[Billing Code 4710-25]

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 9445]

RIN 1400-AD32

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XII

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category XII (fire control, laser, imaging, and guidance and control equipment) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The Department also proposes to amend USML Categories VIII, XIII, and XV to reflect that items now described in those Categories will be in the revised Category XII.

DATES: The Department of State will accept comments on this proposed rule until [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- E-mail: DDTCPublicComments@state.gov with the subject line, "ITAR Amendment – Category XII Second Proposed."
- Internet: At www.regulations.gov, search for this notice by using this rule's RIN (1400-AD32).

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 desire to be made public or any information for which a claim of confidentiality is asserted. All comments and transmittal e-mails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls website at www.pmddtc.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; e-mail DDTCPublicComments@state.gov. ATTN: Regulatory Change, USML Category XII.

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.

The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563.

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 C.F.R. 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.

Revision of Category XII

The revision of USML Category XII was first published as a proposed rule (RIN 1400-AD32) on May 5, 2015, for public comment (see 80 FR 25821) (first proposed rule). The comment period ended July 6, 2015. One hundred twenty parties submitted public comments, which were reviewed and considered by the Department and other agencies.

The majority of the public comments stated that the proposed controls in USML Category XII included items that are in commercial and civil applications, identifying items that would largely be controlled under paragraphs (b), (c), (d), and (e), and requested that the Department limit the

USML controls for most paragraphs to items specially designed for the military. The comments varied in level of detail and specific paragraphs addressed, if any, but the general tenor of the public comments was consistent. These comments led the Department to reevaluate USML Category XII in its entirety and to draft this second proposed rule to allow for public feedback on new proposed changes. Given the thorough redrafting of USML Category XII, the Department does not address each public comment in detail.

This second proposed rule revises USML Category XII, covering fire control, range finder, optical and guidance and control equipment, to advance the national security objectives of the President's Export Control Reform initiative and to more accurately describe the articles within the category, in order to establish a "bright line" between the USML and the CCL for the control of these articles. The revisions to Category XII being proposed in this second proposed rule are described below, along with a description of any changes from the first proposed rule.

The most significant change from the first proposed rule to this second proposed rule is that, in response to a high number of substantive public comments, certain articles will be controlled based on the design intent of the manufacturer. This was decided because the Department found

that certain articles could be used as components or as end items for the same military application. While applying the standard terminology "specially designed for a defense article" would apply to articles that operate as a component for a higher-level assembly, that terminology would not describe the same articles when used as end items on their own for the same military purpose. To address this concern, paragraphs (b)(6) and (c)(2)(iii) control articles if they are specially designed for a military end user. A military end user is defined in the new Note to Category XII as the national armed services, National Guard, national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses. An item is specially designed for a military end user if it was created for use by a military end user or users. If an item is created for both military and non-military end users, or if the item was created for no specific end user, then it is not specially designed for a military end user. Contemporaneous documents are required to support the design intent; otherwise, use by a military end user will establish that the item was specially designed for a military end user.

Paragraph (a) is revised to add subparagraphs (1) through (10) to more clearly describe the articles controlled in (a).

Paragraph (a)(1) is added for fire control systems. In response to one comment, the Department moved the control on "specially designed parts and components" to paragraph (e) for this paragraph and others, so that all parts and components are described in paragraph (e). None of the parts and components in paragraph (e) are designated significant military equipment. One comment requested clarification on the classification of defense articles enumerated elsewhere in the USML that are specially designed components of a fire control system, such as fire control computers for aircraft, described in USML Category VIII(h)(16). A control on "specially designed parts and components" is a catch all control for items that are not elsewhere specified in the USML, and items that are explicitly described elsewhere, such as USML Category VIII(h)(16), are controlled by that entry.

Paragraph (a)(2) is added for weapons sights and weapons aiming or imaging systems, with certain infrared focal plane arrays, image intensifier tubes, ballistic computers, or lasers, when specially designed for a defense article. The Department received multiple comments requesting revisions to this paragraph. These comments were not adopted, as these weapons sights and weapon aiming and imaging systems all relate to the sighting, aiming, or imaging for a defense article and therefore warrant USML control.

Paragraph (a)(3) is added for electronic or optical weapon positioning, laying, or spotting systems.

Paragraph (a)(4) is added for certain laser spot trackers and laser spot detectors that are for laser target designators or coded laser target markers controlled in paragraph (b)(1). The Department revised this control from the first proposed rule by tying it to paragraph (b)(1) to more specifically describe the kinds of items controlled by this paragraph.

Paragraph (a)(5) is added for bomb sights and bombing computers.

