

2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010-07-04 Empresa Brasileira de Aeronautica S.A. (EMBRAER):
Amendment 39-16248. Docket No. FAA-2010-0274; Directorate Identifier 2010-NM-055-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 9, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes; Model ERJ 170-200 LR, -200 SU, and -200 STD airplanes; Model ERJ 190-100 STD, -100 LR, -100 ECJ, and -100 IGW airplanes; and Model ERJ 190-200 STD, -200 LR, and -200 IGW airplanes; certificated in any category; equipped with Air Management System (AMS) controller cards having part number 1001050-1-YYY or 1001050-2-YYY containing software version Black Label 08 or lower installed.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire protection.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

It has been determined that due to an intermittent communication between AMS [Air Management System] controller cards and both Secondary Power Distribution Assemblies (SPDAs) the message “RECIRC SMK DET FAIL” is displayed in the Engine

Indication and Crew Alerting System (EICAS). This communication failure could result in loss of automatic activation of engine inlet ice protection system when in ice condition. In this situation the caution messages “A-I Eng 1 Fail” and “A-I Eng 2 Fail” will be displayed and if the flight crews do not follow the associated procedures ice may accrete in the engines inlet and cause a dual engine shut down.

* * * * *

The required action includes revising the Limitations section of the airplane flight manual to prohibit dispatch with message “RECIRC SMK DET FAIL” displayed on the ground unless troubleshooting action confirms the message has not been triggered due to a failure of an AMS controller card.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 10 days after the effective date of this AD, revise the Limitations section of the airplane flight manual (AFM) to include the following statement. This may be done by inserting a copy of this AD in the AFM.

“Dispatch with the message ‘RECIRC SMK DET FAIL’ displayed on the ground is prohibited unless troubleshooting action confirms the message has not been triggered due to a failure of an AMS controller card.”

Note 1: When a statement identical to that in paragraph (g) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Note 2: The limitation and procedure specified in paragraph (g) of this AD is an interim solution until a final action is identified, at which time the FAA might consider further rulemaking.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2768; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

(i) *Special Flight Permits:* We are prohibiting the issuance of special flight permits to operate the airplane to a location to replace the AMS controller card, unless the following condition is met: The flight crew must manually engage the engine anti-ice system if icing conditions occur during any ferry flight.

Related Information

(j) Refer to MCAI Brazilian Airworthiness Directives 2010-01-01 and 2010-01-02, both effective January 31, 2010, for related information.

Material Incorporated by Reference

(k) None.

Issued in Renton, Washington, on March 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-6518 Filed 3-24-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 748, and 774

[Docket No. 0906041008-91452-01]

RIN 0694-AE64

Revisions to the Export Administration Regulations To Enhance U.S. Homeland Security: Addition of Three Export Control Classification Numbers (ECCNs) and License Review Policy

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by revising controls to advance U.S. homeland security and foreign policy interests. The revisions include language that should facilitate public understanding of how concealed object detection equipment is treated for purposes of U.S. Government export controls, in particular by detailing the

technical parameters of concealed object detection equipment that is subject to the Export Administration Regulations. These amendments reflect issues identified by an interagency working group that is reviewing export control issues related to homeland security. The interagency working group is made up of representatives from the Departments of Commerce, Defense, Homeland Security and State. The purpose of the interagency working group is to ensure that appropriate export controls are in place to protect U.S. export control interests for homeland security related items, while at the same time facilitating the development, production and use of items that will enhance U.S. homeland security and the homeland security of key U.S. allies. To help accomplish these objectives, this rule adds three new entries to the Commerce Control List (CCL) to control certain concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and related software and technology. In addition, to facilitate the export and reexport of these items to certain trusted destinations and end-users, this rule adds new license review criteria to the EAR to create a presumption of approval for certain cooperating countries provided the items are being made to a government end-user or to a person designated by the government end-user pursuant to contract.

DATES: *Effective Date:* This rule is effective March 25, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694-AE64, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include "RIN 0694-AE64" in the subject line of the message.

Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694-AE64.

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 e-mail to Jasmeet.K.Seehra@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of

Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.*, RIN 0694-AE64)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Ronald Rolfe, Senior Engineer/Licensing Officer, Nuclear Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, telephone: (202) 482-4563.

SUPPLEMENTARY INFORMATION:

Background

The Export Administration Regulations (EAR) protect the national security and foreign policy interests of the United States, which includes protecting the homeland security interests of the United States. BIS has previously adapted the EAR to address homeland security related export control issues through measures such as expanding the Entity List to add § 744.11 (License Requirements that Apply to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States to the EAR), see 73 FR 49311, Aug. 21, 2008, and adding restrictions on certain designated persons in § 744.8 (Restrictions on exports and reexports to persons designated pursuant to Executive Order 13382—Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters), see 74 FR 2355, Jan. 15, 2009. An interagency working group on homeland security export control issues, composed of representatives from the Departments of Commerce, Defense, Homeland Security, and State, has identified additional areas where changes should be made to the EAR. This rule implements the first set of changes identified by the interagency working group by adding language to facilitate public understanding of how concealed object detection equipment is treated for purposes of U.S. Government export controls in particular by detailing the technical parameters of concealed object detection equipment that is subject to the Export Administration Regulations. These changes to the EAR are also in the foreign policy interest of the United States.

Development, Production and Procurement of Homeland Security Items

The Department of Homeland Security (DHS) has research and

development (R&D) and procurement programs that are used to develop, produce and procure items for homeland security. These R&D and procurement activities include the use of various government agencies, both within DHS and outside of DHS, along with various private sector contractors. The U.S. Government also maintains international cooperative homeland security agreements with certain countries. These agreements facilitate collaborative efforts with partner countries to develop, produce and deploy homeland security items. The U.S. Government has agreements with the following nine countries: Australia, Canada, France, Germany, Israel, Mexico, Singapore, Sweden, and the United Kingdom. The U.S. Government has pending agreements with the European Union (nonbinding implementing arrangement only), the Netherlands, New Zealand and Japan.

CCL Based Controls Need To Evolve To Keep Pace With Homeland Security Innovations

The interagency working group on homeland security related export control issues is working to identify any areas in which CCL-based controls may not control DHS-related innovations at an appropriate level. This rule addresses one such area by adding three new entries to the Commerce Control List (CCL) to control certain concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and related software and technology. Specifically, this rule makes the following changes to the Export Administration Regulations:

(1) In Supplement No. 1 to part 774, the Commerce Control List (CCL), this rule adds three new Export Control Classification Numbers (ECCNs) 2A984, 2D984 and 2E984. These three new ECCNs will be subject to Regional Stability (RS 2) and Anti-terrorism (AT 1) controls on the CCL. BIS worked with the Departments of State, Defense and Homeland Security to develop these new controls.

ECCN 2A984 controls concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution of 0.5 milliradian up to and including 1 milliradian at a standoff distance of 100 meters. A "Note" to this ECCN entry clarifies that concealed object detection equipment includes but is not limited to equipment for screening people, documents, baggage, other personal effects, cargo and/or mail. A "Technical Note" to this ECCN entry clarifies that the range of frequencies span what is generally

considered as the millimeter-wave, submillimeter-wave and terahertz frequency regions.

ECCN 2A984 includes references to make the public aware of “Related Controls” for these types of concealed object detection equipment. Specifically, ECCN 2A984 specifies the following three “Related Controls”: (1) Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian (a lower milliradian number means a more accurate image resolution) at a standoff distance of 100 meters is under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). (2) Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution greater than 1 milliradian (a higher milliradian number means a less accurate image resolution) at a standoff distance of 100 meters is designated as EAR99. (3) See ECCNs 2D984 and 2E984 for related software and technology controls.

ECCN 2D984 controls software “required” for the “development,” “production” or “use” of concealed object detection equipment controlled by 2A984.

ECCN 2E984 controls technology “required” for the “development,” “production” or “use” of equipment controlled by 2A984 or “required” for the “development” of software controlled by 2D984.

