to section 742.3(b)
- (c) By adding paragraph (4) to section 742.5(b); and
- (d) By revising paragraph (b)(7) to section 742.4, to read as follows:

§742.2 Proliferation of Chemical and Biological Weapons

(a) * * * * *

(b) * * * * *

(4) BIS will review license applications for items described in paragraph (a) of this section in accordance with the licensing policies described in paragraph (b) of this section and the licensing policies in both paragraph (b) of this section and §742.4(b)(7) when those items are destined to the People’s Republic of China.

§742.3 Nuclear Nonproliferation

(a) * * * * *

(b) * * * * *

(4) BIS will also review license applications for items described in paragraph (a) of this section in accordance with the licensing policies described in paragraph (b) of this section and the licensing policies in both paragraph (b) of this section and §742.4(b)(7) when those items are destined to the People’s Republic of China.

§742.4 National Security

- * * * * *
- (a) * * *
- (b) * * *

(7) For the People's Republic of China, there is a general policy of approval for license applications to export, reexport, or transfer items to civil end-uses. There is a presumption of denial for items that would make a material contribution to the military capabilities of the People's Republic of China. Thus, all license applications for exports, reexports, and transfers to the People's Republic of China will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the People's Republic of China. In addition, license applications may be reviewed under missile technology, nuclear nonproliferation, or chemical and biological weapons review policies, to determine if the end-user may be involved in proliferation activities.

* * * *

§742.5 Missile Technology

- (a) * * * * *
- (b) * * * * *

(4) BIS will also review license applications for items described in paragraph (a) of this section in accordance with the licensing policies described in paragraph (b) of this section and the licensing policies in both paragraph (b) of this section and section 742.4(b)(7) of the EAR when those items are destined to the People's Republic of China.

PART 744 - [AMENDED]

6. The authority citation for 15 CFR part 744 is revised 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; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005); Notice of October 25, 2005, 70 FR 62027 (October 27, 2005)

7. Part 744 is amended

- (a) By adding paragraph (ii) to § 744.6(a)(1);
- (b) By adding § 744.21; and
- (c) By adding Supplement No. 2 to part 744, to read as follows:

§744.6 Restrictions on certain activities of U.S. persons.

(a) * * *

(1) * * *

(ii) No U.S. person, as defined in paragraph (c) of this section, shall, without a license from BIS, knowingly support an export or reexport, or transfer that does not have a license as required by this section or by §744.21. Support means any action, including

financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

§744.21 Restrictions on Certain Military End-uses in the People's Republic of China (PRC).

(a) General prohibition. In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer any item listed in Supplement No. 2 to Part 744 to the PRC without a license or under a license exception described in paragraph (c) of this section if, at the time of the export, reexport, or transfer, you know, meaning either (1) you have positive or actual knowledge that the item is intended, entirely or in part, for a "military end-use," as defined in paragraph (f) of this section, in the PRC; or (2) you have been informed by BIS that the item is or may be intended, entirely or in part, for a "military end-use" in the PRC.

(b) Additional prohibition on those informed by BIS. BIS may inform you either individually by specific notice, through amendment to the EAR published in the Federal Register, or through a separate notice published in the Federal Register, that a license is required for specific exports, reexports, or transfers of any item because there is an unacceptable risk of use in or diversion to military end-use activities in the PRC. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant

Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) License Exception. The only License Exception that may apply to the prohibitions described in paragraphs (a) and (b) of this section are the provisions of License Exception GOV set forth in §740.11(b)(2)(i) or (ii).

(d) License application procedure. When submitting a license application pursuant to this section, you must state in the "additional information" section of the BIS-748P "Multipurpose Application" or its electronic equivalent that "this application is submitted because of the license requirement in §744.21 of the EAR (Restrictions on Certain Military End-uses in the People's Republic of China)." In addition, either in the additional information section of the application or in an attachment to the application, you must include all known information concerning the military end-use of the item(s). If you submit an attachment with your license application, you must reference the attachment in the additional information section.

(e) License review standards.

(1) Applications to export, reexport, or transfer items described in paragraph (a) of this section will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the PRC and would result in advancing the country's military activities contrary to the

national security interests of the United States.

(2) Applications may be reviewed under missile technology, nuclear nonproliferation, or chemical and biological weapons review policies if the end-user may be involved in certain proliferation activities.

(3) Applications for items requiring a license for other reasons that are destined to the PRC for a military end-use also will be subject to the review policy stated in paragraph (e) of this section.

