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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 744 and 748

[Docket No. 060622180-6180-01]

RIN 0694-AD75

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

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: It is the policy of the United States Government to prevent exports that would make a material contribution to the military capability of the People's Republic of China (PRC), while facilitating U.S. exports to legitimate civil end-users in the PRC. 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 licensing requirements and licensing 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 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. The items subject to this license requirement will be set forth in a list. This rule further proposes to revise the licensing review policy for items controlled for reasons of chemical and biological proliferation, nuclear nonproliferation, and missile technology for export to the PRC, requiring that applications involving such items be reviewed in conjunction with the revised national security licensing policy.

This rule proposes the creation of a new authorization for validated end-users in certain destinations, including the PRC, to whom certain, specified items may be exported or reexported. Such validated end-users would be placed on a list in the EAR after review and approval by the United States Government.

Finally, this rule proposes to require exporters to obtain an End-User Certificate, issued by the PRC Ministry of Commerce, for all items that both require a license to the PRC for any reason and exceed a total value of \$5,000. The current PRC End-Use Certificate applies only to items controlled for national security reasons. This rule also proposes to eliminate the current requirement that

exporters submit PRC End-User Certificates to BIS with their license applications but provides that they must retain them for five years.

DATES: Comments must be received by November 3, 2006.

ADDRESSES: Written comments on this rule may be sent to the Federal eRulemaking Portal: <http://www.regulations.gov>, or by e-mail to [RIN\\_0694-AD75@hq.dhs.gov](mailto:RIN_0694-AD75@hq.dhs.gov). Include RIN 0694-AD75 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-AD75; 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](mailto: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.

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: [Bernard.Kritzer@hq.dhs.gov](mailto:Bernard.Kritzer@hq.dhs.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. The United States and China share an interest in expanding free and fair trade, which has increased the prosperity of both the American and Chinese people. At the same time, the United States has a long standing policy of not permitting exports that would make a material contribution to the PRC's military capability. Thus, the United States seeks to facilitate trade for confirmed civil end-uses and end-users in the PRC, while preventing trade that would serve military end-uses.

In 2005, U.S. companies exported approximately \$41 billion worth of items to the PRC. During the same period, approximately \$2.4 billion worth of exports were licensed for export to the PRC, while \$12.5 million worth of exports were denied. In order to strengthen U.S. Government confidence that these U.S. exports conform to U.S. policy and to determine the bona fides of potential and actual end-users, the U.S. Government conducts end-use visits, consisting of Pre-License Checks (PLCs) and Post-Shipment Verifications (PSVs). 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.

This rule proposes certain 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 for items controlled on the CCL for reasons of national security (i.e., controlled pursuant to the Wassenaar Arrangement), set forth in section 742.4(b)(7) of the EAR. Specifically, this rule amends section 742.4(b)(7) to reaffirm that the overall policy of the United States for exports to the PRC of these items is to approve exports for civil applications but generally to deny exports that will contribute to the advancement of Chinese military capabilities.

Consistent with this revised policy and U.S. commitments as a Participating State in the Wassenaar Arrangement regarding review of items not on that regime's dual use list that are destined for military end-use in a country subject to an arms embargo, 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 knowledge, as defined in section 772.1 of the EAR, that such items are destined for military end-use in the PRC or is informed that such items are destined for such an end-use. The additional items that would be subject to this military end-use restriction are based on careful interagency review of items listed on the CCL that currently do not require a license for export to the PRC but have the potential to advance the military capabilities of the PRC. For purposes of serving this revised policy and U.S. commitments as a Participating State in the Wassenaar Arrangement, this rule proposes to define "military end-use" as: 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 Munitions List (IML) (as set out on the Wassenaar Arrangement Web site 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. This new control would be set forth in new section 744.21 of the EAR.

Applications to export, reexport, or transfer items controlled pursuant to proposed section 744.21 would 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. Other end-use controls in part 744 of the EAR will continue to apply. In addition, BIS proposes to 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.

Items primarily affected by the revisions discussed in this section 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 between the Vice Minister of Commerce of the PRC and the U.S. Under Secretary of Commerce for Industry and Security, 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 over a specific value threshold (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 per single ECCN entry. 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. Facilitation of end-use checks should facilitate increased U.S. exports to the PRC. This revised requirement would be set forth in revised section 748.10 of the EAR.

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. These 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 Authorization Validated End-User (VEU)

To facilitate legitimate exports to civilian end-users, BIS proposes to establish a new authorization for validated end-users in section 748.15 of the EAR. This proposed authorization would allow the

export, reexport, and transfer of eligible items to specified end-users in an eligible destination, including the PRC. These validated end-users would be those who meet a number of criteria, including a demonstrated record of engaging only in civil end-use activities and not contributing 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 proposes to evaluate prospective validated 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 for VEU; 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 would consider the status of export controls in the eligible destination and the support and adherence to multilateral export control regimes of the government of the eligible destination. The proposed rule states that requests to be listed as a validated end-user should be submitted in the form of an advisory opinion request as set forth in new section 748.15(a)(2) (Eligible end-users) of the EAR. In addition, requests would have to include a list of items identified by ECCN that would be exported, reexported or transferred to an eligible end-user. Those items would have to be specified to the extent of the applicable subparagraph of the ECCN entry. The request also should include a description of how each item would be used by the eligible end-user in an eligible destination. Such requests would be accepted from exporters, reexporters and end-users. A list of validated end-users, respective eligible items, and eligible destinations would appear in proposed Supplement No. 7 to Part 748 (Supplement No. 7 to Part 748 - Authorization Validated End-User (VEU): List of Validated End-Users, Respective Eligible Items and Eligible Destinations) of the EAR.