(2) This rule amends two existing ECCNs to conform with the three new ECCNs added to the CCL with this final rule. Specifically:

ECCN 2E001 is amended by revising the heading of the ECCN to clarify that this ECCN entry does not include technology for 2A984, which will be controlled under new ECCN 2E984, as described above.

ECCN 2E002 is amended by revising the heading of the ECCN to clarify that this ECCN entry does not include technology for 2A984, which will be controlled under new ECCN 2E984, as described above.

(3) In part 740 (License Exceptions), this rule expands one of the general restrictions on the use of license exceptions under § 740.2 (Restrictions on all License Exceptions) by adding three additional ECCNs that are included in the scope of the general restrictions. Specifically, this rule adds ECCNs 2A984, 2D984 and 2E984 to paragraph (a)(8) of § 740.2. Prior to publication of this rule, paragraph (a)(8) of § 740.2 only applied to ECCNs 2A983, 2D983 and 2E983. With the publication

of this rule, paragraph (a)(8) of § 740.2 will include ECCNs 2A983, 2A984, 2D983, 2D984, 2E983 and 2E984. Because of this general restriction, items controlled under ECCNs 2A983, 2A984, 2D983, 2D984, 2E983 or 2E984 are not eligible for export pursuant to any license exception unless the license exception is one of those specified in paragraph (a)(8)(i), (ii) or (iii).

Lastly, as a technical correction to a final rule that was published in July 2004, this rule removes an incorrect cross reference in paragraph (a)(8)(ii) that referenced a paragraph in License Exception GOV (*i.e.*, § 740.11(b)(2)(v)) that does not exist. This inadvertent cross reference was added to the EAR on July 30, 2004 (69 FR 46070).

(4) In § 740.10 (Servicing and replacement of parts and equipment (RPL)), this rule expands the scope of paragraph (c) (Special Recordkeeping Requirements: ECCNs 2A983 and 2D983) by adding new ECCNs 2A984 and 2D984 to these special record keeping requirements. Specifically, in addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983, 2A984, 2D983 and 2D984. Requirements for what additional information needs to be kept are specified under paragraph (c).

(5) In § 740.13 (Technology and software—unrestricted (TSU)), this rule expands the scope of paragraph (f) (Special Recordkeeping Requirements: ECCNs 2D983 and 2E983) by adding new ECCNs 2D984 and 2E984 to these special record keeping requirements. Specifically, in addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983, 2D984, 2E983, and 2E984, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. Requirements for what additional information needs to be kept are specified under paragraph (f).

(6) In part 742 (Control Policy—CCL Based Controls), this rule adds a new license review policy in § 742.6 (Regional Stability), to facilitate the export of items classified under ECCNs 2A984, 2D984 and 2E984 that are being exported or reexported to certain trusted

destinations and end-users. Specifically, this new license review policy states that applications to export and reexport items controlled under ECCNs 2A984, 2D984 and 2E984 will be reviewed under a presumption of approval when exported or reexported to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore or Sweden, provided the items are being made to a government end-user or to a person designated by the government end-user pursuant to contract. License applications to export to a designated person must include a statement from the government end-user that the contractor is so designated.

This license review policy specifically names Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore and Sweden because, under § 742.6(a)(4)(i), as indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is not required to export items controlled for RS Column 2 to Australia, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO). Implementing this license review policy for Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore and Sweden will therefore facilitate the export and reexport of items controlled under ECCNs 2A984, 2D984 and 2E984 to all of the countries that currently maintain international cooperative homeland security agreements or are party to an implementing arrangement with the United States.