Paragraph (a)(6) is added for electro-optical missile or ordnance tracking systems.

Paragraph (a)(7) is added for electro-optical ordnance guidance systems.

Paragraph (a)(8) is added for electro-optical systems that automatically detect and locate weapons launch or fire.

Paragraph (a)(9) is added for remote wind sensing systems specially designed for ballistic-corrected aiming.

Paragraph (a)(10) is added for certain helmet mounted display (HMD) systems. In response to comments, the Department limited the scope of the control for HMD's with optical sights or slewing devices that control infrared imaging systems and end items from the first proposed rule, to those

infrared systems and end items that are also defense articles themselves. This clarifies that HMDs for civilian firefighter systems are not described in this control.

Paragraph (b) is revised to add subparagraphs (1) through (7) to more clearly describe the articles controlled in (b). Controls on lasers and others parts and components of laser systems are moved to paragraph (e).

Paragraph (b)(1) is added for laser target designators or coded target markers that mediate the delivery of ordnance to a target. The Department made the control language from the first proposed rule more specific to more completely describe the defense articles controlled by this paragraph.

Paragraph (b)(2) is added for infrared laser target illumination systems having a variable beam divergence. The Department made the control language from the first proposed rule more specific to more completely describe the defense articles controlled by this paragraph.

Paragraph (b)(3) is added for certain laser range finders. In response to comments, the Department revised the control language from the first proposed rule to specify only laser ranger finders operating at a wavelength of 1064 nm and having a Q-switched pulse output, and laser ranger finders operating in excess of 1064 nm and meeting certain technical parameters.

Paragraph (b)(4) is added for certain targeting or target location systems. In response to public comments, the Department revised the control from the first proposed rule to require that the system use a Global Navigation Satellite System (GNSS), guidance, or navigation defense article.

Paragraph (b)(5) is added for optical augmentation systems.

Paragraph (b)(6) is added for light detection and ranging (LIDAR), laser detection and ranging (LADAR), or range-gated systems specially designed for a military end user.

Paragraph (b)(7) is added for developmental lasers and laser systems funded by the Department of Defense, with certain exceptions.

Paragraph (c) is revised to add subparagraphs (1) through (9) to more clearly describe the articles controlled in (c). Controls on image intensifier tubes (IITs), infrared focal plane arrays (IRFPAs), IRFPA dewar cooler assemblies (IDCAs), gimbals, and other parts and components of imaging systems are moved to paragraph (e).

Paragraph (c)(1) is added for night vision or infrared cameras specially designed for defense articles. The Department revised this entry in response to comments regarding non-military uses of cameras and imaging systems described in the first proposed rule. As a specially designed component of another defense article, a camera, as defined in the Note to

paragraph (c)(1), is eligible for paragraph (b) of specially designed in §120.41.

Paragraph (c)(2) is added for certain binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems. The Department revised this entry in response to comments regarding non-military uses of binocular, goggles, and other close eye systems described in the first proposed rule. For articles that employ third generation IITs or are sensor fused, the Department described the articles based on their technical characteristics. For articles with an IRFPA or infrared imaging camera, the articles are controlled if specially designed for a military end user.

Paragraph (c)(3) is added for targeting systems specially designed for defense articles.

Paragraph (c)(4) is added for infrared search and track (IRST) systems that utilize a longwave IRFPA and maintain positional or angular state of a target through time. The Department revised this control from the first proposed rule in response to public comments regarding non-military IRST systems.

Paragraph (c)(5) is added for certain infrared imaging systems, described in nine subparagraphs: 1) mobile systems that provide real-time target location at ranges greater than 5 km; 2) airborne stabilized systems

specially designed for military reconnaissance; 3) multispectral imaging systems that classify or identify military or intelligence targets or characteristics; 4) automated missile detection or warning systems; 5) systems hardened to withstand electromagnetic pulse (EMP) or chemical, biological, or radiological threats; 6) systems incorporating mechanisms to reduce signature; 7) certain aerial persistent surveillance systems; 8) certain gimbaled infrared systems; 9) systems specially designed for USML platforms. The Department revised this entry from the first proposed rule in response to comments regarding non-military imaging systems described in the proposed rule.

Paragraph (c)(6) is added for certain terahertz imaging systems. In response to public comments, the Department revised the technical parameter from the first proposed rule from 0.3 milliradians to 0.1 milliradians.

Paragraph (c)(7) is added for systems or equipment incorporating an infrared beacon or emitter specially designed for Combat Identification. The Department revised this entry to Combat Identification from Identification Friend or Foe (IFF) in the first proposed rule in response to public confusion regarding IFF.

