

Proposed Rules

Federal Register

Vol. 81, No. 26

Tuesday, February 9, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 770 and 774

[Docket No. 151030999–5999–01]

RIN 0694–AG76

Clarifications and Revisions to Military Aircraft, Gas Turbine Engines and Related Items License Requirements

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the Commerce Control List (CCL) entries for two types of items: Military aircraft and related items, and military gas turbine engines and related items. The rule would add clarifying text to the descriptions of the types of military aircraft controlled on the CCL. The lists of items that are subject only to the anti-terrorism reason for control would be clarified and expanded. This proposed rule is based on a review of the military aircraft and gas turbine engine related entries that were added to the CCL on October 15, 2013. That review was intended to ensure that the regulatory changes made by the October 15, 2013 rule are clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the export control reform effort. This proposed rule is being published simultaneously with a proposed rule by the Department of State, which is based on a review of Categories VIII and XIX of the United States Munitions List (USML). This document also furthers the retrospective regulatory review directed by the President in Executive Order 13563.

DATES: Comments must be received by March 25, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for this rule using its regulations.gov docket number: BIS–2016–0009.

- By email directly to publiccomments@bis.doc.gov. Include RIN 0694–AG76 in the subject line.

- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG76.

All comments (including any personally identifying information) will be made available for public inspection and copying. Commerce’s full plan for retrospective regulatory review can be accessed at: <http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>

FOR FURTHER INFORMATION CONTACT: Thomas DeFee or Jeffrey Leitz in the Office of Strategic Industries and Economic Security, Munitions Control Division by telephone at (202) 482–4506 or by email at Thomas.DeFee@bis.doc.gov or Jeffrey.Leitz@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS), Department of Commerce maintains the Export Administration Regulations (EAR), including the Commerce Control List (CCL). The Export Control Reform (ECR) Initiative, a fundamental reform of the U.S. export control system announced by the President in 2010, has resulted in transfer to the CCL of items that the President has determined do not warrant control on the United States Munitions List (USML), including certain military aircraft, military gas turbine engines, and related items. The USML is part of the International Traffic in Arms Regulations (ITAR) maintained by the Department of State.

All references to the USML in this rule are to the list of defense articles that are controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations (see 27 CFR part 447). Pursuant to § 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part

of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR’s USML to the EAR’s CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

A core element of the ECR Initiative has been the streamlining of categories on the USML and the control on the CCL of items that the President determines do not warrant USML control. On December 10, 2010, the Department of State provided notice to the public of its intent, pursuant to the ECR Initiative, to revise the USML to create a more “positive list” that describes controlled items using, to the extent possible, objective criteria rather than broad, open-ended, subjective, or design intent-based criteria (see 75 FR 76935). As a practical matter, this meant revising USML categories so that, with some exceptions, the descriptions of defense articles that continued to warrant control under the USML did not use catch-all phrases, such as “specially designed” or “specifically designed or modified,” to control unspecified items. With limited exceptions, the defense articles that warranted control under the USML were those that provided the United States with a critical military or intelligence advantage. All other items were to become subject to the jurisdiction of the EAR. Since that time, the Departments of State and Commerce have jointly published final rules setting forth revisions for fifteen USML categories, each of which has been reorganized into a uniform and more “positive list” structure, and corresponding revisions to the CCL.

The advantage of revising the USML into a more positive list is that its controls can be tailored to satisfy the national security and foreign policy objectives of the ITAR by maintaining control over those defense articles that provide a critical military or intelligence advantage, or otherwise warrant control under the ITAR, without inadvertently controlling items in normal commercial use. This approach, however, requires that both the USML and the CCL be regularly revised and updated to account for technological developments, practical application issues identified

by exporters and reexporters, and changes in the military and commercial applications of items affected by the USML and the 600 series ECCNs.

As part of the ECR Initiative, certain military aircraft and gas turbine engines along with related parts, components, accessories and attachments, materials, software and technology were added to the CCL on October 15, 2013 (*see* 78 FR 22660, April 16, 2013). At the same time, the USML was amended by revising Category VIII (Aircraft and Related Articles) and by creating Category XIX (Gas Turbine Engines and Associated Equipment) to describe, for the most part, the defense articles in those categories that remained on the USML in positive, objective terms (*see* 78 FR 22740, April 16, 2013).