This new licensing policy for ECCNs 2A984, 2D984 and 2E984 differs from the licensing policy for the other RS Column 2 controlled items listed under § 742.6(a)(4)(i). Applications to export or reexport any other RS Column 2 controlled items listed in § 742.6(a)(4)(i) to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore and Sweden will generally be considered favorably on a case-by-case basis unless there is evidence that the export or reexport would contribute significantly to the destabilization of the region to which the equipment is destined. The license review policy for any destination other than for Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore and Sweden (*i.e.*, other countries subject to an RS Column 2 license requirement) for the new ECCNs will be the same as other RS Column 2 controlled items listed under § 742.6(a)(4)(i), meaning applications to export or reexport items controlled by ECCNs 2A984, 2D984 and 2E984 will generally be considered favorably on a case-by-case basis unless there is evidence that the export or reexport

would contribute significantly to the destabilization of the region to which the equipment is destined.

(7) Also in § 742.6, this rule revises paragraph (c) (Contract Sanctity Date) by redesignating paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to provide contract sanctity provisions for the three new ECCNs added to the CCL with this rule: ECCNs 2A984, 2D984 and 2E984. These new contract sanctity provisions will be applicable as of March 19, 2010. This contract sanctity date applies only to items controlled under ECCNs 2A984, 2D984 and 2E984 destined for countries not listed in Country Group E (Supplement 1 to part 740).

(8) In §§ 742.9 (Syria), 742.10 (Sudan) and 742.19 (North Korea), under paragraph (b) (Licensing Policy) in each of these sections, this rule adds three new paragraphs under paragraph (b) to indicate the licensing policy for the three new ECCNs added to the CCL with this rule: ECCNs 2A984, 2D984 and 2E984. These new paragraphs indicate that applications for export and reexport to all end-users in these three countries (Syria, Sudan, and North Korea) of items controlled under ECCNs 2A984, 2D984 and 2E984 will generally be denied.

(9) In Supplement No. 2 to part 742 (Anti-Terrorism Controls: North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies), to conform with the contract sanctity provisions added to paragraph (b) in §§ 742.9, 742.10 and 742.19, as described above, this rule adds new contract sanctity provisions under paragraph (c) of Supplement No. 2 for the three ECCNs added to the CCL with this rule: ECCNs 2A984, 2D984 and 2E984. Specifically, this rule adds new paragraphs (c)(46), (c)(47) and (c)(48) to Supplement No. 2 to provide guidance to the public on the license review policy for ECCNs 2A984, 2D984 and 2E984 for North Korea, Syria and Sudan, respectively.

(10) In Supplement No. 2 to part 748 (Unique application and submission requirements), this rule revises paragraph (k) (Regional stability controlled items) by redesignating paragraph (k) as paragraph (k)(1) and adding a new paragraph (k)(2) to provide guidance on additional support documentation that must be submitted for certain export or reexport license applications for items classified as ECCNs 2A984, 2D984 and 2E984 to certain countries and end-users. Specifically, this new paragraph states that if you are submitting a license application for the export or reexport to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore or Sweden of items controlled by ECCNs 2A984,

2D984 and 2E984 to a person designated by a government end-user, pursuant to contract, your license application to export to such designated person must include a statement from the government end-user that the person is so designated. A responsible official representing the designated end-user must sign the statement. "Responsible official" is defined as someone with personal knowledge of the information included in the statement, and authority to bind the designated end-user for whom they sign, and who has the power and authority to control the use and disposition of the licensed items. Statements from government end-users that the person is so designated (*i.e.*, support documents submitted in accordance with paragraph (k)(2)) must address the following three criteria for a license application to be reviewed in accordance with the license review policy in § 742.6(b)(2)(ii): (1) U.S. Department of Homeland Security (DHS) Customer Contract Number or agreement reference number, End-user name (company), complete address (including street address, city, state, country and postal code), end-user point of contact (POC); (2) Brief contract description, including DHS Project information and projected outcome; and (3) the statement shall include a certification stating "We certify that all of the representations in this statement are true and correct to the best of our knowledge and we do not know of any additional representations which are inconsistent with the above statement."

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on March 25, 2010, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before April 26, 2010. Any such items not actually exported or reexported before midnight, on April 26, 2010, require a license in accordance with this rule.