Paragraph (c)(8) is added for systems that project radiometrically calibrated scenes directly into the entrance aperture of an electro-optical or infrared (EO/IR) sensor controlled in this subchapter within either the spectral band exceeding 10 nm but not exceeding 400 nm, or the spectral band exceeding 900 nm but not exceeding 30,000 nm.

Paragraph (c)(9) is added for developmental imaging systems funded by the Department of Defense.

Paragraph (d) is revised to include controls on GNSS equipment previously controlled in Category XV and to add subparagraphs (1) through (6) to more clearly describe the articles controlled in (d). Controls on inertial measurement units, accelerometers, gyroscopes, GNNS security devices, and other parts and components of navigation systems are moved to paragraph (e).

Paragraph (d)(1) is added for certain guidance or navigation systems. The Department did not adopt public comments to revise this entry to items specially designed for the military. Rather the Department has revised the technical parameters from the first proposed rule to a level that more clearly describes the military critical technology.

Paragraph (d)(2) is added for GNSS receiving equipment, moved from Category XV.

Paragraph (d)(3) is added for GNSS anti-jam systems specially designed for use with the anti-jam antennae described in USML Category XI(c)(10). In response to public comments, the Department revised the entry for anti-jam GNNS systems from the first proposed rule by expressly linking the control to the anti-jam antennae described in USML Category XI(c)(10).

Paragraph (d)(4) is added for certain mobile relative gravimeters.

Paragraph (d)(5) is added for certain mobile gravity gradiometers.

Paragraph (d)(6) is added for developmental guidance, navigation, or control systems funded by the Department of Defense.

Paragraph (e) is revised to add subparagraphs (1) through (23) to more clearly describe the parts and components for the systems in (a) – (d) that are controlled in (e).

Paragraph (e)(1) is added for parts and components specially designed for articles described in paragraph (a)(1) or (a)(8).

Paragraph (e)(2) is added for lasers specially designed for defense articles. In response to public comments regarding the non-military uses of lasers described in the first proposed rule, the Department limited this entry to lasers that are specially designed for defense articles.

Paragraph (e)(3) is added for laser stacked arrays specially designed for defense articles. In response to public comments regarding the non-

military uses of laser stacked arrays described in the first proposed rule, the Department limited this entry to laser stacked arrays that are unique to defense articles.

Paragraph (e)(4) is added for IRFPAs specially designed for defense articles. In response to public comments, the Department completely revised the controls on IRFPAs from the first proposed rule, limiting the USML control to those that are unique to defense articles.

Paragraph (e)(5) is added for certain charge multiplication focal plane arrays specially designed for defense articles. In response to public comments, the Department completely revised the controls on charge multiplication focal plane arrays from the first proposed rule, limiting the USML control to those that are unique to defense articles.

Paragraph (e)(6) is added for second generation and greater IITs specially designed for defense articles, and specially designed parts and components therefor. This control includes third generation IITs, EBAPS, night vision and thermal fused IITs, and all subsequent IIT designs. In response to public comments, the Department completely revised the controls on IITs from the first proposed rule, limiting the USML control to those that are unique to defense articles.

Paragraph (e)(7) is added for parts and components specially designed for articles described in paragraph (c)(3), (c)(4), or (c)(5)(vi)-(vii).

Paragraph (e)(8) is added for inertial measurement units specially designed for defense articles. In response to public comments, the Department revised the controls on inertial measurement units from the first proposed rule to a technical parameter based control to a control on all inertial measurement units that are unique to defense articles.

Paragraph (e)(9) is added for GNSS security devices, Selective Availability Anti-Spoofing Module (SAASM), Security Module (SM), and Auxiliary Output Chip (AOC) chips.

Paragraph (e)(10) is added for certain accelerometers that meet the technical parameters. In response to public comments regarding the non-military uses of accelerometers described in the first proposed rule, the Department revised this entry to more specifically describe the items warranting control on the USML.

Paragraph (e)(11) is added for certain gyroscopes and angular rate sensors that meet the technical parameters. In response to public comments regarding the non-military uses of gyroscopes and angular rate sensors described in the first proposed rule, the Department revised this entry to more specifically describe the items warranting control on the USML.

Paragraph (e)(12) is added for optical sensors that have a spectral filter that is specially designed for items controlled in USML Category XI(a)(4) and optical sensor assemblies that provide threat warning or tracking for those items controlled in USML Category XI(a)(4). In response to public comments, the Department revised the control from the first proposed rule to add the specially designed control parameter.