In 2015, the Departments of Defense, State and Commerce reviewed the implementation of these changes to ascertain the effectiveness and utility of the 2013 amendments. That review included soliciting public comments by the Department of Commerce (*see* 80 FR 11315, March 2, 2015) and the Department of State (*see* 80 FR 11314, March 2, 2015).

This notice also furthers the retrospective regulatory review directed by the President in Executive Order 13563.

Changes Proposed in This Rule

Note Regarding Castings, Forgings and Other Unfinished Products

A note stating that forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by the ECCN in which the note appears (or by specified paragraphs in that ECCN) are controlled by that ECCN. BIS intends that the policy set forth in these notes apply to all commodities that are controlled in all 600 series Product Group A ECCNs. Accordingly this rule would add the following text as a new interpretation in § 770.2:

Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by any Product Group A (“End Items,” “Equipment,” “Accessories,” “Attachments,” “Parts,” “Components” and “Systems”) “600 series” ECCN are controlled in that “600 series” ECCN.

As a conforming change, the individual notes would be removed

from ECCNs 0A604, 0A614, 3A611, 9A604 and 9A619. This change, which would merely eliminate the potential for redundancies in the EAR, is not a substantive change.

Changes to ECCN 9A610

This proposed rule would remove text currently in the “Control(s)” table that excludes paragraphs .t, .u, .v and .w from national security controls. Although the text of those paragraphs is taken from the Missile Technology Control Regime Annex, the commodities that they control are unmanned aerial vehicle parts, components or associated equipment that also are subject to category ML10 on the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The addition of the national security controls would not increase the number of destinations to which a license is required for the commodities controlled by these paragraphs as those paragraphs already have missile technology and regional stability controls.

This proposed rule also would revise the text of the “Controls” table so that the national security and regional stability reasons for control would not apply to L100 aircraft manufactured prior to 2013 or to specially designed parts and components for L100 aircraft controlled in paragraph .x. This change is to make the reasons for control that apply to pre 2013 L100 aircraft and parts consistent with the reasons for control that applied to them historically under ECCN 9A991.

The “Related Controls” paragraph of ECCN 9A610 would be expanded to refer to USML Category XIX and ECCN 9A619 for controls on military aircraft engines and related items.

The “Items” paragraph of ECCN 9A610 would be revised to clarify that the aircraft listed in Note 1 to paragraph .a are examples of aircraft types controlled in that paragraph whereas the substantive criteria for control in paragraph .a is that the aircraft be “specially designed” for a military use and not enumerated in USML Category VIII(a).

A new paragraph .b would be added to control L100 aircraft manufactured prior to 2013 to implement the limited applicability of national security and regional stability controls to these aircraft as described above.

A new paragraph .e would be added to control mobile aircraft arresting and engagement systems for aircraft controlled in either USML Category VIII(a) or ECCN 9A610.a.

Existing paragraph .f, which controls ground equipment specially designed

for military aircraft, would be revised to incorporate into the paragraph text, the illustrative list currently in the technical note.

BIS is not proposing any changes to paragraphs .g through .s.

Paragraphs .t, .u, .v and .w would continue to control certain unmanned aerial vehicle parts, components and associated equipment. The text of these paragraphs is drawn from the Missile Technology Regime Annex and specifies range capability (paragraphs .t and .u) or range and payload capability (paragraphs .v and .w). This proposed rule would leave the control text of those paragraphs unchanged, but would add a note to each paragraph to make clear that commodities that do not meet the range or range and payload parameters specified are controlled in the “catch all” paragraph .x, which applies to parts, components, accessories and attachments specially designed for commodities in ECCN 9A610 or USML Category VIII that are not elsewhere specified. The addition of these notes would not be a substantive change.

This rule would make several changes to paragraph .y of ECCN 9A610.

