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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 774**

**[Docket No. 120105019-5328-01]**

**RIN 0694-AF52**

# Commerce Control List: Addition of Items Determined to No Longer Warrant Control under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule describes how articles the President determines no longer warrant control under Category XIV (Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment) or Category XVIII (Directed Energy Weapons) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL). The affected Category XIV articles consist primarily of dissemination, detection and protection "equipment" and related articles and would be controlled under new Export Control Classification Numbers (ECCNs) 1A607, 1B607, 1C607, 1D607, and 1E607, as proposed by this rule. The affected Category XVIII articles consist primarily of tooling, production "equipment," test and evaluation "equipment," test models and related articles and would be controlled under new ECCNs 6B619, 6D619 and 6E619, as proposed by this rule.

This rule is one in a series of proposed rules describing how various types of articles that the President determines no longer warrant control on the USML, as part of the Administration's Export Control Reform Initiative, would be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR).

This proposed rule is being published by the Bureau of Industry and Security (BIS) in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Categories XIV and XVIII. The citations in this BIS proposed rule to USML Categories XIV and XVIII reflect the proposed amendments contained in the Department of State's rule. The revisions proposed by BIS in this rule are part of Commerce's retrospective regulatory review plan under Executive Order 13563 completed in August 2011.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal eRulemaking Portal: http://www.regulations.gov. The identification number for this rulemaking is BIS-2015-0023**.**
- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AF52 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-AF52.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding dissemination, detection and protection "equipment" and related articles that would be controlled under new ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607, contact Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, telephone: (202) 482-3343, e-mail: Richard.Duncan@bis.doc.gov.

For questions regarding tooling, production "equipment," test and evaluation "equipment" and test models that would be controlled under new ECCNs 6B619, 6D619 and 6E619, contact Mark

Jaso, Sensors and Aviation Division, Office of National Security & Technology Transfer Controls, Bureau of Industry and Security, telephone: (202) 482-0987, e-mail: Mark.Jaso@bis.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

This proposed rule is published by the Bureau of Industry and Security (BIS) as part of the Administration's Export Control Reform (ECR) Initiative, the object of which is to protect and enhance U.S. national security interests. The implementation of the ECR includes amendment of the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML), so that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and amendment of the Export Administration Regulations (EAR) to control military items that do not warrant USML controls. This series of amendments to the ITAR and the EAR will reform the U.S. export control system to enhance our national security by: (i) improving the interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services; and (iii) allowing export control officials to focus government resources on transactions that pose greater national security, foreign policy, or proliferation concerns than those involving our NATO allies and other multi-regime partners.

Following the structure set forth in the final rule titled "Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform" (78 FR 22660, April 16, 2013) (hereinafter the "April 16 (initial implementation) rule"), this proposed rule describes BIS's proposal for controlling under the EAR's CCL certain dissemination, detection and protection "equipment" and related articles currently controlled under USML Category XIV in the ITAR and certain tooling, production "equipment," test and evaluation "equipment," test models and related articles currently controlled under USML Category XVIII of the ITAR.

In the April 16 (initial implementation) rule, BIS created a series of new ECCNs to control items that would be removed from the USML and similar items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that were already controlled elsewhere on the CCL. That final rule referred to this series of new ECCNs as the "600 series," because the third character in each of these new ECCNs is the number "6." The first two characters of the "600 series" ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a number, within the range of 0 through 9, that identifies the Category on the CCL in which the ECCN is located. The second character is a letter, within the range of A through E, that identifies the product group in a CCL Category. As indicated above, the third character in the "600 series" ECCNs is the number "6," which distinguishes the items controlled under this series of ECCNs from items identified under other ECCNs on the CCL. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular "600 series" ECCN.

Pursuant to section 38(f) of the Arms Export Control Act (AECA), the President is obligated to review the USML "to determine what items, if any, no longer warrant export controls under" the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must "describe the nature of any controls to be imposed on that item under any other provision of law." 22 U.S.C. § 2778(f)(1).

The changes proposed in this rule and the State Department's companion rule to Categories XIV and XVIII of the USML are based on a review of these USML Categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review focused on identifying the types of articles that are now controlled by USML Category XIV or Category XVIII that are either: (i) inherently military and otherwise warrant control on the USML; or (ii) of a type common to civil applications, possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article was found to satisfy either or both of these criteria, the article remains on the USML. If an article was found not to satisfy either criterion, but is nonetheless a type of article that is "specially designed" for military applications, then, generally, it is identified in one of the new "600 series" ECCNs proposed by this rule.

All references to the USML in this rule are to the list of defense articles that are controlled for purposes of export, temporary import, or brokering pursuant to the ITAR, and not to the list of defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import

under its regulations at 27 CFR Part 447. Pursuant to section 38(a)(1) of the AECA, all defense articles controlled for export or import, or that are subject to brokering controls, are part of the "USML" under the AECA. For the sake of clarity, references to the USMIL are to the list of defense articles controlled by ATF for purposes of permanent import. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL, for purposes of export controls, does not affect the list of defense articles that are controlled on the USMIL under the AECA for purposes of permanent import or brokering controls.

On January 18, 2011, the President issued Executive Order 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. The revisions proposed in this rule are part of Commerce's retrospective regulatory review plan under Executive Order 13563. Commerce's full plan, completed in August 2011, can be accessed at: http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.