Paragraph (e)(13) is added for read-out integrated circuits (ROICs) specially designed for defense articles.

Paragraph (e)(14) is added for IDCAs, with or without an IRFPA, specially designed for defense articles, other than those in USML Category XV, and specially designed parts and components therefor.

Paragraph (e)(15) is added for gimbals specially designed for defense articles in this category.

Paragraph (e)(16) is added for IRFPA Joule-Thomson (JT) self-regulating cryostats specially designed for defense articles.

Paragraph (e)(17) is added for infrared lenses, mirrors, beam splitters or combiners, filters, and treatments and coatings, specially designed for defense articles.

Paragraph (e)(18) is added for drive, control, signal, or image processing electronics specially designed for defense articles in this category.

Paragraph (e)(19) is added for near-to-eye displays specially designed for defense articles in this category.

Paragraph (e)(20) is added for resonators, receivers, transmitters, modulators, gain media, and drive electronics or frequency converters specially designed for defense articles in this category.

Paragraph (e)(21) is added for two-dimensional infrared scene projector emitter arrays (i.e., resistive arrays) specially designed for infrared scene generators controlled in USML Category IX(a)(10).

Paragraph (e)(22) is added for classified parts, components, accessories, attachments, and associated equipment.

Paragraph (e)(23) is added for developmental IITs, FPAs, ROICs, accelerometers, gyroscopes, angular rate sensors, and inertial measurement units funded by the Department of Defense.

Paragraph (f) is revised to more clearly describe the technical data and defense services controlled in paragraph (f). In response to public comments, the Department significantly revised paragraph (f), so that it now mirrors the

other technical data and defense services paragraphs in ECR-revised USML Categories.

A new (x) paragraph has been added to USML Category XII, allowing ITAR licensing for commodities, software, and technology subject to the EAR provided those commodities, software, and technology are to be used in or with defense articles controlled in USML Category XII *and* are described in the purchase documentation submitted with the application.

Finally, articles common to the Missile Technology Control Regime (MTCR) Annex and the USML are to be identified on the USML with the parenthetical "(MT)" at the end of each section containing such articles. A separate proposed rule will address the sections in the ITAR that include MTCR definitions.

The following definitions explain and amplify terms used in this Category and are provided to assist exporters in understanding the scope of the proposed control.

Charge multiplication is a form of electronic image amplification, the generation of charge carriers as a result of an impact ionization gain process.

Focal plane array is a linear or two-dimensional planar layer, or combination of planar layers, of individual detector elements, with or without readout electronics, which work in the focal plane.

Note: This definition does not include a stack of single detector elements or any two, three, or four element detectors provided time delay and integration is not performed within the element.

Image intensifier tube refers to an imaging device that incorporates a photoemissive transducer (i.e., photocathode) and achieves electron image amplification in the vacuum space.

Multispectral refers to producing discrete outputs associated with more than one spectral band of response.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some control parameters are proposed recognizing that they may control items in normal commercial use and on the Wassenaar Arrangement's Dual Use List. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Categories 5, 11 and 15 (WA-ML15) and the relevant Dual Use List Categories including the IRFPAs in

Category 6 (WA-DU 6.A.2). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category XII contained in this notice and the new and revised ECCNs published separately by the Department of Commerce when reviewed together.

2) Another key goal of this rulemaking is to identify items proposed for control on the USML or the CCL that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List. The public is asked to identify any items proposed for control on the USML that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List.

3) A third key goal of this rulemaking is to establish a "bright line" between the USML and the CCL for the control of these materials. The public is asked to provide specific examples of control criteria that do not clearly describe items that would be defense articles and thus do not establish a "bright line" between the USML and the CCL.

4) Although the proposed revisions to the USML do not preclude the possibility that items in normal commercial use would or should be ITAR-controlled because, *e.g.*, they provide the United States with a critical military or intelligence advantage, the U.S. government does not want to inadvertently control items on the ITAR that are in normal commercial use. Items that would be controlled on the USML in this proposed rule have been

identified as possessing parameters or characteristics that provide a critical military or intelligence advantage. The public is thus asked to provide specific examples of items, if any, that would be controlled by the revised USML Category XII that are now in normal commercial use. The examples should demonstrate actual commercial use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items.

5) For any criteria the public believes control items in normal commercial use, the public is asked to identify parameters or characteristics that differentiate such items from items exclusively or primarily in military use.

6) For any criteria the public believes control items in normal commercial use, the public is asked to identify the multilateral controls (such as the Wassenaar Arrangement's Dual Use List), if any, for such items, and the consequences of such items being controlled on the USML.