Consistent with the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), a *foreign policy report* was submitted to Congress on March 19, 2010, notifying Congress of the imposition of foreign

policy-based licensing requirements reflected in this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This rule has been determined to 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 the 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. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office of Management and Budget control number 0694-0088 are expected to increase slightly as a result of this rule.

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 participation, 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).) 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.

List of Subjects

15 CFR Parts 740 and 748

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 742, 748, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are 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.*; 22 U.S.C. 7201 *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 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Section 740.2 is amended:

- a. By revising the introductory text of paragraph (a)(8); and
- b. By revising paragraph (a)(8)(ii) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(8) The item is controlled under ECCNs 2A983, 2A984, 2D983, 2D984, 2E983 or 2E984 and the License Exception is other than:

* * * * *

(ii) GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii); or

* * * * *

■ 3. Section 740.10 is amended:

- a. By redesignating paragraph (a)(3)(vi) as paragraph (a)(3)(vii);
- b. By adding new paragraph (a)(3)(vi); and
- c. By revising the heading for paragraph (c) and the introductory text of paragraph (c)(1).

The revision and addition read as follows:

§ 740.10 Servicing and replacement of parts and equipment (RPL).

* * * * *

(a) * * *

* * * * *

(3) * * *

(vi) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is concealed object detection equipment controlled under ECCN 2A984 or related software controlled under ECCN 2D984.

* * * * *

(c) *Special recordkeeping requirements: ECCNs 2A983, 2A984, 2D983 and 2D984.* (1) In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983, 2A984, 2D983 and 2D984. The following information must be specially maintained for each such export or reexport transaction:

* * * * *

■ 4. Section 740.13 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 740.13 Technology and software—unrestricted (TSU).

* * * * *

(f) *Special recordkeeping requirements: ECCNs 2D983, 2D984, 2E983 and 2E984.* In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983, 2D984, 2E983, and 2E984, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983, 2D984, 2E983, and 2E984:

* * * * *

PART 742—[AMENDED]

■ 5. 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.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; 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 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

■ 6. Section 742.6 is amended:

- a. By revising paragraph (a)(4)(i);
- b. By revising paragraph (b)(2);
- c. By redesignating paragraph (c) as (c)(1); and

■ d. By adding paragraph (c)(2), to read as follows:

§ 742.6 Regional stability.

(a) * * *

(4) * * *

(i) *License Requirements Applicable to Most RS Column 2 Items.* As indicated in the CCL and in RS Column 2 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except Australia, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO) for items described on the CCL under ECCNs 0A918, 0E918, 1A004.d, 1D003 (software to enable equipment to perform the functions of equipment controlled by 1A004.d), 1E001 (technology for the development, production, or use of 1A004.d), 2A983, 2A984, 2D983, 2D984, 2E983, 2E984, 8A918, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, 9A018.a and .b, 9D018 (only software for the “use” of commodities in ECCN 9A018.a and .b), and 9E018 (only technology for the “development”, “production”, or “use” of commodities in 9A018.a and .b).

* * * * *

(b) * * *

(2) *Licensing policy for RS Column 2 items.* (i) Except as described in paragraph (b)(2)(ii), applications to export and reexport commodities described in paragraph (a)(4) of this section will generally be considered favorably on a case-by-case basis unless there is evidence that the export or reexport would contribute significantly to the destabilization of the region to which the equipment is destined.

(ii) Applications to export and reexport items controlled under ECCNs 2A984, 2D984 and 2E984 will be reviewed under a presumption of approval when exported or reexported to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore or Sweden, provided the items to be exported or reexported are being made to a government end-user or to a person designated by the government end-user pursuant to contract. License applications to export to a designated person must include a statement from the government end-user that the person is so designated. See Supplement No. 2 to part 748, paragraph (k)(2).

* * * * *

(c) * * *

(2) *Contract sanctity date:* March 19, 2010. This contract sanctity date applies

only to items controlled under ECCNs 2A984, 2D984 and 2E984 destined for countries not listed in Country Group E (Supplement 1 to part 740). See parts 742 and 746 for the contract sanctity requirements applicable to exports and reexports to countries listed in Country Group E.