**Changes Proposed by this Rule to Controls on Certain Dissemination, Detection and Protection "Equipment" and Related Items Currently Controlled under USML Category XIV**

This proposed rule would create five new "600 series" ECCNs in CCL Category 1 (ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607) that would clarify the EAR controls that apply to

certain dissemination, detection and protection "equipment" and related items the President determines no longer warrant control under USML Category XIV. Terms such as "part," "component" "accessories," "attachments," and "specially designed" are applied in the same manner in this rule as those terms are defined in Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a "Specially Designed" Decision Tool and a CCL Order of Review Decision Tool are available on the BIS website at: http://www.bis.doc.gov/index.php/decision-tree-tools.

***New ECCN 1A607: Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities.***

In proposed ECCN 1A607, paragraphs .a through .d, paragraph .i, and paragraphs .l through .w would be reserved. Paragraph .e of ECCN 1A607 would control "equipment" "specially designed" for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a. Paragraph .f of ECCN 1A607 would control protection "equipment" "specially designed" for military use and for defense against either materials controlled by USML Category XIV(a) or (b) or any of the riot control agents in new ECCN 1C607.a. Paragraph .g of ECCN 1A607 would control decontamination "equipment" not controlled by USML Category XIV(f) that is "specially designed" for military use and for the decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b). Paragraph .h would control "equipment" not controlled by USML Category XIV(f) that is "specially designed" for military use and for the detection or identification of either materials specified by USML Category

XIV(a) or (b) or riot control agents controlled by proposed new ECCN 1C607.a. Paragraph .j would control "equipment" "specially designed" to: (i) interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a "600 series" ECCN; and (ii) collect and process samples of articles controlled in USML Category XIV(a) or (b). Paragraph .k would control medical countermeasures that are "specially designed" for military use (including pre- and post-treatments, antidotes, and medical diagnostics) and "specially designed" to counter chemical agents controlled by USML Category XIV(a). Paragraph .x would control "parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled under ECCN 1A607.e, .f, .g, .or .j or a defense article controlled in USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

***New ECCN 1B607: Military test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV.***

In proposed ECCN 1B607, paragraph .a would control "equipment," not including incinerators, that is "specially designed" for the destruction of chemical agents controlled by USML Category XIV(a). Paragraph .b of ECCN 1B607 would control test facilities and "equipment" that are "specially designed" for military certification, qualification, or testing of commodities controlled by new ECCN 1A607.e, .f, .g, or .j or by USML Category XIV(f), except for XIV(f)(1). Paragraph .c would control tooling and "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled under new ECCN

1A607.e, .f, .g, or .j or USML Category XIV(f). Paragraphs .d through .w would be reserved. Paragraph .x would control "parts," "components," "accessories," and "attachments," not enumerated or otherwise described elsewhere in the USML, that are "specially designed" for a commodity controlled by ECCN 1B607.b or .c or for a defense article controlled by USML Category XIV(f).

***New ECCN 1C607: Tear gases, riot control agents and materials for the detection and decontamination of chemical warfare agents.***

Proposed ECCN 1C607.a would control specified tear gases and riot control agents. Paragraph .b of ECCN 1C607 would control "biopolymers" not controlled by USML Category XIV(g) that are "specially designed" or processed for the detection or identification of chemical warfare (CW) agents specified by USML Category XIV(a) and the cultures of specific cells used to produce them. Paragraph .c would control specified "biocatalysts" and biological systems that are not controlled by USML Category XIV(g) and are "specially designed" for the decontamination or degradation of CW agents specified by USML Category XIV(a). Paragraph .d would control chemical mixtures not controlled by USML Category XIV(f) that are "specially designed" for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

***New ECCN 1D607: "Software" "specially designed" for the "development," "production," operation, or maintenance of items controlled by 1A607, 1B607 or 1C607.***

Proposed ECCN 1D607.a would control "software" "specially designed" for the "development," "production," operation, or maintenance of items controlled by ECCN 1A607, 1B607 or 1C607. Paragraph .b of ECCN 1D607 would be reserved.

***New ECCN 1E607: "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607.***

Proposed ECCN 1E607.a would control "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607. Paragraph .b of ECCN 1E607 would be reserved.

**Changes Proposed by this Rule to Controls on Certain Tooling, Production "Equipment," Test and Evaluation "Equipment" and Test Models Currently Controlled under USML Category XVIII**

This rule proposes to create three new "600 series" ECCNs in CCL Category 6 (ECCNs 6B619, 6D619 and 6E619) that would clarify the EAR controls that apply to certain tooling, production "equipment," test and evaluation "equipment," test models and related articles for Directed Energy Weapons (DEWs) that the President determines no longer warrant control under USML Category XVIII. Terms such as "part," "component" "accessories," "attachments," and "specially designed" are applied in the same manner in this rule as those terms are defined in

Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a "Specially Designed" Decision Tool and a CCL Order of Review Decision Tool are available on the BIS website at: http://www.bis.doc.gov/index.php/decision-tree-tools.

***New ECCN 6B619: Test, inspection and production "equipment," and related commodities, "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII.***

Proposed ECCN 6B619.a would control tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test "equipment" not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML that are "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII. The commodities that would be controlled under proposed ECCN 6B619.a are used to produce directed energy weapons (including non-lethal directed energy weapons, such as active denial systems) and are similar to commodities that are in operation in a number of other countries, some of which are not allies of the United States or members of multinational export control regimes. Research and development is currently underway to determine the possible uses of such commodities (e.g., to protect the Earth from asteroids, or for perimeter security and crowd control). Possession of such commodities does not confer a significant military advantage on the United States and, therefore, the inclusion of such commodities on the CCL would be appropriate.

