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15 CFR Parts 744

Revisions to the Entity List; Final Rule

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 744**

[160609506–6506–01]

RIN 0694–AH00

Revisions to the Entity List**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by revising the license requirement to apply to all items subject to the EAR for twelve Chinese entities on the Entity List. These revisions are made in order to address national security concerns resulting from the removal of certain subparagraphs of Export Control Classification Numbers (ECCNs) 5A992, 5D992 and 5E992 that occurs in the 2015 Wassenaar Implementation rule, which is also published elsewhere in this issue of the **Federal Register**. This rule also brings the general Entity List license requirements, policies and procedures under a single section of the EAR to assist the public to better locate and comply with these regulations.

DATES: This rule is effective September 20, 2016.

FOR FURTHER INFORMATION CONTACT: For questions relating to the Entity List, please contact the Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: ERC@bis.doc.gov. All other questions may be directed to Sharron Cook, Office of Exporter Services, Regulatory Policy Division: (202) 482–2440, Email: sharron.cook@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Entity List (Supplement No. 4 to part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The “license requirement” for each listed entity or person is identified in the License Requirement column on the Entity List. The impact on the

availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List or to the extent specified within the entries on the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. Generally, the ERC makes all decisions to modify an entry by unanimous vote. The modifications in this Entity List rule are being made pursuant to the unanimous clearance of this rule by the Departments of Commerce, State, Defense and Energy.

Revisions to the Entity List

To maintain the level of national security warranted for certain encryption items, this rule revises the license requirements for twelve entities. The removal of ECCNs 5A992.a and .b, 5D992.a and .b and 5E992.a from the Commerce Control List (CCL) implemented in a separate rule entitled “Wassenaar Arrangement 2015 Plenary Agreements Implementation, Removal of Foreign National Review Requirements, and Information Security Updates,” also published in today’s **Federal Register**, designates these encryption items as EAR99. To prevent these EAR99 encryption items from being exported, reexported or transferred to certain prohibited end users without a license, this rule revises the license requirements of twelve Chinese entities on the Entity List to “all items subject to the EAR.” Currently, the license requirements for each of the twelve entities exclude EAR99 items. With the publication of this rule, EAR99 items will be included in the scope of the license requirements for these entities. This rule revises the license requirements for the following twelve entities in China: 33 Institute, 35 Institute, 54th Research Institute of China, Baotou Guanghua Chemical Industrial Corporation, Beijing Aerospace Automatic Control Institute (BICD), Beijing Institute of Structure and Environmental Engineering (BISE), China Aerodynamics Research and Development Center (CARD), Northwestern Polytechnical University, Shanghai Academy of Spaceflight Technology (SAST), Shanghai Institute of Space Power Sources, Southwest Research Institute of Electronics

Technology, and Xi’an Research Institute of Navigation Technology.

Consolidation of Entity List Regulatory Provisions

This rule also reorganizes the information found in part 744 of the EAR in order to facilitate finding the regulations pertaining to the Entity List. The intent is to consolidate and not change any of existing requirements, procedures or policies. Specifically, this rule removes paragraph (c) from § 744.1 and moves it to § 744.16, in which Entity List license requirements, policies and procedures may now be found. While Section 1 of most parts of the EAR is used to explain what is included in the part, prior to this rule, § 744.1 included general license requirements for the Entity List. While other sections in part 744 pertain to the criteria used to add specific entities on the Entity List, § 744.16 will now be dedicated to general license requirements, license policies, license exception eligibility and other policies for the Entity List.

Saving Clause

Shipments of items removed from eligibility for a License Exception or export, reexport or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport or transfer (in-country), on September 20, 2016, pursuant to actual orders for export, reexport or transfer (in-country) to a foreign destination, may proceed to that destination under the previous eligibility for a license exception or export, reexport or transfer (in-country) without a license (NLR).

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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 not be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor 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 collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to Jasmeet.K.Seehra@omb.eop.gov, or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in 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 comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by rationalizing and harmonizing controls for better compliance, administration, and enforcement of items being exported, reexported, or transferred (in-country) to the persons on the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, EAR99 items would continue to be exported, reexported and transferred

(in-country) without a license to persons or entities on the Entity List, contrary to the national security or foreign policy interests of the United States. Further, 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 by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

5. For the revisions to Section 744.16, the Department finds there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment to the provision of this rule, because the provisions have not been changed, but consolidated into one section so that these provisions may be more easily found in the EAR. Further, 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 by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

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

Authority: 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. 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 September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November

13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Section 744.1 is amended by revising the twelfth sentence in paragraph (a)(1) and by removing paragraph (c).