* * * * *

■ 7. Section 742.9 is amended by adding paragraphs (b)(1)(xii), (b)(1)(xiii), and (b)(1)(xiv), to read as follows:

§ 742.9 Anti-terrorism: Syria.

* * * * *

- (b) * * *
(1) * * *

(xii) Concealed object detection equipment controlled under ECCN 2A984.

(xiii) "Software" (ECCN 2D984) "required" for the "development", "production" or "use" of concealed object detection equipment controlled by 2A984.

(xiv) "Technology" (ECCN 2E984) "required" for the "development", "production" or "use" of concealed object detection equipment controlled by 2A984, or the "development" of "software" controlled by 2D984.

* * * * *

■ 8. Section 742.10 is amended by adding paragraphs (b)(1)(xii), (b)(1)(xiii), and (b)(1)(xiv), to read as follows:

§ 742.10 Anti-Terrorism: Sudan.

* * * * *

- (b) * * *
(1) * * *

(xii) Concealed object detection equipment controlled under ECCN 2A984.

(xiii) "Software" (ECCN 2D984) "required" for the "development", "production" or "use" of concealed object detection equipment controlled by 2A984.

(xiv) "Technology" (ECCN 2E984) "required" for the "development", "production" or "use" of concealed object detection equipment controlled by 2A984, or the "development" of "software" controlled by 2D984.

* * * * *

■ 9. Section 742.19 is amended by adding paragraphs (b)(1)(xxii), (b)(1)(xxiii), and (b)(1)(xxiv), to read as follows:

§ 742.19 Anti-terrorism: North Korea.

* * * * *

- (b) * * *
(1) * * *

(xxii) Concealed object detection equipment controlled under ECCN 2A984.

(xxiii) "Software" (ECCN 2D984) "required" for the "development",

"production" or "use" of concealed object detection equipment controlled by 2A984.

(xxiv) "Technology" (ECCN 2E984) "required" for the "development", "production" or "use" of concealed object detection equipment controlled by 2A984, or the "development" of "software" controlled by 2D984.

* * * * *

■ 10. Supplement No. 2 to Part 742 is amended by adding paragraphs (c)(46), (c)(47), and (c)(48), to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(c) * * *

* * * * *

(46) Concealed object detection equipment described in ECCN 2A984.

(i) Syria. Applications for all end-users in Syria of these commodities will generally be denied. Contract sanctity date: March 19, 2010.

(ii) Sudan. Applications for all end-users in Sudan of these commodities will generally be denied. Contract sanctity date: March 19, 2010.

(iii) North Korea. Applications for all end-users in North Korea of these commodities will generally be denied. Contract sanctity date: March 19, 2010.

(47) "Software" described in ECCN 2D984 "required" for the "development", "production" or "use" of concealed object detection equipment controlled by 2A984.

(i) Syria. Applications for all end-users in Syria of these software will generally be denied. Contract sanctity date: March 19, 2010.

(ii) Sudan. Applications for all end-users in Sudan of these software will generally be denied. Contract sanctity date: March 19, 2010.

(iii) North Korea. Applications for all end-users in North Korea of these software will generally be denied. Contract sanctity date: March 19, 2010.

(48) "Technology" described in ECCN 2E984 "required" for the "development", "production" or "use" of concealed object detection equipment controlled by 2A984, or the "development" of "software" controlled by 2D984.

(i) Syria. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 19, 2010.

(ii) Sudan. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: March 19, 2010.

(iii) North Korea. Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 19, 2010.

PART 748—[AMENDED]

■ 11. 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 13, 2009, 74 FR 41325 (August 14, 2009).

■ 12. Supplement No. 2 to part 748 is amended by revising paragraph (k), to read as follows:

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

* * * * *

(k) Regional stability controlled items. (1) If you are submitting a license application for the export or reexport of items controlled for regional stability reasons and subject to licensing under RS Column 1 on the Country Chart, your license application must be accompanied by full technical specifications.