(f) In this section, "military end-use" means: incorporation into, or use for the production, design, development, maintenance, operation, installation, or deployment, repair, overhaul, or refurbishing of items (1) described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); (2) described on the International Munitions List (IML) (as set out on the Wassenaar Arrangement website at <http://www.wassenaar.org>); or (3) listed under ECCNs ending in "A018" on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR.

Note to paragraph (f) of this section: For purposes of this section the following definitions apply: "production" means integration, assembling, inspection, or testing; "development" means design, and includes testing and building of prototypes; "maintenance" means performing work to bring an item to its original or designed capacity and efficiency for its intended purpose, and includes testing, measuring, adjusting, inspecting, replacing parts, restoring, calibrating, overhauling; "operation" means to cause to function as intended; "installation" means to make ready for use, and

includes connecting, integrating, incorporating, loading software, and testing;

“deployment” means placing in battle formation or appropriate strategic position.

8. Supplement No. 2 to part 744 is added to read as follows:

SUPPLEMENT NO. 2 TO PART 744 – LIST OF ITEMS SUBJECT TO THE

MILITARY END-USE LICENSE REQUIREMENT OF §744.21

The following items are subject to the military end-use license requirement in §744.21.

(1) Category 1 – Materials, Chemicals, Microorganisms, and Toxins

(i) 1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U-235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

(ii) 1B999 Equipment controlled by 1B999.e specially designed for the production of structural composites, fibers, prepregs and performs controlled in Category 1, n.e.s.

(iii) 1C990 Fibrous and filamentary materials, not controlled by 1C010 or 1C210, for use in “composite” structures and with a specific modulus of 3.18×10^6 m or greater and a specific tensile strength of 7.62×10^4 m or greater.

(iv) 1C995 Mixtures not controlled by 1C350, 1C355 or 1C395 that contain chemicals controlled by 1C350 or 1C355 and medical, analytical, diagnostic, and food testing kits not controlled by 1C350 or 1C395 that contain chemicals controlled by 1C350.d, as follows (see List of Items Controlled), except 1C995.c “Medical, analytical, diagnostic, and food testing kits.”

(v) 1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the following characteristics (see List of Items Controlled).

(vi) 1D999 Specific software controlled by 1D999.b for equipment controlled by 1B999.e specially designed for the production of structural composites, fibers, prepregs and performs controlled in Category 1, n.e.s.

(vii) 1D993 “Software” specifically designed for the “development”, “production”, or “use” of equipment or materials controlled by 1C210.b, or 1C990.

(viii) 1E994 “Technology” for the “development”, “production”, or “use” of fibrous and filamentary materials controlled by 1C990.

(2) Category 2 – Materials Processing

(i) 2A991 Bearings and bearing systems not controlled by 2A001.

(ii) 2B991 Limited to machine tools controlled under 2B991 having “positioning accuracies”, with all compensations available, better than 0.010 mm along any linear axis; and machine tools having the characteristic of one or more contouring “tilting spindles controlled by 2B991.d.1.a.

(iii) 2B992 Non-“numerically controlled” machine tools for generating optical quality surfaces, and specially designed components therefor.

(iv) 2B993 Limited to gear making and/or finishing machinery not controlled by 2B003 capable of producing gears to a quality level of better than AGMA 12.

(v) 2B996 Dimensional inspection or measuring systems or equipment not controlled by 2B006.

(3) Category 3 – Electronics Design, Development and Production

(i) 3A292 Oscilloscopes and transient recorders other than those controlled by 3A002.a.5, and specially designed components therefor.

(ii) 3A999 Limited to items controlled by 3A999.c.

(iii) 3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

(iv) 3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic components and materials, and specially designed components and accessories therefor.

(v) 3D991 “Software” specially designed for the “development”, “production”, or “use” of electronic devices or components controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 and 3B992.

(vi) 3E292 “Technology” according to the General Technology Note for the “development”, “production”, or “use” of equipment controlled by 3A292.

(vii) 3E991 “Technology” for the “development”, “production”, or “use” of electronic devices or components controlled by 3A991, general purpose electronic equipment

controlled by 3A992, or manufacturing and test equipment controlled by 3B991 or 3B992.

(4) Category 4 - Computers

(i) 4A994 Limited to computers not controlled by 4A003, with an adjusted peak performance exceeding 0.1 weighted teraflops.

(ii) 4D993 “Program” proof and validation “software”, “software” allowing the automatic generation of “source codes”, and operating system “software” not controlled by 4D003 that are specially designed for real time processing equipment.

(iii) 4E992 “Technology” for the “development”, “production”, or “use” of equipment controlled by 4A994, as described in this Supplement No. 2 to part 744, and 4B994, materials controlled by 4C994, or “software” controlled by 4D993 or 4D994.