The revision reads as follows:

§ 744.1 General provisions.

(a)(1) * * * Section 744.16 sets forth the license requirements, policies and procedures for the Entity List. * * *

■ 3. Section 744.16 is revised to read as follows:

§ 744.16 Entity List.

The Entity List (Supplement No. 4 to part 744) identifies persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The entities are added to the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

(a) *License requirements.* The public is hereby informed that in addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) items specified on the Entity List to listed entities without a license from BIS. The specific license requirement for each listed entity is identified in the license requirement column on the Entity List in Supplement No. 4 to this part.

(b) *License exceptions.* No license exceptions are available for exports, reexports or transfers (in-country) to listed entities of specified items, except license exceptions for items listed in § 740.2(a)(5) of the EAR destined to listed Indian or Pakistani entities to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, and in the case of entities added to the Entity List pursuant to § 744.20, to the extent specified on the Entity List.

(c) *License review policy*—(1) *General review policy.* The license review policy for each listed entity is identified in the License Review Policy column on the Entity List.

(d) *The End-User Review Committee (ERC).* The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, generally makes decisions regarding additions to, removals from, or other modifications to the Entity List.

(e) *Removal or modification requests.* Any entity listed on the Entity List may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Room 3886, Washington, DC 20230.

(1) *Review.* The ERC will review such requests in accordance with the procedures set forth in Supplement No. 5 to this part.

(2) *BIS action.* The Deputy Assistant Secretary for Export Administration will

convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

■ 4. In Supplement No. 4 to part 744, under “China, People’s Republic of,” revise the entries for the following entities:

- a. 33 Institute;
- b. 35 Institute;
- c. 54th Research Institute of China;
- d. Baotou Guanghua Chemical Industrial Corporation;
- e. Beijing Aerospace Automatic Control Institute (BICD);
- f. Beijing Institute of Structure and Environmental Engineering (BISE);

- g. China Aerodynamics Research and Development Center (CARDIC);
- h. Northwestern Polytechnical University;
- i. Shanghai Academy of Spaceflight Technology (SAST);
- j. Shanghai Institute of Space Power Sources;
- k. Southwest Research Institute of Electronics Technology; and
- l. Xi’an Research Institute of Navigation Technology.

The revisions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
CHINA, PEOPLE’S REPUBLIC OF	<p>33 Institute, a.k.a., the following three aliases: —Beijing Automation Control Equipment Institute (BACEI); —Beijing Institute of Automatic Control Equipment, China Haiying Electromechanical Technology Academy; <i>and</i> —No. 33 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC): Yungang, Fengtai District, Beijing</p> <p>35 Institute, a.k.a., the following four aliases: —Beijing Hangxing Machine Building Corporation; —Beijing Huahang Radio Measurements Research Institute, China Haiying Electronic Mechanical Technical Research Academy; —Huahang Institute of Radio Measurement; <i>and</i> —No. 35 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC):</p> <p>54th Research Institute of China, a.k.a., the following three aliases: —China Electronics Technology Group Corp. (CETC) 54th Research Institute; —Communication, Telemetry and Telecontrol Research Institute (CTI); <i>and</i> —Shijiazhuang Communication Observation and Control Technology Institute.</p>	<p>For all items subject to the EAR.</p> <p>For all items subject to the EAR.</p> <p>For all items subject to the EAR.</p>	<p>See § 744.3(d) of this part</p> <p>See § 744.3(d) of this part</p> <p>See § 744.3(d) of this part</p>	<p>66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.</p> <p>66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.</p> <p>66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.</p>
*	*	*	*	*
	<p>Baotou Guanghua Chemical Industrial Corporation (Parent Organization: China National Nuclear Group Corporation (CNNC)), a.k.a., the following five aliases: —202 Plant, Baotou Nuclear Energy Facility; —Baotou Guanghua Chemical Industrial Corporation;</p>	<p>For all items subject to the EAR.</p>	<p>See § 744.2(d) of this part</p>	<p>66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 81 FR [INSERT FR PAGE NUMBER 9/20/16.</p>