7) The Department seeks public comment on each paragraph of the proposed USML Category XII.

REGULATORY ANALYSIS AND NOTICES

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are

exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess 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, distributed 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).

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

Following is a listing of approved Department of State information collections that will be affected by revision of the U.S. Munitions List (USML) and the Commerce Control List pursuant to the President's Export Control Reform (ECR) initiative. The list of collections and the description of the manner in which they will be affected pertains to revision of the USML in its entirety, not only to the categories published in this rule. In accordance with the Paperwork Reduction Act, the Department of State will request comment on these collections from all interested persons at the

appropriate time. In particular, the Department will seek comment on changes to licensing burden based on implementation of regulatory changes pursuant to ECR, and on projected changes based on continued implementation of regulatory changes pursuant to ECR. The information collections are as follows:

1) Statement of Registration, DS-2032, OMB No. 1405-0002. The Department estimates that between 3,000 and 5,000 of the currently registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of between 6,000 and 10,000 hours annually, based on a revised time burden of two hours to complete a Statement of Registration.

2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP-5, OMB No. 1405-0003. The Department estimates that there will be 35,000 fewer DSP-5 submissions annually following full revision of the USML. This would result in a burden reduction of 35,000 hours annually.

3) Application/License for Temporary Import of Unclassified Defense Articles, DSP-61, OMB No. 1405-0013. The Department estimates that there will be 200 fewer DSP-61 submissions annually following full revision of the USML. This would result in a burden reduction of 100 hours annually.

4) Application/License for Temporary Export of Unclassified Defense Articles, DSP-73, OMB No. 1405-0023. The Department estimates that there will be 800 fewer DSP-73 submissions annually following full revision of the USML. This would result in a burden reduction of 800 hours annually.

5) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP-6, -62, -74, -119, OMB No. 1405-0092. The Department estimates that there will be 2,000 fewer amendment submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

6) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP-5, OMB No. 1405-0093. The Department estimates that there will be 1,000 fewer agreement submissions annually following full revision of the USML. This would result in a burden reduction of 2,000 hours annually.

7) Maintenance of Records by Registrants, OMB No. 1405-0111. The requirement to actively maintain records pursuant to provisions of the ITAR will decline commensurate with the drop in the number of persons who will be required to register with the Department pursuant to the ITAR. As stated above, the Department estimates that up to 5,000 of the currently-registered persons will not need to maintain registration following full revision of the

USML. This would result in a burden reduction of 100,000 hours annually. However, the ITAR does provide for the maintenance of records for a period of five years. Therefore, persons newly relieved of the requirement to register with the Department may still be required to maintain records.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 121 is proposed to be amended as follows:

PART 121 – THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

§121.1 [Amended]

2. Section 121.1 is amended by:

a. Removing and reserving paragraph (e) in U.S. Munitions List Category VIII.

b. Revising U.S. Munitions List Category XII:

c. Removing and reserving paragraph (a) in U.S. Munitions List Category XIII.

d. Removing and reserving paragraph (c) in U.S. Munitions List Category XV.

The revision to read as follows:

§121.1 The United States Munitions List.

* * * * *

Category XII — Fire Control, Laser, Imaging, and Guidance and Control Equipment

*(a) Fire control and aiming systems, as follows:

(1) Fire control systems;

(2) Weapon sights, weapon aiming systems, and weapon imaging systems (e.g., clip-on), with or without an integrated viewer, display, or reticle, specially designed for an article subject to this subchapter and also incorporating or specially designed to incorporate any of the following:

(i) An infrared focal plane array having a peak response at a wavelength exceeding 1,000 nm;

(ii) Second generation or greater image intensifier tubes;

(iii) A ballistic computer for adjusting the aim point display; or

(iv) Infrared laser having a wavelength exceeding 710 nm;

(3) Electronic or optical weapon positioning, laying, or spotting systems;

(4) Laser spot trackers and laser spot detection, location, or imaging systems, with an operational wavelength shorter than 400 nm or longer than 710 nm and that are for laser target designators or coded laser target markers controlled in paragraph (b)(1);

Note to paragraph (a)(4): For controls on LIDAR, see paragraph (b)(6) of this category.