Paragraphs .b through .w of ECCN 6B619 would be reserved. Paragraph .x would control "parts," "components," "accessories," and "attachments" "specially designed" for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

***New ECCN 6D619: "Software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by 6B619.***

Proposed ECCN 6D619 would control "software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by ECCN 6B619. Inclusion of this "software" on the CCL would be appropriate, because it would be limited to "software" "specially designed" for ECCN 6B619 commodities and would not include any "software" for items specifically enumerated or otherwise described on the USML.

***New ECCN 6E619: "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6B619 or "software" controlled by 6D619.***

Proposed ECCN 6E619 would control "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 6B619, or "software" controlled by 6D619. Inclusion of this "technology" on the CCL would be appropriate, because it would be limited to "technology"

"required" for ECCN 6B619 commodities and would not include any "technology" for items specifically enumerated or otherwise described on the USML.

**Applicable controls for the new "600 series" ECCNs proposed by this rule.**

Pursuant to the framework established in the April 16 (initial implementation) rule, detection and protection "equipment" and related commodities classified under ECCN 1A607; related test, inspection and production "equipment" classified under ECCN 1B607; tear gases, riot control agents and related commodities classified under ECCN 1C607 (except for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14, all of which are specifically excluded from WAML Category 7 by Note 1 thereto); related "software" classified under ECCN 1D607 (except "software" for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14); and related "technology" classified under ECCN 1E607 (except "technology" for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14 and 1D607 "software" therefor) would be subject to the licensing policies that apply to items controlled for national security (NS) reasons, as described in § 742.4(b)(1) – specifically, NS Column 1 controls. The same level of NS controls and licensing policies also would apply to the items that would be controlled under the three new ECCNs (i.e., test, inspection, and production "equipment" classified under ECCN 6B619; related "software" classified under ECCN 6D619; and related "technology" classified under ECCN 6E619) that this rule proposes to add to Category 6 of the CCL. In addition, all of the items that would be controlled under the new ECCNs proposed by this rule would be subject to the regional stability (RS) licensing policies set

forth in § 742.6(a)(1), i.e., RS Column 1, as well as antiterrorism (AT Column 1) and United Nations (UN) controls.

Also, in accordance with §§ 742.4(b)(1) and 742.6(b)(1) of the EAR, exports and reexports of "600 series" items controlled for NS or RS reasons will be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR, if destined to a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. All items controlled for NS or RS reasons, as set forth in this proposed rule, would be subject to this licensing policy.

**Effects of this Proposed Rule**

BIS believes that the principal effect of this rule, when considered in the context of similar proposed rules being published as part of the ECR, will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the USML. This greater flexibility would be in the form of: application of the EAR's *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions "Servicing and Replacement of Parts and Equipment" (RPL) and "Strategic Trade Authorization" (STA); elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail below.

*De minimis.*

The April 16 (initial implementation) rule imposed certain unique *de minimis* requirements on items controlled under the new "600 series" ECCNs. Section 734.3 of the EAR provides, *inter alia,* that, under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a "*de minimis*" percentage of controlled U.S. origin content. Under Section 734.4 of the EAR, as amended by the April 16 (initial implementation) rule, there is no eligibility for *de minimis* treatment for a foreign-made item that incorporates U.S.-origin "600 series" items when the foreign-made item is destined for a country that is subject to a U.S. arms embargo, i.e., a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. Items controlled under the new "600 series" ECCNs proposed in this rule would be eligible for *de minimis* treatment under the EAR, provided that the foreign-made items into which they are incorporated are not destined for a country listed in Country Group D:5. In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (i.e., USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors).

*Use of license exceptions.*

The April 16 (initial implementation) rule imposed certain restrictions on the use of license exceptions for items controlled under "600 series" ECCNs on the CCL. The general restrictions that apply to the use of license exceptions for such items are described in § 740.2(a)(13) of the EAR. The EAR provisions that describe the requirements specific to individual license exceptions contain additional restrictions on the use of license exceptions for such items.

For example, this rule proposes limited License Exception STA availability for the new "600 series" ECCNs contained herein. None of the items that would be controlled under these proposed ECCNs would be eligible for the STA "controls of lesser sensitivity" described in § 740.20(c)(2) of the EAR. Instead, STA eligibility for all such items would be limited to the destinations listed in §740.20(c)(1) of the EAR (i.e., Country Group A:5 destinations indicated in Supplement No. 1 to part 740 of the EAR). In addition, such items must be for: (1) ultimate end-use by a person of a type specified in § 740.20(b)(3)(ii) of the EAR (i.e., the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government); or (2) the "development," "production," operation installation, maintenance, repair, overhaul, or refurbishing of an item, in one of the countries listed in Country Group A:5 or the United States, that will ultimately be used by any such government agencies, the United States Government, or by a person in the United States. The use of License Exception STA also may be authorized, under certain circumstances described in § 740.20(b)(3)(ii)(C), where the U.S. Government has otherwise authorized the ultimate end-use under a license.

None of the items that would be controlled under the new "600 series" ECCNs proposed by this rule would be treated as "end items" for purposes of License Exception STA and, therefore, such items would not be subject to the License Exception STA eligibility request requirements in § 740.20(g) of the EAR.

Items controlled under proposed new ECCN 1B607 or 6B619 also would be eligible for License Exception LVS (limited value shipments) up to a value of $1,500, TMP (temporary exports), and RPL (servicing and replacement parts). License Exceptions TMP and RPL also would be available for items controlled under new ECCN 1A607.

BIS believes that the restrictions that would apply to the use of license exceptions for the items in the proposed new "600 series" ECCNs would represent an overall reduction from the level of restrictions that currently apply to such items on the USML. This would be particularly true with respect to exports of such items to NATO members and multiple-regime member countries.

*Alignment with the Wassenaar Arrangement Munitions List*.