Country	Entity	License requirement	License review policy	Federal Register citation
	<p>—Baotou Guanghua Chemical Industry Company;</p> <p>—Baotou Nuclear Fuel Element Plant; <i>and</i></p> <p>—China Nuclear Baotou Guanghua Chemical Industry Company. 202 Factory Baotou, Inner Mongolia.</p>			
	*	*	*	*
	<p>Beijing Aerospace Automatic Control Institute (BICD), a.k.a., the following four aliases:</p> <p>—12th Research Institute China Academy of Launch Vehicle Technology (CALT);</p> <p>—Beijing Institute of Space Automatic Control;</p> <p>—Beijing Spaceflight Autocontrol Research Institute; <i>and</i></p> <p>—China Aerospace Science and Technology Corp First Academy 12th Research Institute. 51 Yong Ding Road, Beijing; <i>and</i> No. 50 Yongding Road, Haidian District, Beijing, China, 100854.</p>	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	*	*	*	*
	<p>Beijing Institute of Structure and Environmental Engineering (BISE), a.k.a., the following two aliases:</p> <p>—702nd Research Institute, China Academy of Launch Vehicle Technology (CALT); <i>and</i></p> <p>—Beijing Institute of Strength and Environmental Engineering No. 30 Wanyuan Road, Beijing.</p>	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99 75 FR 78877, 12/17/10. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	*	*	*	*
	<p>China Aerodynamics Research and Development Center (CARDC). Sichuan Province.</p>	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28910, 5/28/99. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	*	*	*	*
	<p>Northwestern Polytechnical University, a.k.a., the following three aliases:</p> <p>—Northwestern Polytechnic University;</p> <p>—Northwest Polytechnic University; <i>and</i></p> <p>—Northwest Polytechnical University. 127 Yonyi Xilu, Xi'an 71002 Shaanxi, China; <i>and</i></p> <p>Youyi Xi Lu, Xi'an, Shaanxi, China; <i>and</i> No. 1 Bianjia Cun, Xi'an; <i>and</i> West Friendship Rd. 59, Xi'an; <i>and</i> 3 10 W Apt 3, Xi'an.</p>	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 881 FR [INSERT FR PAGE NUMBER 9/20/16.
	*	*	*	*
	<p>Shanghai Academy of Spaceflight Technology (SAST), a.k.a., the following four aliases:</p> <p>—8th Research Academy of China Aerospace;</p> <p>—Shanghai Astronautics Industry Bureau;</p>	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78877, 12/17/10. 81 FR [INSERT FR PAGE NUMBER 9/20/16.

Country	Entity	License requirement	License review policy	Federal Register citation
	—Shanghai Bureau of Astronautics (SHBOA); <i>and</i> —Shanghai Bureau of Space. Shanghai, Spaceflight Tower, 222 Cao Xi Road, Shanghai, 200233: Shanghai Institute of Space Power Sources, a.k.a., the following three aliases: —811th Research Institute, 8th Academy, China Aerospace Science and Technology Corp. (CASC); —Shanghai Space Energy Research Institute; <i>and</i> —Shanghai Space Power Supply Research Institute. 388 Cang Wu Road, Shanghai; <i>and</i> Dongchuan Rd., 2965 Shanghai.	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	*	*	*	*
	Southwest Research Institute of Electronics Technology, a.k.a., the following three aliases: —10th Research Institute of China Electronic Technology Group Corp (CETC); —CETC 10th Research Institute; <i>and</i> —Southwest Institute of Electronic Technology (SWIET); No. 6 Yong Xin Street, Chengdu; <i>and</i> No. 90 Babao Street, Chengdu; <i>and</i> 48 Chadianzi Street East, Jinniu District, Chengdu, 610036.	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24267, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	*	*	*	*
	Xi'an Research Institute of Navigation Technology, a.k.a., the following two aliases: —20th Research Institute of China Electronic Technology Group Corp (CETC); <i>and</i> —CETC 20th Research Institute 1 Baisha Rd., Xi'an, Shaanxi.	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24267, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	*	*	*	*

Dated: September 1, 2016.

Kevin J. Wolf,
Assistant Secretary for Export Administration.

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