Paragraph .y.2, which currently applies to cockpit analog gauges and indicators, would apply to such gauges and indicators wherever they are located on the aircraft. Paragraph .y.8 would apply to all types of fluid filters and filter assemblies—not just hydraulic, oil and fuel system filters and filter assemblies. Paragraph .y.10 would be expanded to apply to fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets. Paragraph .y.15 would be expanded to cover mirrors whether located in the cockpit or cabin instead of just the cockpit as is now the case. Paragraph .y.20 would be made more precise to cover underwater locator beacons instead of underwater beacons as the text reads now. There are many types of underwater beacons. However, the underwater beacons installed on aircraft generally are designed to facilitate locating the aircraft if it crashes in the water. BIS’s intent is to cover only the latter types of beacons. The word “cockpit” would be removed from paragraph .y.23, making filtered and unfiltered panel knobs, indicators, switches, buttons, and dials controlled by paragraph .y.23 wherever on the aircraft they are located.

Paragraphs .y.31 and .y.32 would be added to cover identification plates and fluid manifolds, respectively.

Changes to ECCN 9A619

This rule would make three additions to the “Related Controls” paragraph.

The first would state explicitly the historical practice of controlling 501–D22 gas turbine engines in ECCN 9A991.d, which is the classification that has been used for many years. The second would add a reference to USML Category XIX(f) to alert readers that some aircraft parts and components are enumerated in that paragraph. Finally, a note would be added reminding readers that the commodities enumerated in paragraph .y are subject to the controls in that paragraph rather than the broader controls elsewhere in this ECCN.

Paragraph .y.3 would be expanded to apply to fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets, instead of only fuel lines and hoses, as is now the case.

Paragraph .y.4 would be expanded to cover fluid filters and filter assemblies, instead of only fuel and oil filters, as is now the case.

Paragraph .y.5 would be revised to remove “V-band, cushion, broomstick, hinged, and loop clamps” from paragraph .y.5, because they would be subsumed in the reference to “clamps” in paragraph .y.3, and add check valves for hydraulic and pneumatic systems in its place. Such valves for aircraft are covered in ECCN 9A610.y.4. Controlling them under a .y paragraph when used in gas turbine engines adds consistency, particularly with respect to check valves used in aircraft gas turbine engines.

The existing text of paragraph .y.8—air, fuel and oil manifolds—would be changed to “fluid manifolds.”

Changes to ECCN 9C610

ECCN 9C610 would be revised by adding references to USML Category VIII in both the heading and in paragraph .a, to make clear that materials specially designed for commodities enumerated or otherwise described in that category are controlled in ECCN 9C610.

Changes to ECCN 9C619

ECCN 9C619 would be revised by adding references to USML Category XIX in both the heading and in paragraph .a, to make clear that materials specially designed for commodities enumerated or otherwise described in that category are controlled in ECCN 9C619.

Change to ECCN 9E619

The related controls paragraph in ECCN 9E619 would be amended by removing the sentence that reads “Technology described in ECCN 9E003 is controlled by that ECCN.” Although true, the placement of the sentence in a 600 series ECCN could mislead readers

into thinking that the order of review does not apply in this instance.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015) has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is 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 OMB control number. This proposed rule would affect one approved collection: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications. This collection carries an annual burden hour estimate of 31,833 hours. BIS believes that this proposed rule, if enacted in final form, will not materially affect the total number of burden hours. This proposed rule would make certain aircraft and parts, components, accessories and attachments that currently are subject to the ITAR subject to the EAR. To the

extent that this change results in an increase in the number of export license applications submitted to BIS, there is likely to be a corresponding reduction in the number of license applications submitted to the Department of State, Directorate of Defense Trade Controls. This proposed rule also would require a license to only eight destinations for some aircraft and engine parts and components that currently require a license to all destinations other than Canada. To the extent that this affects the annual burden hours associated with this collection, the effect is likely to be a reduction in burden hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at jseehra@omb.eop.gov or by fax to (202) 395–7285 and to William Arvin, BIS, at william.arvin@bis.doc.gov.