Since the beginning of ECR, the Administration has stated that the reforms will be consistent with the United States' obligations to the multilateral export control regimes. Accordingly, the Administration will, in this proposed rule, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. In this rule, proposed ECCNs 1A607 and 1C607 would implement, to the extent possible, the controls in WAML Category 7; proposed ECCNs 1B607 and 6B619 would implement, to the extent possible, the

controls in WAML Category 18 for production "equipment;" proposed ECCNs 1D607 and 6D619 would implement, to the extent possible, the controls in WAML Category 21 for "software;" and proposed ECCNs 1E607 and 6E619 would implement, to the extent possible, the controls in WAML Category 22 for "technology."

**Request for Comments**

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal e-mails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations 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 the following approved collections: Simplified Network Application

Processing System (control number 0694-0088), which includes, among other things, license applications; License Exceptions and Exclusions (0694-0137); recordkeeping (0694-0096); export clearance (0694-0122); and the Automated Export System (0607-0152).

As stated in the proposed rule published on July 15, 2011 (76 FR 41958) (the "July 15 proposed rule"), BIS initially estimated that the combined effect of all rules to be published, adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative, would increase the number of license applications to be submitted to BIS by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694-0088. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that would come under BIS jurisdiction and whether those items would be eligible for export under license exception. As of June 21, 2012, BIS revised its estimate to reflect an increase in license applications of 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694-0088. BIS continues to believe that its revised estimate is accurate. Notwithstanding this increase in license applications under the EAR, the net burden that U.S. export controls impose on U.S. exporters is expected to go down, as described below, as a result of the transfer of less sensitive military items to the jurisdiction of the Department of Commerce, under the EAR, and the application of the license exceptions and other provisions in the EAR that are described in this proposed rule.

As proposed by this rule, certain dissemination, detection and protection "equipment" and related articles currently controlled under USML Category XIV in the ITAR and certain tooling,

production "equipment," test and evaluation "equipment," test models and related articles currently controlled under USML Category XVIII of the ITAR would become subject to the licensing jurisdiction of the Department of Commerce under the EAR and its CCL, and also would be eligible for certain license exceptions, including License Exception STA. For example, items controlled under proposed ECCN 1A607, 1B607, 1C607, 1D607, 1E607, 6B619, 6D619, or 6E619 would become eligible under certain provisions of License Exception STA and would not need a determination of eligibility as described in § 740.20(g) of the EAR. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published, adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative, would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden hours under the EAR would be more than offset by a reduction in the burden hours associated with currently approved collections related to the ITAR. With few exceptions, most exports of the dissemination, detection and protection "equipment" and related articles and the tooling, production "equipment," test and evaluation "equipment," test models and related articles that this rule proposes to add to the CCL currently require State Department authorization, even when destined to NATO member states and other close allies. In addition, the exports of "technology" necessary to produce such items in the inventories of the United States and its NATO and other close allies currently require State Department authorization. Under the EAR, as proposed by this rule, such "technology" would become

eligible for export to NATO member states and other close allies under License Exception STA, unless otherwise specifically excluded.

The anticipated reduction in burden hours would particularly impact exporters of "parts" and "components" that would no longer be subject to the ITAR, because, with few exceptions, the ITAR currently exempt from license requirements only exports to Canada. Most exports of such "parts" and "components," even when destined to NATO and other close allies, currently require State Department authorization. Under the EAR, as proposed by this rule, a small number of low-level "parts" and "components" would not require a license to most destinations, while most other "parts" and "components" identified under the proposed new "600 series" ECCNs would be eligible for export to NATO and other close allies under License Exception STA.

Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item that is being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the requirements of the EAR. However, the Administration believes that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship, rather than applying repeatedly for licenses with every purchase order, to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced, compared to the current license requirement under the ITAR. In particular, license applications for exports of "technology" controlled by ECCN 1E607 or 6E619 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled "technology," i.e., Manufacturing License Agreements and Technical Assistance Agreements.

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 an initial regulatory flexibility analysis (IRFA) for 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 certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. Accordingly, pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities. The rationale for this certification is as follows.

*Number of Small Entities*

Although BIS does not collect data on the size of entities that apply for, and are issued, export licenses and is, therefore, unable to estimate the exact number of small entities – as defined by the Small Business Administration's regulations implementing the RFA – BIS acknowledges that some small entities may be affected by this proposed rule.

*Economic Impact*

The amendments set forth in this rule are proposed as part of the Administration's ECR initiative, which seeks to revise the USML to be a positive control list – one that does not use generic, catch-all control text to describe items subject to the ITAR – and to move some items that the President has determined no longer warrant control under the ITAR to control under the EAR and its CCL. Such items, along with certain military items currently identified on the CCL (most of which are identified on the WAML), will be controlled under new "600 series" ECCNs on the CCL. In addition, certain other items currently on the CCL will move from existing ECCNs to the new "600 series" ECCNs.

This rule addresses certain dissemination, detection and protection "equipment" and related articles currently enumerated or otherwise described in USML Category XIV (Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment) and certain tooling, production "equipment," test and evaluation "equipment," test models and related articles currently enumerated or otherwise described in USML Category XVIII (Directed Energy

Weapons). Most toxicological agents (i.e., chemical and biological agents) and associated equipment and all Directed Energy Weapons (DEWs) systems "specially designed" or modified for military applications, "equipment" "specially designed" or modified to detect, identify or defend against such systems, and "specially designed" "parts," "components," "accessories" and "attachments" for such systems or "equipment" would remain on the USML. However, many other "parts" and "components" would become subject to the EAR (as items described in ECCN 1A607.x, 1B607.x, or 6B619.x), unless specifically enumerated or otherwise described on the USML. Many of these "parts" and "components" are more likely, than the USML articles described above, to be produced by small businesses. In addition, officials of the Department of State have informed BIS that license applications for such "parts" and "components" represent a high percentage of the license applications for USML articles reviewed by that department. Changing the jurisdictional status of certain Category XIV and Category XVIII items would reduce the burden on small entities (and other entities as well) through: (i) elimination of some license requirements; (ii) greater availability of license exceptions; (iii) simpler license application procedures; and (iv) reduced or eliminated registration fees.