(5) Bomb sights or bombing computers;

(6) Electro-optical missile or ordnance tracking systems,

(7) Electro-optical ordnance guidance systems;

(8) Electro-optical systems that automatically detect and locate weapons launch or fire;

(9) Remote wind-sensing systems specially designed for ballistic-corrected aiming; or

(10) Helmet mounted display (HMD) systems or end items, incorporating optical sights or slewing devices that aim, launch, track, or manage munitions, or control infrared imaging systems or end items described in this category, other than such items controlled in Category VIII (e.g., Combat Vehicle Crew HMD, Mounted Warrior HMD, Integrated Helmet Assembly Subsystem, Drivers Head Tracked Vision System);

*(b) Laser systems and end items, as follows:

(1) Laser target designators or coded target markers that mediate the delivery of ordnance to a target;

(2) Target illumination systems having a variable beam divergence, and a laser output wavelength exceeding 710 nm, to artificially light an area to search for or locate a target;

(3) Laser rangefinders having any of the following:

(i) Output wavelength of 1064 nm and any Q-switched pulse output; or

(ii) Output wavelength exceeding 1064 nm and any of the following:

(A) Single shot ranging capability of 3 km or greater against a standard 2.3 m x 2.3 m NATO target having 10% reflectivity and 23 km visibility; or

(B) Multiple shot ranging capability at 3 Hz or greater of 1 km or greater against a standard 2.3 m x 2.3 m NATO target having 10% reflectivity and 23 km visibility;

(4) Targeting systems and target location systems, incorporating or specially designed to incorporate a laser rangefinder and incorporating or specially designed to incorporate a Global Navigation Satellite System (GNSS), guidance, or navigation defense article controlled in paragraph (d) of this category (MT if designed or modified for rockets, missiles, space launch vehicles (SLVs), drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(5) Systems specially designed to use laser energy with an output wavelength exceeding 710 nm to exploit differential target-background retroreflectance in order to detect personnel or optical / electro-optical equipment (e.g., optical augmentation systems);

(6) Light detection and ranging (LIDAR), laser detection and ranging (LADAR), or range-gated systems specially designed for a military end user (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km); or

(7) Developmental lasers or laser systems funded by the Department of Defense via contract or other funding authorization;

Note 1 to paragraph (b)(7): This paragraph does not control lasers or laser systems: (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (b)(7): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (b)(7): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017 or later.

*(c) Night vision, infrared, or terahertz imaging systems or end items, as follows:

(1) Night vision or infrared cameras specially designed for articles in this subchapter;

Note to paragraph (c)(1): The articles controlled by this paragraph have sufficient electronics to enable at a minimum the output of an analog or digital signal once power is applied.

(2) Binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems (including video-based articles having a separate near-to-eye display), as follows:

(i) Incorporating an autogated third generation image intensifier tube or a higher generation image intensifier tube;

(ii) Fusing output of an image intensifier tube and an infrared focal plane array having a peak response greater than 1,000 nm; or

(iii) Having an infrared focal plane array or imaging camera, and is specially designed for a military end user;

(3) Targeting systems specially designed for articles in this subchapter;

(4) Infrared search and track (IRST) systems, that:

(i) Incorporate or are specially designed to incorporate an infrared focal plane array or imaging camera, having a peak response within the wavelength range exceeding 3 microns or greater; and

(ii) Maintain positional or angular state of a target through time;

(5) Infrared imaging systems, as follows:

(i) Mobile reconnaissance, scout, or surveillance systems providing real-time target location at ranges greater than 5 km (e.g., LRAS, CIV, HTI, SeeSpot, MMS);

(ii) Airborne stabilized systems specially designed for military reconnaissance (e.g., DB-110, C-B4);

(iii) Multispectral imaging systems that classify or identify military or intelligence targets or characteristics;

(iv) Automated missile detection or warning systems;

(v) Systems hardened to withstand electromagnetic pulse (EMP) or chemical, biological, or radiological threats;

(vi) Systems incorporating mechanism(s) to reduce signature;

(vii) Persistent surveillance systems with a ground sample distance (GSD) of 0.5 m or better (smaller) at 10,000 ft AGL and a simultaneous coverage area of 3 km^2 or greater;

(viii) Gimbaled infrared systems, as follows:

(A) Having a stabilization better (less) than 30 microradians RMS and a turret with a ball diameter of 15 inches or greater; or

(B) Specially designed for articles in this subchapter; or

(ix) Systems specially designed for military platforms controlled in this subchapter (MT if for determining bearings to specific electromagnetic sources (direction finding equipment) or terrain characteristics and designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(6) Terahertz imaging systems having a peak response in the frequency range exceeding 30 GHz but not exceeding 3000 GHz, and having a resolution less (better) than 0.1 milliradians at a standoff range of 100 m;

(7) Systems or equipment, incorporating an infrared (IR) beacon or emitter, specially designed for Combat Identification;

(8) Systems that project radiometrically calibrated scenes at a frame rate greater than 30 Hz directly into the entrance aperture of an electro-optical or infrared (EO/IR) sensor controlled in this subchapter within either the spectral band exceeding 10 nm but not exceeding 400 nm, or the spectral band exceeding 900 nm but not exceeding 30,000 nm;

(9) Developmental electro-optical, infrared, or terahertz systems funded by the Department of Defense.

