DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, and 774

[Docket No. 110124056–1301–02]

RIN 0969–AF11

Wassenaar Arrangement 2010 Plenary Agreements Implementation: Commerce Control List, Definitions, Reports; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendments.

SUMMARY: This document corrects errors in a final rule published by the Bureau of Industry and Security (BIS) in the Federal Register on Friday, May 20, 2011 that revised the Export Administration Regulations (EAR) by amending entries for certain items that are controlled for national security reasons in Categories 1, 2, 3, 4, 5 Parts 1 & II, 6, 7, 8, and 9; adding and amending definitions to the EAR; and revising reporting requirements. That final rule contained errors concerning radial ball bearings, as well as editorial mistakes.

DATES: Effective Date: This rule is effective: June 14, 2011.

FOR FURTHER INFORMATION CONTACT: For general questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2440 or by e-mail: sharron.cook@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 2011, the final rule, “Wassenaar Arrangement 2010 Plenary Agreements Implementation: Commerce Control List, Definitions, Reports” was published in the Federal Register (76 FR 29610). The May 20th rule removed paragraphs 2A001.b, “Other ball bearings and solid roller bearings, having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better.’’ However, there is a subset of these ball bearings that are listed on the Missile Technology Control Regime Annex under A.7.7, which provides: “Radial ball bearings having all tolerances specified in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or other national equivalents), or better and having all the following characteristics: a. An inner ring bore diameter between 12 and 50 mm; b. An outer ring outside diameter between 25 and 100 mm; and c. A width between 10 and 20 mm.” Therefore, BIS is adding a new Export Control Classification Number (ECCN) 2A101 to the Commerce Control List (CCL) (Supplement No. 1 to part 774) to control the export and reexport of these ball bearings. ECCN 2A101 is controlled for Missile Technology (MT) and Anti-terrorism (AT) reasons, more specifically MT column 1 and AT column 1. A license is required under MT Column 1 of the Commerce Country Chart (Supplement No. 1 to part 738) for export or reexport of ball bearings classified under ECCN 2A101 to all destinations, except Canada. License requirements and license review policy for MT controlled items are set forth in § 742.5 of the EAR. License requirements and license review policy for AT controlled items are set forth in §§ 742.8 Iran, 742.9 Syria, 742.10 Sudan, and 742.19 North Korea.

To harmonize with the addition of ECCN 2A101, this rule adds 2A101 to the list of ECCNs in § 740.2(a)(5)(ii) that are MT controlled. But may be exported or reexported under § 740.9(a)(2)(ii) (License Exception TMP) or 740.10 (License Exception RPL) as one-for-one replacements for equipment previously legally exported or reexported.

To harmonize with the text of the WA list, this rule removes the word “the” in the phrase “For the multiple channel ADCs” that appears in Technical Note 4 following paragraph 3A001.a.5.a.5.

To harmonize with the text of the WA list, this rule removes the word “converter” from the phrase “ADC converter units” in Technical Note 9 following paragraph 3A001.a.5.a.5.

To harmonize with the text of the WA list, this rule removes the Technical Note in the Items paragraph of ECCN 3E001.

This rule removes the Notes to paragraph (c)(1)(vi) in Section 743.1, because these notes relate to paragraphs 6A002.a.3 and 6A006.d, which were removed from Wassenaar reporting requirements in the May 20th rule.

This rule also removes paragraphs 6A005.a.1 and 6A006.g and .h from the limited restrictions under the TSR paragraph of the License Exception section of ECCNs 6E001 and 6E002. Paragraph 6A005.a.1 is removed because it is not listed on the Wassenaar Arrangement Sensitive or Very Sensitive Lists. Paragraph 6A006.g and .h are no longer in existence, as these paragraphs were removed from the CCL on July 15, 2005 (70 FR 41094, 41099).

This rule also removes paragraph 6A006.i.3 from Supplement No. 1 to part 740.11 “Additional Restrictions on Use of License Exception GOV.” The
May 20th rule removed and reserved paragraph 6A008.1.3. The Wassenaar Arrangement (WA) inadvertently left this paragraph on the Sensitive and Very Sensitive Lists, but in the Spring of 2011 the WA agreed to correct this error. In addition, this rule removes 6A008.1.3 from the limited restrictions under the TSR paragraph of the License Exception section of ECCNs 6D001, 6E001 and 6E002.

This rule also replaces the double quotes with single quotes around the term “Active noise reduction or cancellation systems” in paragraph 8A002.0.3.b and the Technical Note of that paragraph. Single quotes are used to indicate the term is defined in the ECCN entry and double quotes are used when the term is defined in Section 772.1.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010, 75 FR 50681 (August 16, 2010).

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or on route aboard a carrier to a port of export, on June 14, 2011, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before August 15, 2011. Any such items not actually exported before midnight, on August 15, 2011, require a license in accordance with this regulation.

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, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor 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 rule involves two collections of information subject to the PRA. One collection has been approved by OMB under control number 0694–0088, “Multi Purpose Application,” and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other collection has been approved by OMB under control number 0694–0106, “Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,” and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by e-mail at Jasmeet_K.Seehra@omb.eop.gov or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6622, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States’ international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Wassenaar Arrangement (WA) contributes to international security and regional stability by promoting greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations of such items. The Wassenaar Arrangement consists of 40 member countries that act on a consensus basis, and the changes set forth in this rule implement agreements reached at the December 2010 plenary session of the WA. Since the United States is a significant exporter of the items in this rule, implementation of the requirements of this rule is necessary for the WA to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by WA members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking was delayed to allow for notice and comment, it would prevent the United States from fulfilling its commitment to the WA in a timely manner and would injure the credibility of the United States in this and other multilateral regimes.

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. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2099, Washington, DC 20230.

List of Subjects

15 CFR Part 740

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

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 740, 743 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

1. The authority citation for Part 740 continues to read as follows:
§ 740.2 [Amended]

7. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing is amended by adding ECCN 2A101, to read as follows:

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

2A101  Radial Ball Bearings Having all Tolerances Specified in Accordance With ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC-9 or Other National Equivalents), or Better and Having all the Following Characteristics (see List of Items Controlled).

<table>
<thead>
<tr>
<th>Control(s)</th>
<th>Country chart</th>
</tr>
</thead>
<tbody>
<tr>
<td>MT applies to entire entry</td>
<td>AT applies to entire entry</td>
</tr>
<tr>
<td>AT Column 1</td>
<td>MT Column 1</td>
</tr>
</tbody>
</table>

License Exceptions

<table>
<thead>
<tr>
<th>Reason for Control: MT, AT0</th>
</tr>
</thead>
<tbody>
<tr>
<td>MT</td>
</tr>
</tbody>
</table>

§ 740.11 [Amended]

3. In § 740.11, Supplement No. 1 to § 740.11 is amended by:

a. Removing “6A008.l.3,” from the following paragraphs:

1. (a)(1) introductory text;
2. (a)(1)(ii)(D) and (E);
3. (b)(1) introductory text; and
4. (b)(1)(ii)(D) and (E); and

b. Removing “6A008.l.3 or” from paragraphs (a)(1)(vi)(C) and (b)(1)(vi)(C).

PART 743—[AMENDED]

4. The authority citation for Part 743 continues to read as follows:


§ 743.1 [Amended]

5. Section 743.1 is amended by removing the notes to paragraph (c)(1)(vi).

PART 774—[AMENDED]

6. The authority citation for Part 774 continues to read as follows:


7. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing is amended by adding ECCN 2A101, to read as follows:

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

* * * * *