(2) If you are submitting a license application for the export or reexport to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore or Sweden of items controlled by ECCNs 2A984, 2D984 or 2E984 to a person designated by a government end-user, pursuant to contract, your license application to export to such designated person must include a statement from the government end-user to be eligible for the licensing policy under § 742.6(b)(2)(ii). A responsible official representing the designated end-user must sign the statement. "Responsible official" is defined as someone with personal knowledge of the information included in the statement, and authority to bind the designated end-user for whom they sign, and who has the power and authority to control the use and disposition of the licensed items. Statements from government end-users that the person is so designated (i.e., support documents submitted in accordance with this paragraph (k)(2)) must address the following three criteria for a license application to be reviewed in accordance with the license review policy in § 742.6(b)(2)(ii):

(i) U.S. Department of Homeland Security (DHS) Customer Contract Number or agreement reference number, End-user name (company), complete address (including street address, city, state, country and postal code), end-user point of contact (POC);

(ii) Brief contract description, including DHS Project information and projected outcome; and

(iii) The statement shall include a certification stating "We certify that all of the representations in this statement are true and correct to the best of our knowledge and we do not know of any additional representations which are inconsistent with the above statement."

* * * * *

PART 774—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C.

1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, is amended by adding Export Control Classification Number (ECCN) 2A984 after ECCN 2A983 and before ECCN 2A991, to read as follows:

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

* * * * *

2A984 Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution of 0.5 milliradian up to and including 1 milliradian at a standoff distance of 100 meters; and parts and components, n.e.s.

License Requirements

Reason for Control: RS, AT

<i>Control(s)</i>	<i>Country chart</i>
-------------------	----------------------

RS applies to entire entry ...	RS Column 2.
AT applies to entire entry ...	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: \$ value

Related Controls: (1) Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian (a lower milliradian number means a more accurate image resolution) at a standoff distance of 100 meters is under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). (2) Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution greater than 1 milliradian (a higher milliradian number means a less accurate image resolution) at a standoff distance of 100 meters is designated as EAR99. (3) See ECCNs 2D984 and 2E984 for related software and technology controls.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

Note: Concealed object detection equipment includes but is not limited to equipment for screening people, documents, baggage, other personal effects, cargo and/or mail.

Technical Note: The range of frequencies span what is generally considered as the millimeter-wave, submillimeter-wave and terahertz frequency regions.

* * * * *

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category

2—Materials Processing, is amended by adding Export Control Classification Number (ECCN) 2D984 after ECCN 2D983 and before ECCN 2D991, to read as follows:

* * * * *

2D984 “Software” “required” for the “development”, “production” or “use” of concealed object detection equipment controlled by 2A984.

License Requirements

Reason for Control: RS, AT

<i>Control(s)</i>	<i>Country chart</i>
-------------------	----------------------

RS applies to entire entry ...	RS Column 2.
AT applies to entire entry ...	AT Column 1.

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: \$ value

Related Controls: (1) “Software” “required” for the “development”, “production” or “use” of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian (a lower milliradian number means a more accurate image resolution) at a standoff distance of 100 meters is under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). (2) “Software” “required” for the “development”, “production” or “use” of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution greater than 1 milliradian (a higher milliradian number means a less accurate image resolution) at a standoff distance of 100 meters is designated as EAR99. (3) See ECCNs 2A984 and 2E984 for related commodity and technology controls.

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E001 is amended by revising the Heading, to read as follows:

* * * * *

2E001 “Technology” according to the General Technology Note for the “development” of equipment or “software” controlled by 2A (except 2A983, 2A984, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998), or 2D (except 2D983, 2D984, 2D991, 2D992, or 2D994).

* * * * *

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E002 is amended by revising the Heading, to read as follows:

* * * * *

2E002 “Technology” according to the General Technology Note for the “production” of equipment controlled by 2A (except 2A983, 2A984, 2A991, or 2A994), or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

* * * * *

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, is amended by adding Export Control Classification Number (ECCN) 2E984 after ECCN 2E983 and before ECCN 2E991, to read as follows:

* * * * *

2E984 “Technology” “required” for the “development”, “production” or “use” of equipment controlled by 2A984 or “required” for the “development” of “software” controlled by 2D984.