Note 1 to paragraph (c)(9): This paragraph does not control electro-optical, infrared, or terahertz imaging systems: (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see §120.4 of this subchapter, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (c)(9): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (c)(9): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017 or later.

(d) Guidance, navigation, and control systems or end items, as follows:

(1) Guidance or navigation systems (e.g., inertial navigation systems, inertial reference units, attitude and heading reference systems) as follows (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range greater than or equal to 300 km);

(i) Having a circle of equal probability (CEP) of position error rate less (better) than 0.28 nautical miles per hour, without the use of positional aiding references;

(ii) Having a heading error or true north determination of less (better) than 0.28 mrad secant (latitude) (0.016043 degrees secant (latitude));

(iii) Having a CEP of position error rate less than 0.2 nautical miles in an 8 hour period, without the use of positional aiding references; or

(iv) Specified to function at linear acceleration levels exceeding 25 g;

Note 1 to paragraph (d)(1): For rocket, SLV, or missile flight control and guidance systems (including guidance sets), see Category IV(h).

Note 2 to paragraph (d)(1): Inertial measurement units are described in paragraph (e) of this category.

(2) Global Navigation Satellite System (GNSS) receiving equipment, as follows:

(i) GNSS receiving equipment specially designed for military applications (MT if designed or modified for airborne applications and capable of providing navigation information at speeds in excess of 600 m/s);

(ii) Global Positioning System (GPS) receiving equipment specially designed for encryption or decryption (e.g., Y-Code, M-Code) of GPS

precise positioning service (PPS) signals (MT if designed or modified for airborne applications);

(iii) GPS receiving equipment specially designed for use with an antenna described in Category XI(c)(10) (MT if designed or modified for airborne applications); or

(iv) GPS receiving equipment specially designed for use with rockets, missiles, SLVs, drones, or unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km (MT);

Note to paragraph (d)(2)(iv): "Payload" is the total mass that can be carried or delivered by the specified rocket, missile, SLV, drone or unmanned aerial vehicle that is not used to maintain flight. For definition of "range" as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. For definition of "range" as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII.

(3) GNSS anti-jam systems specially designed for use with an antenna described in Category XI(c)(10);

(4) Mobile relative gravimeters having automatic motion compensation, with an in-service accuracy of less (better) than 0.4 mGal (MT if designed or modified for airborne or marine use and having a time to steady-state registration of two minutes or less);

(5) Mobile gravity gradiometers having an accuracy of less (better) than 10 Eotvos squared per radian per second for any component of the gravity gradient tensor, and having a spatial gravity wavelength resolution of 50 m or less (MT if designed or modified for airborne or marine use);

Note to paragraph (d)(5): "Eotvos" is a unit of acceleration divided by distance that was used in conjunction with the older centimeter-gram-second system of units. The Eotvos is defined as 1/1,000,000,000 Galileo (Gal) per centimeter.

(6) Developmental guidance, navigation, or control systems funded by the Department of Defense (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range equal to or greater than 300 km);

Note 1 to paragraph (d)(6): This paragraph does not control guidance, navigation, or control systems: (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (d)(6): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (d)(6): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017, or later.

Note 4 to paragraph (d)(6): For definition of "range" as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. For definition of "range" as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII.

(e) Parts, components, accessories, or attachments, as follows:

(1) Parts and components specially designed for articles described in paragraph (a)(1) or (a)(8) of this section;

(2) Lasers specially designed for articles in this subchapter;

(3) Laser stacked arrays specially designed for articles in this category;

(4) Infrared focal plane arrays (IRFPAs) specially designed for articles in this subchapter;

(5) Charge multiplication focal plane arrays exceeding 50 mA/W for any wavelength exceeding 760 nm and specially designed for articles described in this subchapter;

(6) Second generation and greater image intensifier tubes specially designed for articles in this subchapter, and specially designed parts and components therefore;

Note to paragraph (e)(6): second and third generation image intensifier tubes are defined as having a peak response within the 0.4 to 1.05 micron wavelength range and incorporating a microchannel plate for electron image amplification having a hole pitch (center-to-center spacing) of less than 25 microns and having either: (a) an S-20, S-25, or multialkali photo cathode; or (b) a GaAs, GaInAs, or other III-V compound semiconductor photocathode.