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

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration certifying that this proposed rule will not have a significant impact on a substantial number of small entities. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this

rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of a review of rules promulgated as part of the Export Control Reform Initiative to assess whether the rules for transferring items from the United States are clear, workable and do not inadvertently control on the USML or in 600 series ECCNs items in normal commercial use. Consistent with the goals of that review, this proposed rule would reduce the level of control on some items and clarify the control status of other items. It does not impose any new export or reexport license requirements.

Several proposed changes would reduce the level of control on some minor parts and components such as check valves, fluid manifolds, identification plates, analog gauges and mirrors used on aircraft so that they will require a license only to eight countries rather than all destinations other than Canada as they do currently.

Other proposed changes would clarify that certain aircraft and parts, components, accessories and attachments that historically have been subject to the EAR, but that, under rules published by BIS and the Department of State as part of the Export Control Reform Initiative, were added to the International Traffic in Arms Regulations would again be subject to the EAR.

The remaining changes would provide clarifying text or additional cross references that would not change any requirements that apply to any person under the regulations.

Changing the jurisdictional status of an item from the USML to the CCL would reduce the burden on small entities (and other entities as well) through simpler license application procedures, and reduced (or eliminated) registration fees. In addition, small entities would be able to take advantage of *de minimis* treatment under the EAR for all items that this rule would transfer from the USML to the CCL, provided those items meet the applicable *de minimis* threshold level. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the

applicant has a way of determining whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML licensing procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval and will more likely have to engage in substantial effort and expense with the risk that the government might reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license, reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the ITAR. Registration fees for manufacturers and exporters of articles on the USML start at \$2,250 per year, increase to \$2,750 for organizations applying for one to ten licenses per year and further increase to \$2,750 plus \$250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items currently listed on the CCL. Once the items that are the subject to this rulemaking are removed from the USML and added to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated.

Finally, *de minimis* treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S. content in that foreign-made product. This proposed rule would apply that same principle to "600 series" items only if the foreign made item is being exported to a country that is subject to a United States arms embargo. In all other cases, foreign-made products that incorporate items that this rule would move to the

CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeded 25 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the reduction in the number of transactions that would require a license, simpler export license applications, reduced or eliminated registration fees, and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content.

For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 770

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations, 15 CFR parts 730—774 are proposed to be amended as follows:

PART 770—[AMENDED]

- 1. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

- 2. Section 770.2 is amended by adding paragraph (n) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(n) *Interpretation 14: Unfinished "600 series" commodities.* Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing

where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by any Product Group A (“End Items,” “Equipment,” “Accessories,” “Attachments,” “Parts,” “Components” and “Systems”) “600 series” ECCN are controlled in that “600 series” ECCN.

PART 774—[AMENDED]

■ 3. 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 7, 2015, 80 FR 48233 (August 11, 2015).

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

* * * * *

ECCN 0A604 [Amended]

■ 4. In ECCN 0A604, remove Note 1 to 0A604.x and redesignate Note 2 to 0A604.x as Note to 0A604.x.

ECCN 0A614 [Amended]

■ 5. In ECCN 0A614, remove Note 3 to 0A614.

ECCN 3A611 [Amended]

■ 6. In ECCN 3A611, remove Note 3 to 0A611.x.

ECCN 9A604 [Amended]

■ 7. In ECCN 9A604, remove Note 1 to 9A604.x and redesignate Note 2 to 9A604.x as Note to 9A604.x.

■ 8. In ECCN 9A610, revise the “Control(s)” table in the “License Requirements” section and the “List of Items Controlled” section to read as follows:

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled)

License Requirements

* * * * *

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or re-exported for use in an aircraft controlled in 9A610.b; and 9A610.y.	NS Column 1
RS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or re-exported for use in an aircraft controlled in 9A610.b; and 9A610.y.	RS Column 1
MT applies to 9A610.t, .u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls
* * * * *	

List of Items Controlled

Related Controls: (1) Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for controls on foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content. (3) See USML Category XIX and ECCN 9A619 for controls on military aircraft engines and related items.

Related Definitions: N/A

Items: a. ‘Military Aircraft’ “specially designed” for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: For purposes of paragraph .a the term ‘military aircraft’ means any aircraft “specially designed” for a military use that are not enumerated in USML paragraph VIII(a). The term includes: trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft; and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are “unmodified” for the purposes of this paragraph .a.

