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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 170721692-8078-01]

RIN 0694-XC037

Request for Public Comments Regarding Controls on Energetic Materials, Armored and Protective “Equipment” and Military Electronics

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Inquiry; request for comments.

SUMMARY: The Bureau of Industry and Security (BIS), Department of Commerce, is seeking public comments to perform a complementary review of items on the Commerce Control List concurrent with the Department of State’s review of the controls implemented in its recent revisions of parts of the United States Munitions List (which control explosives and energetic materials, propellants, incendiary agents and their constituents; personal protective equipment; and military electronics), to ensure that the descriptions of these items on the CCL are clear, items for normal commercial use are not inadvertently controlled as military items on the USML, technological developments are accounted for on the control lists, and controls properly implement the national security and foreign policy objectives of the United States. This Notice of Inquiry also furthers the regulatory reform agenda directed by the President in Executive Order 13777.

DATE: Comments must be received by BIS no later than [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted through the Federal rulemaking portal (<http://www.regulations.gov>). The regulations.gov ID number for this rule is BIS-2018-0004. All comments (including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT:

For technical questions relating to the item. For questions regarding energetic materials (ECCNs 1B608, 1C608, 1D608 and 1E608) or personal protective equipment, shelters and related items (ECCNs 1A613, 1B613, 1D613 and 1E613), contact Joseph Giunta in the Office of National Security and Technology Transfer Controls, Electronics and Materials Division at (202) 482-3127 or Joseph.Giunta@bis.doc.gov. For questions relating to military electronics (ECCNs 3A611, 3B611, 3D611 and 3E611), contact Brian Baker, Director, Electronics and Materials Division, Office of National Security and Technology Transfer Controls at (202) 482-5534 or Brian.Baker@bis.doc.gov. For questions relating to cryogenic and superconducting equipment (ECCNs 9A620, 9B620, 9D620 and 9E620), contact Michael Tu in the Office of National Security and Technology Transfer Controls, Sensors and Aviation Division at (202) 482-6462 or Michael.Tu@bis.doc.gov.

For licensing questions related to the item. For general questions regarding license applications for “600 series” ECCNs, contact Thomas DeFee or Christopher Williams in the Office of Strategic Industries and Economic Security, Munitions Control Division, at (202) 482-4506 or at Thomas.DeFee@bis.doc.gov or Christopher.Williams@bis.doc.gov. For “600 series” licenses regarding energetic materials (ECCNs 1B608, 1C608, 1D608 and 1E608) or personal protective equipment, shelters and related items (ECCNs 1A613,

1B613, 1D613 and 1E613), contact Kylie Gaskins, Munitions Control Division at (202) 482-3064 or Kylie.Gaskins@bis.doc.gov. For “600 series” licenses relating to military electronics (ECCNs 3A611, 3B611, 3D611 and 3E611) and cryogenic and superconducting equipment (ECCNs 9A620, 9B620, 9D620 and 9E620), contact Adam Duvall, Munitions Control Division at (202) 482-6534 or Adam.Duvall@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS), Department of Commerce, maintains the Export Administration Regulations, including the Commerce Control List (CCL). The items controlled under the “600 series” entries on the CCL were previously controlled on the United States Munitions List (USML), which is part of the International Traffic in Arms Regulations (ITAR), maintained by the Department of State. These items, including energetic materials, armored and protective “equipment” and military electronics, were determined by the President to not warrant control on the USML. Through this Notice of Inquiry (NOI), BIS is seeking public comments to perform a complementary review of energetic materials, armored and protective “equipment” and military electronics and related items therefor, on the CCL, concurrent with the Department of State’s review of the controls implemented in its recent revisions to Categories V, X and XI of the USML (which control explosives and energetic materials, propellants, incendiary agents and their constituents, personal protective equipment, and military electronics), to ensure that the descriptions of these items on the CCL are clear, items for normal commercial use are not inadvertently controlled as military items on the USML, technological developments are accounted for on the control lists, and controls

properly implement the national security and foreign policy objectives of the United States.

Specifically, BIS is soliciting comments on the clarity, usability and any other matters related to implementation of the “600 series” Export Control Classification Numbers (ECCNs) that control the following items, as well as certain items related thereto: energetic materials (ECCNs 1B608, 1C608, 1D608 and 1E608); armored and protective “equipment” (ECCNs 1A613, 1B613, 1D613, 1E613); military electronics (ECCNs 3A611, 3B611, 3D611 and 3E611); and cryogenic and superconducting equipment (ECCNs 9A620, 9B620, 9D620 and 9E620).

A core element of the transfer of certain articles on the USML to “600 series” ECCNs on the CCL has been the streamlining of categories on the USML, resulting in 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 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 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 licensing jurisdiction of the EAR. Since that time, the Department of State has published final rules setting forth revisions for eighteen USML categories, each of which has been reorganized

into a uniform and more “positive list” structure. In coordination with the Department of State, the Department of Commerce has published final rules that made corresponding revisions to the CCL by controlling items that the President has determined do not warrant control on the USML.

The advantage of revising the USML into a 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 ITAR, without inadvertently controlling items in normal commercial use. However, this approach requires that the USML and the CCL be regularly reviewed and updated to account for the following: technological developments; issues identified by exporters and reexporters involving the practical application of these controls; and changes in the military and commercial applications of items affected by the USML or by the corresponding “600 series” ECCNs on the CCL.

Consistent with the approach described above, this NOI requests public comments as part of a review of changes to the EAR that complements a similar review the Department of State is performing with respect to the ITAR. As discussed above, the Departments of State and Commerce reviews are being undertaken to follow up on sets of rules published by the Departments of State and Commerce. These rules implemented revisions to the following categories of the USML: Category V (explosives and energetic materials, propellants, incendiary agents and their constituents), effective July 1, 2014 (see 79 FR 34); Category X (protective personnel equipment), effective July 1, 2014 (see 79 FR 34); and Category XI (military electronics), effective December 30, 2014 (see 79 FR 37536).

These rules also added the following “600 series” ECCNs to the CCL: ECCNs 1B608, 1C608, 1D608, 1E608, 1A613, 1B613, 1D613 and 1E613, effective July 1, 2014 (see 79 FR 264), and ECCNs 3A611, 3B611, 3D611, 3E611, 9A620, 9B620, 9D620 and 9E620, effective December 30, 2014 (see 79 FR 37551). The Department of State is seeking comments from the public on the condition and efficacy of the revised Categories V, X, and XI and whether they are meeting the objectives for the list revisions. BIS will make any changes to the CCL that it determines are necessary to complement revisions to the USML by the Department of State. In addition, through this NOI, BIS is independently seeking comments on how to improve the implementation of these “600 series” ECCNs on the CCL.

BIS is also seeking comments on potential cost savings to private entities from shifting control of specific commercial items from USML to the CCL. 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.

Dated: January 31, 2018.

Richard E. Ashooh

Assistant Secretary for Export Administration

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