(7) Parts and components specially designed for articles described in paragraph (c)(3), (c)(4), or (c)(5)(vi)-(vii);

(8) Inertial measurement units specially designed for articles in this subchapter (MT for systems incorporating accelerometers specified in (e)(10) or gyroscopes or angular rate sensors specified in (e)(11) that are designated MT);

(9) GNSS security devices (e.g., Selective Availability Anti-Spoofing Modules (SAASM), Security Modules (SM), and Auxiliary Output Chips (AOC);

(10) Accelerometers having a bias repeatability of less (better) than 10 μg and a scale factor repeatability of less (better) than 10 parts per million, or capable of measuring greater than 100,000 g (MT);

Note 1 to paragraph (e)(10): For weapon fuze accelerometers, see Category III(d) or IV(h).

Note 2 to paragraph (e)(10): MT designation does not include accelerometers that are designed to measure vibration or shock.

(11) Gyroscopes or angular rate sensors as follows (MT if having a rated drift stability of less than 0.5 degrees (1 sigma or rms) per hour in a 1 g environment or specified to function at acceleration levels greater than 100 g):

(i) Having an angle random walk of less (better) than 0.001 degrees per square root hour; or

(ii) Mechanical gyroscopes or rate sensors having a bias repeatability less (better) than 0.0015 degrees per hour;

Note to paragraphs (e)(10) and (e)(11):

"Repeatability" is the closeness of agreement among repeated measurements of the same variable under the same operating conditions when changes in conditions or non-operating periods occur between measurements.

"Bias" is the accelerometer output when no acceleration is applied.

“Scale factor” is the ratio of change in output to a change in the input.

The measurement of “bias” and “scale factor” refers to one sigma standard deviation with respect to a fixed calibration over a period of one year.

“Drift Rate” is the component of gyro output that is functionally independent of input rotation and is expressed as an angular rate.

“Stability” is a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.)

(12) Optical sensors having a spectral filter specially designed for systems or equipment controlled in USML Category XI(a)(4), or optical sensor assemblies that provide threat warning or tracking for systems or equipment controlled in Category XI(a)(4);

(13) Read-out integrated circuits (ROICs) specially designed for articles in this subchapter;

(14) Integrated IRFPA dewar cooler assemblies (IDCAs), with or without an IRFPA, specially designed for articles in this subchapter other than Category XV, and specially designed parts and components therefore;

(15) Gimbals specially designed for articles in this category;

(16) IRFPA Joule-Thomson (JT) self-regulating cryostats specially designed for articles controlled in this subchapter;

(17) Infrared lenses, mirrors, beam splitters or combiners, filters, and treatments and coatings, specially designed for articles controlled in this category;

(18) Drive, control, signal, or image processing electronics, specially designed for articles controlled in this category;

(19) Near-to-eye displays specially designed for articles controlled in this category;

(20) Resonators, receivers, transmitters, modulators, gain media, drive electronics, and frequency converters specially designed for laser systems controlled in this category;

(21) Two-dimensional infrared scene projector emitter arrays (i.e., resistive arrays) specially designed for infrared scene generators controlled in USML Category IX(a)(10);

*(22) Any part, component, accessory, attachment, or associated equipment, that:

(i) Is classified;

(ii) Contains classified software;

(iii) Is manufactured using classified production data; or

(iv) Is being developed using classified information.

Note to paragraph (e)(22): "Classified" means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

(23) Developmental image intensification tubes, focal plane arrays, read-out-integrated circuits, accelerometers, gyroscopes, angular rate sensors and inertial measurement units funded by the Department of Defense (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range equal to or greater than 300 km);

Note 1 to paragraph (e)(23): This paragraph does not control items: (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see §120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (e)(23): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (e)(23): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017, or later.

(f) Technical data (see §120.10) and defense services (see §120.9) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category and classified technical data directly related to items controlled in ECCNs 7A611, 7B611, and 7D611. (See §125.4 for exemptions.) (MT for technical data and defense services related to articles designated as such.) Technical data directly related to manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(g)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (see §120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note to Category XII: For purposes of determining whether an item (i.e., system, end item, part, component, accessory, attachment, or software) is specially designed for a military end user, a "military end user" means the national armed services (army, navy, marine, air force, or coast guard),

national guard, national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses. A system or end item is not specially designed for a military end user if the item was developed with knowledge that it is or would be for use by both military end users and non-military end users, or if the item was or is being developed with no knowledge for use by a particular end user. In such instances, documents contemporaneous with the development must establish such knowledge.

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