(5) Category 5 – (Part 1) Telecommunications

(i) 5A991 Limited to items controlled by 5A001.a., 5A001.b.5., 5A001.b.7. and 5A001.f.

(ii) 5B991 Telecommunications test equipment, n.e.s.

(iii) 5C991 Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A991.

(iv) 5D991 “Software” specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 5A991 and 5B991.

(v) 5E991 “Technology” for the “development”, “production” or “use” of equipment controlled by 5A991 or 5B991, or “software” controlled by 5D991, and other “technologies” as follows (see List of Items Controlled).

(6) Category 5 – (Part 2) Information Security

(i) 5A992 Equipment not controlled by 5A002, except mass market encryption commodities and software described in §§742.15(b)(1)(i) and 742.15(b)(2); certain “short-range wireless” commodities and software described in §742.15(b)(3)(ii); and commodities and software with limited cryptographic functionality described in §742.15(b)(3)(iii).

(ii) 5D992 “Information Security” “software” not controlled 5D002, except mass market encryption commodities and software described in §§742.15(b)(1)(i) and 742.15(b)(2); certain “short-range wireless” commodities and software described in §742.15(b)(3)(ii); and commodities and software with limited cryptographic functionality described in §742.15(b)(3)(iii).

(iii) 5E992 “Information Security” “technology”, not controlled by 5E002.

(7) Category 6 – Sensors and Lasers

(i) 6A995 “Lasers”, not controlled by 6A005 or 6A205.

(ii) 6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a “beat length” of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by mole fraction.

(8) Category 7 – Navigation and Avionics

(i) 7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

(ii) 7B994 Other equipment for the test, inspection, or “production” of navigation and avionics equipment.

(iii) 7D994 “Software”, n.e.s., for the “development”, “production”, or “use” of navigation, airborne communication and other avionics.

(iv) 7E994 “Technology”, n.e.s., for the “development”, “production”, or “use” of navigation, airborne communication, and other avionics equipment.

(9) Category 8 - Marine

(i) 8A992 Underwater systems or equipment, not controlled by 8A002, and specially designed parts therefor.

(ii) 8D992 “Software” specially designed or modified for the “development”, “production” or “use” of equipment controlled by 8A992.

(iii) 8E992 “Technology” for the “development”, “production” or “use” of equipment controlled by 8A992.

(10) Category 9 – Propulsion Systems, Space Vehicles and Related Equipment

(i) 9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

(ii) 9B990 Vibration test equipment and specially designed parts and components, n.e.s.

(iii) 9D990 “Software”, n.e.s., for the “development” or “production” of equipment controlled by 9A990 or 9B990.

(iv) 9D991 “Software”, for the “development” or “production” of equipment controlled by 9A991 or 9B991.

(v) 9E990 “Technology”, n.e.s., for the “development” or “production” or “use” of equipment controlled by 9A990 or 9B990.

(vi) 9E991 “Technology”, for the “development”, “production” or “use” of equipment controlled by 9A991 or 9B991.

PART 748 – [AMENDED]

9. 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 2, 2005, 70 FR 45273 (August 5, 2005).

10. Section 748.9 is amended:

a. By revising paragraph (b)(2) by adding a new sentence after the first sentence;

b. By revising subparagraph (b)(2)(i) by adding a new sentence after the first sentence and removing sentence (b)(2)(i)(B); and

c. By revising paragraph (c)(1), to read as follows:

§748.9 Support Documents for License Applications.

* * * * *

(b) * * *

(2) Does your transaction involve items controlled for national security reasons destined for one of the following countries? If your item is destined for the People's Republic of China (PRC), does your transaction involve items that require a license to the PRC for any reason? (This applies only to those overseas destinations specifically listed.)

* * *

(i) If *yes*, your transaction may require an Import or End-User Certificate. If your transaction involves items destined for the PRC that are controlled to the PRC for any reason, your transaction may require a PRC End-User Certificate. Note that if the destination is the PRC, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Certificate when the item to be exported (i.e., replacement parts and sub-assemblies) is for servicing previously exported items and is valued at \$75,000 or less

(ii) If *no*, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section, then proceed to §748.11 of the EAR.

(c) *License Applications Requiring Support Documents.* * * *

(1) License applications supported by an Import or End-User Certificate. You may submit your license application upon receipt of a facsimile or other legible copy of the Import or End-User Certificate, provided that no shipment is made against any license issued based upon the Import or End-User Certificate prior to receipt and retention of the original statement by the applicant.