Note 2: 9A610.a does not control ‘military aircraft’ that:

- a. Were first manufactured before 1946;
- b. Do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and

c. Do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. L100 aircraft manufactured prior to 2013.

c.–d. [Reserved]

e. Mobile aircraft arresting and engagement systems for aircraft controlled by either USML Category VIII(a) or ECCN 9A610.a

f. Pressure refueling equipment and other ground equipment designed to facilitate operations in confined areas, where such equipment is “specially designed” for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete parachute canopies, harnesses, platforms, electronic release mechanisms “specially designed” for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and “equipment” “specially designed” for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, “specially designed” for use by a military.

k. through s. [Reserved]

t. Composite structures, laminates and manufactures thereof “specially designed” for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.

Note to paragraph .t. Composite structures, laminates and manufactures thereof “specially designed” for unmanned aerial vehicles controlled under USML Category VIII(a) with a maximum range less than 300 km are controlled in paragraph .x of this entry.

u. Apparatus and devices “specially designed” for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

Note to paragraph .u. Apparatus and devices “specially designed” for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a with a maximum range less than 300 km are controlled in paragraph .x of this entry.

v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph

VIII(a) or ECCN 9A610.a. that are not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML, in 9A610.y, or 3A611.y.

y. Specific "parts," "components," "accessories," and "attachments" "specially designed" for a commodity subject to control in this entry, ECCN 9A619, or for a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities "specially designed" for a military use, as follows, and "parts," "components," "accessories," and "attachments" "specially designed" therefor:

- y.1. Aircraft tires;
y.2. Analog gauges and indicators;
y.3. Audio selector panels;
y.4. Check valves for hydraulic and pneumatic systems;
y.5. Crew rest equipment;
y.6. Ejection seat mounted survival aids;
y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);
y.8. Fluid filters and filter assemblies;
y.9. Galleys;
y.10. Fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets;
y.11. Lavatories;
y.12. Life rafts;
y.13. Magnetic compass, magnetic azimuth detector;
y.14. Medical litter provisions;
y.15. Cockpit or cabin mirrors;
y.16. Passenger seats including palletized seats;
y.17. Potable water storage systems;
y.18. Public address (PA) systems;
y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);
y.20. Underwater locator beacons;
y.21. Urine collection bags/pads/cups/pumps;
y.22. Windshield washer and wiper systems;
y.23. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;
y.24. Lead-acid and Nickel-Cadmium batteries;

y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;

y.26. Fire extinguishers;
y.27. Flame and smoke/CO2 detectors;
y.28. Map cases;

y.29. 'Military Aircraft' that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation;

y.30. "Parts," "components," "accessories," and "attachments," other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h;

y.31. Identification plates; and
y.32. Fluid manifolds.

9. In ECCN 9A619, the List of Items Controlled section is amended by:

- a. Revising the "Related Controls" paragraph;
b. Removing the note that immediately follows paragraph .e in the "Items" paragraph; and
c. Revising paragraph .y in the "Items" paragraph. The revisions read as follows:

9A619 Military gas turbine engines and related commodities (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: (1) Military gas turbine engines and related articles that are enumerated or otherwise described in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). (2) Gas turbine engines designated 501-D22 are controlled in ECCN 9A991.d regardless of the aircraft type into which they will be installed. (3) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a de minimis amount of U.S.-origin "600 series" controlled content. (4) "Parts," "components," "accessories," and "attachments" specified in USML Category XIX(f) are subject to the controls of that paragraph. (5) "Parts," "components," "accessories," and "attachments" specified in ECCN 9A619.y are subject to the controls of that paragraph.

* * * * *

Items:

* * * * *

y. Specific "parts," "components," "accessories," and "attachments"

"specially designed" for a commodity subject to control in this entry, ECCN 9A610, or for a defense article in USML Category XIX and not elsewhere specified on the USML or in the CCL, and other commodities, as follows, and "parts," "components," "accessories," and "attachments" "specially designed" therefor:

- y.1. Oil tank and reservoirs;
y.2. Oil lines and tubes;
y.3. Fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets;
y.4. Fluid filters and filter assemblies;
y.5. Check valves for hydraulic and pneumatic systems;
y.6. Shims;
y.7. Identification plates;
y.8. Fluid manifolds.