Moreover, "parts" and "components" that are controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR, for those items that would no longer be controlled under the ITAR, may reduce the disincentive for foreign manufacturers to purchase U.S.-origin "parts" and "components," a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Many exports and reexports of the Category XIV or Category XVIII articles that would be added to the CCL by this rule (particularly, the "parts" and "components" that would be controlled under new ECCN 1A607.x, 1B607.x, or 6B619.x) would become eligible for license exceptions that apply to exports to U.S. Government agencies, exports of "parts" and "components" for use as replacement parts, temporary exports and limited value exports (for ECCN 1B607 and 6B619 items, only), as well as License Exception STA, thereby reducing the number of licenses that exporters of these items would need. License exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would create a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process for obtaining a license would be simpler and less costly under the EAR. When a USML Category XIV or Category XVIII article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease

because the licensing procedure for CCL items is simpler and more flexible than the licensing procedure for USML articles.

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 to determine 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 procedure, the applicant must caveat all sales presentations with a reference to the need for government approval, and is more likely to engage in substantial effort and expense only to find that the government will 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 specified consignee over the life of a license (normally four years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule proposes to transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. 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. Conversely, there are no registration or application processing fees for applications to export items listed on the CCL. Once the Category XIV or Category XVIII 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, its ITAR registration and registration fee requirement would be eliminated.

*Conclusion*

BIS expects that the changes to the EAR proposed in this rule will have a positive effect on all affected entities, including small entities. While BIS acknowledges that this rule may have some cost impacts on small (and other) entities, those costs are more than offset by the benefits to the entities from the licensing procedures under the EAR, which are much less costly and less time consuming than the procedures under the ITAR. As noted above, any new burdens proposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, 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, all of which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. Accordingly, the Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if implemented,

would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required, and none has been prepared.

**List of Subjects in 15 CFR Part 774**

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730-774) is proposed to be amended as follows:

**PART 774 - [AMENDED]**

1. 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, 2014, 79 FR 46959 (August 11, 2014).

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1--Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1A607 between ECCNs 1A290 and 1A613 to read as follows:

**Supplement No. 1 to Part 774 – the Commerce Control List**

* * * * *

**1A607 Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled).**

**License Requirements**

*Reason for Control*: NS, RS, AT, UN

| Control(s) | Country chart (see Supp. No. 1 to Part 738) |
|---|---|
| NS applies to entire entry | NS Column 1 |
| RS applies to entire entry | RS Column 1 |
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**List Based License Exceptions (See Part 740 for a description of all license exceptions)**

*LVS*: N/A

*GBS*: N/A

*CIV*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1A607.

**List of Items Controlled**

*Related Controls*: (1) Vaccines identified in ECCN 1C991 are not controlled by this ECCN. (2) See 22 CFR 121.1 (USML), Category XIV(h), for vaccines that are subject to the ITAR. (3) Protection and detection "equipment" and related items identified in ECCN 1A004, 1A995, or 2B351 are not controlled by this ECCN. (4) See 22 CFR 121.1 (USML), Category XIV(f), for dissemination, detection and protection "equipment" that is subject to the ITAR. (5) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.

*Related Definitions*: N/A

*Items*:

a. through d. [Reserved]

e. "Equipment" "specially designed" for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a.

f. Protection "equipment" (including air conditioning units and protective clothing):

f.1. Not controlled by USML Category XIV(f); *and*

f.2. "Specially designed" for military use and for defense against:

f.2.1. Materials specified by USML Category XIV (a) or (b); *or*

f.2.2. Riot control agents controlled in 1C607.a.

g. Decontamination "equipment":

g.1. Not controlled by USML Category XIV(f); *and*

g.2. "Specially designed" for military use and for decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b).

h. "Equipment":

h.1. Not controlled by USML Category XIV(f); *and*

h.2. "Specially designed" for military use and for the detection or identification of:

h.2.1. Materials specified by USML Category XIV(a) or (b); *or*

h.2.2. Riot control agents controlled by ECCN 1C607.a.

i. [Reserved]

j. “Equipment” “specially designed” to:

j.1. Interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a “600 series” ECCN; *and*

j.2. Collect and process samples of articles controlled in USML Category XIV(a) or (b).

k. Medical countermeasures that are “specially designed” for military use (including pre- and post-treatments, antidotes, and medical diagnostics) and “specially designed” to counter chemical agents controlled by the USML Category XIV(a).

***Note:*** *Examples of “equipment” controlled by this entry are barrier and non-barrier creams and filled autoinjectors (e.g., combopens where one injector contains 2-PAM and the other atropine) if “specially designed” to counter such agents.*

l. through w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity controlled by ECCN 1A607.e, .f, .g, or .j or for a defense article controlled by USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1--Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1B607 between ECCNs 1B234 and 1B608 to read as follows:

**1B607 Military test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV (see List of Items Controlled).**

**License Requirements**

*Reason for Control*: NS, RS, AT, UN

| Control(s) | Country chart (see Supp. No. 1 to Part 738) |
|---|---|
| NS applies to entire entry | NS Column 1 |
| RS applies to entire entry | RS Column 1 |
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**List Based License Exceptions (See Part 740 for a description of all license exceptions)**

*LVS*: $1500

*GBS*: N/A

*CIV*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1B607.