The proposed rule also provides, as set forth in proposed section 748.15(c) (Item restrictions), that some items would not be eligible for export, reexport, or transfer under this authorization. Ineligible items are those restricted by statute.

Finally, under new section 748.15, exporters, reexporters and end-users who use authorization VEU would be required to comply with recordkeeping and reporting requirements, as described in sections 748.15(e) (Certification and recordkeeping) and (f) (Reporting and auditing requirements) of the EAR. As required in proposed section 748.15(e), prior to the initial export or reexport under authorization VEU, exporters or reexporters would be required to receive and retain certifications from eligible end-users that state that they are informed of and will abide by all VEU end-use restrictions; they have procedures in place to ensure compliance with the terms and conditions of VEU; they will not use items obtained under VEU 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 VEU. Validated end-users found to be not in compliance with the requirements of VEU as set forth in section 748.15 will be subject to removal from the list of validated end-users and other action, as appropriate.

In addition, as described in proposed section 748.15(f)(1), exporters

and reexporters who use authorization VEU would be required to submit annual reports to BIS. These reports must include specific information regarding the export or reexport of eligible items to each validated end-user. Exporters, reexporters, and end-users who avail themselves of VEU also would be audited on a routine basis, as described in proposed section 748.15(f)(2) (Audits). Upon request by BIS, exporters, reexporters, and validated end-users would be required to allow inspection of records or on-site compliance review. For audit purposes, this rule would require records and information identified in proposed section 748.15 to 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, the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS proposes to amend the EAR in this rule under the provisions of the EAA as continued in effect under IEEPA and Executive Order 13222.

#### Expansion of Foreign Policy-Based Controls

[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. This rule imposes new export controls for foreign policy reasons. As required by section 6 of the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to the Congress on [INSERT DATE OF DELIVERY TO THE CONGRESS.]]. Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.]

#### Rulemaking Requirements

1. This proposed rule has been determined to be not 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 collections of information subject to the requirements of the PRA. These collections have been approved by OMB under Control Numbers 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 also contains a proposed revision to the existing collection under Control Number 0694-0088 for recordkeeping, reporting and auditing requirements, which would be submitted in connection with proposed authorization Validated End-User and would carry an estimated burden of 30 minutes per submission. An amendment to the existing collection under Control Number 0694-0088 will be submitted to OMB for approval. Public comment will be sought regarding the burden of the collection of information associated with

preparation and submission of these proposed requirements. This proposed rule is not expected to result in a significant increase in license applications or other documentation 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), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the ADDRESSES section of this rule.

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 and the opportunity for public participation are inapplicable because this regulation involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)). 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. However, in order to obtain the benefit of a variety of viewpoints before publishing any final rule, BIS is issuing this proposed rule with a request for comments. The period for submission of comments will close on November 3, 2006. In developing a final rule, BIS will consider all comments on all aspects of this proposed rule that are received before the close of the comment period. 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 at and on the BIS Freedom of Information Act (FOIA) web site at . 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.

#### 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.

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

PART 742 - [AMENDED]

1. 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).

2. Amend §742.2 by adding paragraph (b) (4) to read as follows:

§742.2 Proliferation of Chemical and Biological Weapons.

\* \* \* \* \*

(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.

\* \* \* \* \*

3. Amend §742.3 by adding paragraph (b) (4) to read as follows:

§742.3 Nuclear Nonproliferation.

\* \* \* \* \*

(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.

\* \* \* \* \*

4. Amend §742.4 by revising paragraph (b) (7) to read as follows:

§742.4 National Security.

\* \* \* \* \*

(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.

\* \* \* \*

5. Amend §742.5 by adding paragraph (b) (4) to read as follows:

§742.5 Missile Technology.

\* \* \* \* \*

(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. Amend §744.6 by revising paragraph (a) (1) (ii) 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.

\* \* \* \* \*

8. Section 744.21 is added to read as follows:

§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 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) of the EAR.

(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 Web site 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: "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.

9. 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 preforms 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 x 106m or greater and a specific tensile strength of 7.62 x 104m 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 preforms 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 ("APP") exceeding 0.1 Weighted TeraFLOPS (WT).

(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) 4D994 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 4A101, 4A994 with an Adjusted Peak Performance ("APP") exceeding 0.1 Weighted TeraFLOPS (WT), 4B994 and materials controlled by 4C994.

(iv) 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 5A991.a., 5A991.b.5., 5A991.b.7. and 5A991.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 by 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]

10. 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).