(2) * * *

* * * * *

11. Section 748.10 is amended:

a. By revising the fourth sentence in paragraph (a);

b. By revising paragraph (b)(1) by adding an “s” to the word “item”;

c. By revising and redesignating paragraph (b)(4) as paragraph (b)(5) and by adding a new paragraph (b)(4);

d. By revising paragraph (c)(1);

e. By revising paragraph (c)(3); and

f. By revising paragraph (g), to read as follows:

§748.10 Import and End-User Certificates.

(a) *Scope.* * * * This section describes exceptions and relationships true for both Import and End-User Certificates, and applies only to transactions involving national security controlled items destined for one of the countries identified in §748.9(b)(2) of this part, or, in the case of the PRC, for all items that require a license to the PRC for any reason.

(b) *Import or End-User Certificate.* An Import or End-User Certificate must be obtained, unless your transaction meets one of the exemptions stated in §748.9(a) of this part, if:

(1) Any commodities on your license application are controlled for national security (NS) reasons, except for items controlled under ECCN 5A002 or 5B002.

(2) * * *

(3) * * *

(4) Your transaction involves an export to the People's Republic of China (PRC) of commodities and software classified in a single entry on the CCL, the total value of which exceeds \$5,000. Note that this \$5,000 threshold does not apply to exports to the PRC of computers, which are subject to the provisions of §748.10(b)(3).

(i) Your license application may list several separate CCL entries. If the total value of entries that require a license to the PRC for any reason on the CCL on a license application exceeds \$5,000, then a PRC End-User Certificate covering all controlled items on your license application must be obtained;

(ii) You may be specifically requested by BIS to obtain an End-User Certificate for a transaction valued under \$5,000 or for a transaction that requires a license to the PRC for reasons in the EAR other than those listed on the CCL.

(5) Your transaction involves a destination other than the PRC and your license application involves the export of commodities and software classified in a single entry on the CCL, the total value of which exceeds \$5,000.

(i) Your license application may list several separate CCL entries. If *any* entry controlled for national security reasons exceeds \$5,000, then an Import Certificate must be obtained covering all items controlled for national security reasons on your license application;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons in a single ECCN exceeding \$5,000, an Import Certificate must be obtained.

(iii) You may be specifically requested by BIS to obtain an Import Certificate for a transaction valued under \$5,000.

(c) How to obtain an Import or End-User Certificate.

(1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import or End-User Certificate, and that it be issued covering only those items that are controlled for national security reasons. Note that in the case of the PRC, applicants must request that the importer obtain an End-User Certificate for all items on a license application that are controlled to the PRC for any reason on the CCL. Importers should not be requested, except in the case of the PRC, to obtain an Import or End-User Certificate for items that are controlled for reasons other than national security. Applicants must obtain original Import or End-User Certificates from importers.

(2) * * *

(3) If your transaction requires the support of a PRC End-User Certificate, you must ensure that the following information is included on the PRC End-User Certificate signed by an official of the Department of Scientific and Technological Development and Trade in Technology of the PRC Ministry of Commerce (MOFCOM), with MOFCOM's seal affixed to it: * * *

* * * * *

(g) *Submission of Import and End-User Certificates.* Certificates must be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of the EAR, and should not be submitted with the license application. For more information on what Import and End-user Certificate information must be included in license applications, refer to §748.9(c) of the EAR. In addition, as set forth in section 748.12(e), to assist in license reviews, BIS will require applicants, on a random basis, to submit specific original Import and End-user Certificates.

* * * * *

12. Section 748.12 is amended:

a. By removing and reserving paragraph (a), to read as follows:

§748.12 Special Provisions for Support Documents.

(a) [RESERVED]

* * * * *

13. Supplement No. 4 to part 748, is amended by revising the entry for “China, People’s Republic of”, to read as follows:

Supplement No. 4 to Part 748 - Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End-Use Certificate Systems in Foreign Countries.

<u>Country</u>	<u>IC/DV Authorities</u>	<u>System Administered</u>
China,	Export Control Division I	PRC

* * * * *

People's
Republic of

Department of S&T
No. 2 Dong Chang An Street
Beijing
Phone: 8610-6519-7366
Fax: 8610-6519-7926

End-User
Certificate

* * * * *

PART 772 [AMENDED]

14. 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 2, 2005, 70 FR 45273 (August 5, 2005).

15. The text of the paragraph for the definition of Knowledge in §772.1 is amended to read as follows:

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

* * * * *

Knowledge. Knowledge of a circumstance (the term may be a variant, such as “know,” “reason to know,” or “reason to believe”) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts. This definition does not apply to part 760 (Restrictive

Trade Practices or Boycotts) or to §744.21 (Restrictions on Certain Military End-uses in the People's Republic of China (PRC)).

DATED:
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