**List of Items Controlled**

*Related Controls*: (1) See ECCN 2B350 for controls on certain incinerators. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.

*Related Definitions*: N/A

*Items*:

a. "Equipment" "specially designed" for the destruction of the chemical agents controlled by USML Category XIV(a).

***Note to 1B607.a:*** *ECCN 1B607.a includes controls over facilities "specially designed" for destruction operations. This paragraph .a does not control incinerators and "specially designed" handling facilities or "specially designed" waste supply systems therefor.*

b. Test facilities and "equipment" "specially designed" for military certification, qualification, or testing of commodities controlled by ECCN 1A607.e, .f, .g, or .j or by USML Category XIV(f), except for XIV(f)(1).

c. Tooling and "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by ECCN 1A607.e, .f .g, or .j or USML Category XIV(f).

d. through w. [RESERVED]

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled by ECCN 1B607.b or .c, or for a defense article controlled by USML Category XIV(f), and that are not enumerated or otherwise described elsewhere in the USML.

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1--Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1C607 between ECCNs 1C395 and 1C608 to read as follows:

**1C607 Tear Gases, Riot Control Agents and materials for the detection and decontamination of chemical warfare agents (see List of Items Controlled).**

**License Requirements**

*Reason for Control*: NS, RS, AT, UN

| Control(s) | Country chart (see Supp. No. 1 to Part 738) |
|---|---|
| NS applies to entire entry, except<br>1C607.a.10, .a.11, .a.12, and .a.14 | NS Column 1 |
| RS applies to entire entry | RS Column 1 |
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**List Based License Exceptions (See Part 740 for a description of all license exceptions)**

*LVS*: N/A

*GBS*: N/A

*CIV*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1C607.

**List of Items Controlled**

*Related Controls*: (1) See ECCN 1A984 for controls on other riot control agents. (2) See 22 CFR 121.1 (USML), Category XIV(b), for modified biological agents and biologically derived substances that are subject to the ITAR. (3) See 22 CFR 121.1 (USML), Category XIV(g), for ITAR controls on antibodies, recombinant protective antigens, polynucleotides, biopolymers or biocatalysts (including the expression vectors, viruses, plasmids, or cultures of specific cells used to produce them) that are "specially designed" for use with articles controlled under USML Category XIV(f). (4) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.

*Related Definitions*: N/A

*Items*:

a. Tear gases and riot control agents including:

a.1. CA (Bromobenzyl cyanide) (CAS 5798–79–8);

a.2. CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698–41–1);

a.3. CN (Phenylacyl chloride or w-Chloroacetophenone) (CAS 532–27-4);

a.4. CR (Dibenz-(b,f)-1,4-oxazephine) (CAS 257–07–8);

a.5. Adamsite (Diphenylamine chloroarsine or DM) (CAS 578–94–9);

a.6. N-Nonanoylmorpholine, (MPA) (CAS 5299-64-9);

a.7. Dibromodimethyl ether (CAS 4497–29–4);

a.8. Dichlorodimethyl ether (ClCi) (CAS 542–88–1);

a.9. Ethyldibromoarsine (CAS 683–43–2);

a.10. Bromo acetone (CAS 598-31-2);

a.11. Bromo methylethylketone (CAS 816-40-0);

a.12. Iodo acetone (CAS 3019-04-3);

a.13. Phenylcarbylamine chloride (CAS 622-44-6);

a.14. Ethyl iodoacetate (CAS 623-48-3);

***Note to 1C607.a:*** *ECCN 1C607.a. does not control formulations containing 1% or less CN or CS or individually packaged tear gases or riot control agents for personal self-defense purposes that are controlled by ECCN 1A984, or to active constituent chemicals, and combinations thereof, identified and packaged for food production or medical purposes.*

b. "Biopolymers," not controlled by USML Category XIV(g) "specially designed" or processed for the detection or identification of chemical warfare agents specified by USML Category XIV(a), and the cultures of specific cells used to produce them.

c. "Biocatalysts," and biological systems therefor, not controlled by USML Category XIV(g) "specially designed" for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV (a), as follows:

c.1. "Biocatalysts" "specially designed" for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV(a) resulting from directed laboratory selection or genetic manipulation of biological systems;

c.2. Biological systems containing the genetic information specific to the production of "biocatalysts" specified by 1C607.c.1, as follows:

c.2.a. "Expression vectors;"

c.2.b. Viruses; *or*

c.2.c. Cultures of cells.

***Note to 1C607.b and .c:*** *The cultures of cells and biological systems are exclusive and these sub-items do not apply to cells or biological systems for civil purposes, such as agricultural, pharmaceutical, medical, veterinary, environmental, waste management, or in the food industry.*

d. Chemical mixtures not controlled by USML Category XIV(f) "specially designed" for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1--Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1D607 between ECCNs 1D390 and 1D608 to read as follows:

**1D607 "Software" "specially designed" for the "development," "production," operation, or maintenance of items controlled by 1A607, 1B607 or 1C607 (see List of Items Controlled).**

**License Requirements**

*Reason for Control*: NS, RS, AT, UN

| Control(s) | Country chart (see Supp. No. 1 to Part 738) |
|---|---|
| NS applies to entire entry, except "software" for 1C607.a.10, .a.11, .a.12, and .a.14 | NS Column 1 |
| RS applies to entire entry | RS Column 1 |
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**List Based License Exceptions (See Part 740 for a description of all license exceptions)**

*CIV*: N/A

*TSR*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1D607.

