



Billing Code 4710-25

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 9980]

Docket Number DOS-2017-0017

RIN 1400-AE46

Notice of Inquiry; Request for Comments Regarding Review of United States Munitions List Categories V, X, and XI

AGENCY: Department of State.

ACTION: Notice of Inquiry; request for comments.

SUMMARY: The Department of State requests comments from the public to inform its review of the controls implemented in recent revisions to Categories V, X, and XI of the United States Munitions List (USML). The Department periodically reviews USML 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 United States.

DATES: The Department will accept comments on the Notice of Inquiry up to [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by docket number DOS-2017-0017, by any of the following methods:

- E-mail: DDTCPublicComments@state.gov. Include docket number DOS-2017 in the subject line with, “Request for Comments Regarding Review of USML Categories V, X and XI.”
- Internet: At www.regulations.gov Follow the instructions for sending comments using docket number, DOS-2017-0017.

Comments submitted through www.regulations.gov will be visible to other members of the public; the Department will publish all comments on the Directorate of Defense Trade Controls website (www.pmdtdc.state.gov).

Therefore, commenters are cautioned not to include proprietary or other sensitive information in their comments.

FOR FURTHER INFORMATION CONTACT: Ms. Engda Wubneh, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2816; e-mail wubnehem@state.gov. ATTN: Request for Comments Regarding Review of USML Categories V, X and XI.

SUPPLEMENTARY INFORMATION:

List Review

On December 10, 2010, the Department provided notice to the public of its intent to revise the USML to create a “positive list” that describes controlled items using, to the extent possible, objective criteria rather than broad, open-ended, subjective, catch-all, or design intent-based criteria (*see* 75 FR 76935). 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 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 Export Administration Regulations. Since that time, the Department has published final rules setting forth revisions for 18 USML categories, each of which have been reorganized into a uniform and more positive list structure.

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 U.S. government by maintaining control over those defense articles that provide a critical military or intelligence advantage, or otherwise warrant control under the International Traffic in Arms Regulations (ITAR), without inadvertently controlling items in normal commercial use. This approach, however, requires that the lists 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 list.

This Notice of Inquiry is the third in a series of solicitations requesting feedback on revised USML categories. Previous Notices of Inquiry requested comments on Categories VIII and XIX (*see* 80 FR 11314) and Categories VI, VII, XIII, and XX (*see* 80 FR 61138). As indicated above, the subjects of this Notice of Inquiry are Categories V and X, which was most recently revised on January 2, 2014 (*see* 79 FR 34), and Category XI, which was most recently revised on July 1, 2014 (*see* 79 FR 37536). Additionally, the Department determined that it is in the interest of the security of the United States to temporarily revise USML Category XI paragraph (b), pursuant to the provisions of 22 CFR 126.2, while a long-term solution is developed. A recent final rule extends the July 2, 2015 modification (80 FR 78130) to August 30, 2018 to allow the U.S. government to review USML Category XI in full and publish proposed and final rules. As with previous inquiries, the Department seeks comment from the public on the condition and efficacy of these categories.

Request for Comments

The Department requests public comment on USML Categories V, X and XI. General comments on other aspects of the ITAR, to include other categories of

the USML, are outside of the scope of this inquiry. In order to contribute effectively to the USML review process, all commenters are encouraged to provide comments that are responsive specifically to the prompts set forth below.

The Department requests comment on the following topics, as they relate to Categories V, X and XI:

1. Emerging and new technologies that are appropriately controlled by one of the referenced categories, but which are not currently described in subject categories or not described with sufficient clarity.

2. Defense articles that are described in subject categories, but which have entered into normal commercial use since the most recent revisions to the category at issue. For such comments, be sure to include documentation to support claims that defense articles have entered into normal commercial use.

3. Defense articles for which commercial use is proposed, intended, or anticipated in the next 5 years.

4. Drafting or other technical issues in the text of all of the referenced categories.

5. Comments regarding USML Category XI paragraph (b) modification.

6. Potential cost savings to private entities from shifting control of specific commercial items from USML to the Export Administration Regulations. To the extent possible, please quantify the cost of compliance with USML control of

commercial items, to include the time saved, the reduction in paperwork, and any other cost savings for a particular change.

The Department will review all comments from the public. If a rulemaking is warranted based on the comments received, the Department will respond to comments received in a proposed rulemaking in the *Federal Register*.

Richard Koelling,
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Bureau of Political-Military Affairs,
U.S. Department of State.

[FR Doc. 2018-02495 Filed: 2/9/2018 8:45 am; Publication Date: 2/12/2018]