ECCN 9A620 [Amended]

- 10. In ECCN 9A620, remove the note to 9A920.b that immediately follows paragraph .x.
11. In ECCN 9C610, revise the header and the "Items" paragraph of the "List of Items Controlled" section to read as follows:

9C610 Materials "specially designed" for commodities controlled by USML Category VIII or ECCN 9A610 and not elsewhere specified in the CCL or the USML (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: a. Materials not elsewhere specified in the USML or the CCL and "specially designed" for commodities enumerated or otherwise described in USML Category VIII or ECCN 9A610 (except 9A610.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to controls of the applicable ECCN.

Note 2: Materials "specially designed" for both aircraft enumerated in USML Category VIII and aircraft enumerated in ECCN 9A610 are subject to the controls of this ECCN.

b. [RESERVED]

- 12. In ECCN 9C619 revise the header and the "Items" paragraph of the "List of Items Controlled" section to read as follows:

9C619 Materials "specially designed" for commodities controlled by USML Category XIX or ECCN 9A619 and not elsewhere specified in the CCL or on the USML (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

a. Materials not elsewhere specified in the CCL or on the USML and “specially designed” for commodities enumerated or otherwise described in USML Category XIX or ECCN 9A619 (except 9A619.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to the controls of the applicable ECCN.

Note 2: Materials “specially designed” for both an engine enumerated in USML Category XIX and an engine enumerated in ECCN 9A619 are subject to the controls of this ECCN 9C619.

b. [Reserved]

■ 13. In ECCN 9E619, revise the “Related Controls” paragraph in the “List of Items Controlled” section to read as follows:

9E619 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619 (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category XIX are subject to the control of USML Category XIX(g).

* * * * *

Dated: January 29, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016-02591 Filed 2-8-16; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF STATE**22 CFR Part 121**

[Public Notice: 9395]

RIN 1400-AD89

Amendment to the International Traffic in Arms Regulations: U.S. Munitions List Categories VIII and XIX

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President’s Export Control Reform (ECR) effort, the

Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Categories VIII (aircraft and related articles) and XIX (gas turbine engines and associated equipment) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The revisions contained in this rule are part of the Department of State’s retrospective plan under E.O. 13563.

DATES: The Department of State will accept comments on this proposed rule until March 25, 2016.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

• **Email:**

DDTCTPublicComments@state.gov with the subject line, “ITAR Amendment—Categories VIII and XIX.”

• **Internet:** At *www.regulations.gov*, search for this notice by using this rule’s RIN (1400-AD89).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not wish to be made public or information for which a claim of confidentiality is asserted, because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmdtcc.state.gov*. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov*, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; email *DDTCTPublicComments@state.gov*. ATTN: ITAR Amendment—USML Categories VIII and XIX.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The items subject to the jurisdiction of the ITAR, *i.e.*, “defense articles,” are identified on the ITAR’s U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction

of the ITAR are subject to the jurisdiction of the Export Administration Regulations (“EAR,” 15 CFR parts 730-774, which includes the Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

USML List Review

On March 2, 2015, the Department published a Notice of Inquiry requesting public comment on USML Categories VIII and XIX (*see* 80 FR 11314). This Notice of Inquiry initiated a review of these categories to ensure that they are clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the reform effort. The Department will similarly review each of the various USML categories that have been revised in the context of the ECR initiative.

In response to this Notice of Inquiry, the Department received 25 comments from the public. These comments offered proposals for modifications to the phrasing of regulatory text in USML Category VIII and Category XIX. The public comments were reviewed and considered by the Department and other agencies. Where the recommended changes added to the clarity of the regulation and were consistent with ECR objectives, the Department accepted them.

All references to the USML in this rule are to the list of defense articles that are controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations (*see* 27 CFR part 447). Pursuant to § 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR’s USML to the EAR’s CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.