**List of Items Controlled**

*Related Controls*: (1) "Software" directly related to articles enumerated or otherwise described in USML Category XIV is subject to the ITAR (see 22 CFR 121.1, Category XIV(m)). "Software" controlled by USML Category XIV(m) includes "software" directly related to any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.

*Related Definitions*: N/A

*Items*:

a. "Software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 1A607, 1B607, or 1C607.

b. [RESERVED]

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1--Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1E607 between ECCNs 1E355 and 1E608 to read as follows:

**1E607 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN**

**1A607, 1B607, 1C607, or 1D607 (see List of Items Controlled).**

**License Requirements**

*Reason for Control*: NS, RS, AT, UN

| Control(s) | Country chart (see Supp. No. 1 to Part 738) |
|---|---|
| NS applies to entire entry, except "technology" for 1C607.a.10, .a.11, .a.12, and .a.14 and for 1D607 "software" therefor | NS Column 1 |
| RS applies to entire entry | RS Column 1 |
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**List Based License Exceptions (See Part 740 for a description of all license exceptions)**

*CIV*: N/A

*TSR*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1E607.

**List of Items Controlled**

*Related Controls*: Technical data directly related to defense articles enumerated or otherwise described in USML Category XIV are subject to the ITAR (see 22 CFR 121.1, Category XIV(m)). Technical data controlled by USML Category XIV(m) include technical data directly related to any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract.

*Related Definitions*: N/A

*Items*:

a. "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607 or 1D607.

***Note to 1E607.a:*** *ECCN 1E607.a includes "technology" "required" exclusively for the incorporation of "biocatalysts" controlled by ECCN 1C607.c.1 into military carrier substances*

*or military material.*

b. [RESERVED]

7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers," add a new ECCN 6B619 between ECCNs 6B108 and 6B995 to read as follows:

**6B619 Test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII (see List of Items Controlled)**

**License Requirements**

*Reason for Control:* NS, RS, AT, UN

| **Control(s)** | **Country chart (see Supp. No. 1 to Part 738)** |
|---|---|
| NS applies to entire entry | NS Column 1 |
| RS applies to entire entry | RS Column 1 |
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**License Exceptions**

*LVS:* $1,500

*GBS*: N/A

*CIV*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6B619.

**List of Items Controlled**

*Related Controls*: "Parts, "components," "accessories," "attachments," and associated systems or "equipment" "specially designed" for defense articles enumerated or otherwise described in paragraphs (a) or (b) of USML Category XVIII are subject to the ITAR (see 22 CFR § 121.1, Category XVIII(e)).

*Related Definitions*: N/A

*Items*:

a. Tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test "equipment" not enumerated or otherwise described in USML Category XVIII and not elsewhere

specified on the USML that are "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII.

b. through w. [Reserved]

x. "Parts," "components," "accessories," and "attachments" "specially designed" for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers," add a new ECCN 6D619 between ECCNs 6D201 and 6D991 to read as follows:

**6D619 "Software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by 6B619.**

**License Requirements**

*Reason for Control*: NS, RS, AT, UN

| **Control(s)** | **Country chart (see Supp. No. 1 to Part 738)** |
|---|---|
| NS applies to entire entry | NS Column 1 |
| RS applies to entire entry | RS Column 1 |

| | |
|---|---|
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**License Exceptions**

*CIV*: N/A

*TSR*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6D619.

**List of Items Controlled**

*Related Controls*: "Software" directly related to articles enumerated or otherwise described in USML Category XVIII is subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).

*Related Definitions*: N/A

*Items*:

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

9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers," add a new ECCN 6E619 between ECCNs 6E202 and 6E990 to read as follows:

**6E619 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6B619 or "software" controlled by 6D619.**

**License Requirements**

*Reason for Control:* NS, RS, AT, UN

| **Control(s)** | **Country chart (see Supp. No. 1 to Part 738)** |
|---|---|
| NS applies to entire entry | NS Column 1 |
| RS applies to entire entry | RS Column 1 |
| AT applies to entire entry | AT Column 1 |
| UN applies to entire entry | See § 746.1(b) for UN controls |

**License Exceptions**

*CIV*: N/A

*TSR*: N/A

***Special Conditions for STA***

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6E619.

**List of Items Controlled**

*Related Controls*: Technical data directly related to articles enumerated or otherwise described in USML Category XVIII are subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).

*Related Definitions*: N/A

*Items*:

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

DATED: June 9, 2015

Kevin J. Wolf

Assistant Secretary

for Export Administration

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[Billing Code 4710-25]

**DEPARTMENT OF STATE**

**22 CFR Part 121**

**RIN 1400-AD03**

**[Public Notice: 9166]**

# Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories XIV and XVIII

**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 Categories XIV (toxicological agents, including chemical agents, biological agents, and associated equipment) and XVIII (directed energy weapons) 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 completed on August 17, 2011. The Department of State's full plan can be accessed at http://www.state.gov/documents/organization/181028.pdf.

**DATES:** The Department of State will accept comments on this proposed rule until [insert date 60 days from date of publication in the *Federal Register*].

**ADDRESSES:** Interested parties may submit comments within 60 days of the date of publication by one of the following methods:

- E-mail: *DDTCPublicComments@state.gov* with the subject line, "ITAR Amendment – Categories XIV and XVIII."
- Internet: At *www.regulations.gov*, search for this proposed rule by using this rule's RIN (1400-AD03).

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 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: ITAR Amendment – USML Categories XIV and XVIII.