License Requirements

Reason for Control: RS, AT

<i>Control(s)</i>	<i>Country chart</i>
-------------------	----------------------

RS applies to entire entry ...	RS Column 2.
AT applies to entire entry ...	AT Column 1.

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: \$ value

Related Controls: (1) “Technology” “required” for the “development”, “production” or “use” of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian (a lower milliradian number means a more accurate image resolution) at a standoff distance of 100 meters or “required” for the “development” of “software” “required” for the “development”, “production” or “use” of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian at a standoff distance of 100 meters is under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). (2) “Technology” “required” for the “development”, “production” or “use” of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution greater than 1 milliradian (a higher milliradian number means a less accurate image resolution) at a standoff distance of 100 meters or “required” for the “development” of “software” “required” for the “development”, “production” or “use” of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution greater than 1 milliradian (a higher milliradian number means a less accurate image resolution) at a standoff distance of 100 meters is designated as EAR99. (3) See ECCNs 2A984 and 2D984 for related commodity and software controls.

Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.
 * * * * *

Dated: March 19, 2010.

Kevin J. Wolf,
Assistant Secretary for Export Administration.

[FR Doc. 2010-6588 Filed 3-24-10; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM04-7-008; Order No. 697-D]

Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

Issued March 18, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission is granting in part and denying in part the requests for rehearing and clarification of its determinations in Order No. 697-C, which granted rehearing and

clarification of certain revisions to Commission regulations and to the standards for obtaining and retaining market-based rate authority for sales of energy, capacity and ancillary services to ensure that such sales are just and reasonable.

DATES: *Effective Date:* This order on rehearing will become effective April 26, 2010.

FOR FURTHER INFORMATION CONTACT:

Michelle Barnaby (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8407.

Paige Bullard (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6462.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

	Paragraph Numbers
I. Introduction	1
II. Background	2
III. Discussion	10
A. Vertical Market Power	10
Other Barriers to Entry	10
B. Mitigation	25
Protecting Mitigated Markets	25
IV. Information Collection Statement	53
V. Document Availability	54
VI. Effective Date	57

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Order No. 697-D

Order on Rehearing and Clarification

I. Introduction

1. In this order, the Federal Energy Regulatory Commission (Commission) addresses requests for rehearing and clarification of Order No. 697-C.¹ Specifically, the Commission provides additional clarification on the requirement that sellers file a notification of change in status when they acquire sites for new generation capacity development.² The Commission denies the requests for rehearing of the tariff provision governing mitigated sales at the metered boundary and reaffirms its determination in Order No. 697-B to

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

² 18 CFR 35.42.

revise the mitigated sales tariff provision in order to ensure that a mitigated seller making market-based rate sales at the metered boundary does not sell power into the mitigated market either directly or through its affiliates.³

II. Background

2. On June 21, 2007, the Commission issued Order No. 697,⁴ codifying and, in certain respects, revising its standards for obtaining and retaining market-based rates for public utilities. In order to accomplish this, as well as streamline the administration of the market-based

³ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008).

⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 (Order No. 697 or Final Rule), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008); *clarified*, 124 FERC ¶ 61,055 (2008) (July 17 Clarification Order), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

rate program, the Commission modified its regulations at 18 CFR Part 35, subpart H, governing market-based rate authorization. Order No. 697 became effective on September 18, 2007.

3. The Commission issued an order clarifying four aspects of Order No. 697 on December 14, 2007.⁵ Specifically, that order addressed: (1) The effective date for compliance with the requirements of Order No. 697; (2) which entities are required to file updated market power analyses for the Commission's regional review; (3) the data required for horizontal market power analyses; and (4) what constitute "seller-specific terms and conditions" that sellers may list in their market-based rate tariffs in addition to the standard provisions listed in Appendix C to Order No. 697.

⁵ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 121 FERC ¶ 61,260 (2007) (December 14 Clarification Order).