11. Section 748.9 is amended:

- a. By revising paragraph (b) (1) introductory text;
- b. By revising paragraph (b) (2) introductory text before the list of countries;
- c. By revising paragraphs (b) (2) (i) and (b) (2) (ii); and
- d. By revising paragraph (c) (1).

The revisions read as follows:

§748.9 Support Documents for License Applications.

\* \* \* \* \*

(b) \* \* \*

(1) Does your transaction involve items controlled for national security reasons? Does your transaction involve items destined for the People's Republic of China (PRC)?

\* \* \* \* \*

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

\* \* \* \* \*

(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.

\* \* \* \* \*

12. Section 748.10 is amended:

- a. By revising the fourth sentence in paragraph (a);
- b. By redesignating paragraph (b) (4) as paragraph (b) (5) and by adding a new paragraph (b) (4) and revising newly designated paragraph (b) (5);
- c. By revising paragraph (c) (1);
- d. By revising paragraph (c) (3) introductory text; and
- e. By revising paragraph (g).

The additions and revisions 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) \* \* \*

(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.

\* \* \* \* \*

(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 §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.

\* \* \* \* \*

§748.12 [Amended]

13. Section 748.12 is amended by removing and reserving paragraph (a).

14. 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

Country IC/DV Authorities System Administered

\* \* \* \* \*

China, Export Control Division I PRC

People's Department of S&T End-User

Republic of No. 2 Dong Chang An Street Certificate

Beijing

Phone: 8610-6519-7366

Fax: 8610-6519-7926

\* \* \* \* \*

15. Section 748.15 is added to read as follows:

§748.15 Authorization Validated End-User (VEU).

Authorization Validated End-User (VEU) permits the export, reexport, and transfer to validated end-users of any eligible items that will be used in an eligible destination. Validated end-users are those who have been approved in advance pursuant to the requirements of this section. To be eligible for authorization VEU, exporters, reexporters, and potential validated end-users must adhere to the conditions and restrictions set forth in paragraphs (a) through (f) of this section.

(a) Eligible end-users. The only end-users to whom eligible items may be exported, reexported, or transferred under VEU are those validated end-users identified in Supplement No. 7 to Part 748.

(1) In evaluating an end-user for eligibility under this authorization, 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 authorization VEU; 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 authorization must be submitted in the form of an advisory opinion request, as described in §748.3(c), and should include a list of items, identified by Export Control Classification Number (ECCN), that exporters or reexporters intend to export, reexport or transfer to an eligible end-user. In addition to the information described in §748.3, the items identified by ECCN should be specified to the extent of the applicable subparagraph of the ECCN entry. The request also should include a description of how each item would be used by the eligible end-user in an eligible destination. Requests for authorization will be accepted from exporters, reexporters and end-users. Submit the request 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 Authorization Validated End-User".

(3) Exports, reexports, or transfers made under authorization VEU may only be made to an end-user listed in Supplement No. 7 to Part 748 if the items will be consigned to and for use by the validated end-user.

(b) Eligible destinations. Authorization VEU 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 authorization.

(d) End-use restrictions. Items obtained under authorization VEU may not be used for any activities described in part 744. Eligible end-users who obtain items under VEU 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) Transfer or reexport such items only as authorized by BIS.

(e) Certification and recordkeeping. Prior to the initial export or reexport under authorization VEU, 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 authorization VEU end-use restrictions;

(2) They have procedures in place to ensure compliance with authorization VEU destination and end-use restrictions;

(3) They will not use items obtained under authorization VEU 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 authorization VEU.

Note to paragraph (e) of this section: These certifications 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)(i) Reports. Exporters and reexporters who use authorization VEU are required to submit annual reports to BIS. These reports must include, for each validated end-user to whom the exporter or reexporter exported or reexported eligible items:

(A) The name and address of any validated end-users to whom the exporters or reexporters exported or reexported eligible items;

(B) The eligible destination to which the items were exported or reexported;

(C) The quantity of such items;

(D) The value of such items; and

(E) The ECCN(s) of such items.

(ii) Reports are due by February 15 of each year, and must cover the period of January 1 through December 31 of the prior year. Packages containing such reports should be marked "Authorization Validated End-User Reports." Reports should be sent to:

Office of Export Enforcement, Bureau of Industry and Security,

U.S. Department of Commerce,

14th Street and Constitution Avenue, NW.,

Room H-4520,

Washington, DC 20230.

(2) Audits. Users of authorization VEU will be audited on a routine basis. Upon request by BIS, exporters, reexporters, and validated

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.

12. Supplement No. 7 to Part 748 is added to read as follows:

Supplement No.7 to Part 748 -Authorization Validated End-User (VEU):  
List of Validated End-Users, Respective Eligible Items and Eligible Destinations

Validated End-Users, Respective Eligible Items and Eligible Destinations for Exports and Reexports Under AuthorizationVEU:

Certified End-User Eligible Items Eligible Destination

Dated: June 29, 2006.

Matthew S. Borman,

Deputy Assistant Secretary

for Export Administration.

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[FR Doc. E6-10504 Filed 7-5-06; 8:45 am]

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