**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.

**Revision of Category XIV**

This proposed rule revises USML Category XIV, covering toxicological agents, including chemical agents, biological agents, and associated equipment. The revisions are proposed in order to advance the national security objectives of greater interoperability with U.S. allies, enhancing the defense industrial base, and permitting the U.S. government to focus its resources on transactions of greater concern. Additionally, the revisions are intended to more accurately describe the articles within the subject categories, in order to establish a "bright line" between the USML and the CCL for the control of these articles.

This proposed rule implements changes consistent with the requirements of Executive Order 13546 on Optimizing the Security of Biological Select Agents and Toxins in the United States, which includes direction to address variations in, and limited coordination of, individual executive departments' and agencies' oversight that add to the cost and complexity of compliance. It also directs a risk-based tiering of the biological select agent list. As a result, the proposed control language in paragraph (b) adopts the "Tier 1" pathogens and toxins established in the Department of Health and Human Services and the United States Department of Agriculture select agent regulations (42 CFR Part 73 and 9 CFR 121) for those pathogens and toxins that meet specific capabilities

listed in paragraph (b). The Tier 1 pathogens and toxins that do not meet these capabilities remain controlled in Export Control Classification Number (ECCN) 1C351 or 1C352 on the CCL.

Additionally, this rule, in concert with the analogous proposed rule published by the Department of Commerce, proposes the movement of riot control agents to the export jurisdiction of the Department of Commerce, as well as the articles covered currently in paragraphs (j), (k), and (l), which include test facilities, equipment for the destruction of chemical and biological agents, and tooling for production of articles in paragraph (f), respectively.

Other changes include the addition of paragraph (a)(5) to control chemical warfare agents **"**adapted for use in war" and not elsewhere enumerated, as well as the removal of paragraphs (f)(3) and (f)(6) and movement to the CCL of equipment for the sample collection and decontamination or remediation of chemical agents and biological agents. Paragraph (f)(5) for collective protection was removed and partially combined in (f)(4) or the CCL. Proposed paragraph (g) enumerates antibodies, recombinant protective antigens, polynucleotides, biopolymers, or biocatalysts exclusively funded by a Department of Defense contract for detection of the biological agents listed in paragraph (b)(1)(ii).

The Department notes that the controls in paragraph (f)(2) that include the phrase "developed under a Department of Defense contract or other funding authorization" do not apply when the Department of Defense acts solely as a servicing agency for a contract on behalf of another agency of the U.S. government.

The Department notes that the controls in paragraphs (g)(1) and (h) that include the phrase "exclusively funded by a Department of Defense

contract" do not apply when the Department of Defense acts solely as a servicing agency for a contract on behalf of another agency of the U.S. government, or, for example, in cases where the Department of Defense provides initial funding for the development of an item but another agency of the U.S. government provides funding to further develop or adapt the item.

Proposed paragraph (h) enumerates certain vaccines funded exclusively by the Department of Defense, as well as certain vaccines controlled in (h)(2) that are specially designed for the sole purpose of protecting against biological agents and biologically derived substances identified in (b). Thus, the scope of vaccines controlled in (h)(2) is circumscribed by the nature of funding, the satisfaction of the term "specially designed" as that term is defined in ITAR §120.41, and the limitations in (b) that control only those biological agents and biologically derived substances meeting specific criteria. In evaluating the scope of this control, please note that the Department offers a decision tool to aid exporters in determining whether a defense article meets the definition of "specially designed." This tool is available at http://www.pmddtc.state.gov/licensing/dt_SpeciallyDesigned.htm.

Proposed revised paragraph (i) is updated to provide better clarity on the scope of the control by including examples of Department of Defense tools that are used to determine or estimate potential effects of chemical or biological weapons strikes and incidents in order to plan to mitigate their impacts.

A new paragraph (x) has been added to USML Category XIV, allowing ITAR licensing on behalf of the Department of Commerce 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 XIV and are described in the purchase documentation submitted with the application. The intent of paragraph (x) is not to impose ITAR jurisdiction on commodities, software, and technology subject to EAR controls.

Finally, the rule proposes to only control on the USML chemical or biological agent detectors when they contain Department of Defense reagents, spectra, algorithms, databases, etc.

**Revision of Category XVIII**

This proposed rule revises USML Category XVIII, covering directed energy weapons. As with USML Category XIV, the revisions are proposed in order to advance the national security objectives set forth above and to more accurately describe the articles within the subject categories, in order to establish a "bright line" between the USML and the CCL for the control of these articles. A change proposed in this rule would revise paragraph (a) to control only those items that satisfy the paragraph's definition of "directed energy weapon," which focuses on the sole or primary purpose of the article in order to exclude those items that might achieve the same effect in an incidental, accidental, or collateral manner.

The articles controlled currently in paragraphs (c) and (d) would move to the export control jurisdiction of the Department of Commerce.

The remaining paragraphs in this category would undergo conforming changes to bring their structures into alignment with the analogous provisions found in other revised USML categories.

**Request for Comments**

The proposed revisions to the USML will control items in normal commercial use and on the Wassenaar Arrangement's Dual Use List. 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 7 (WA-ML7) and 19 (WA-ML19). The public is therefore asked to identify any potential lack of coverage brought about by the proposed rules for Categories XIV and XVIII contained in this proposed rule and the new Category 1 and Category 6 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 therefore asked to identify any potential expansion of coverage brought about by the proposed rules for Categories XIV and XVIII contained in this proposed rule and the new Category 1 and Category 6 ECCNs published separately by the Department of Commerce when reviewed together.

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 toxicological agents, including chemical agents, biological agents, and associated equipment, as well as directed energy weapons, whose jurisdiction would be in doubt based on this revision. The public is also asked to comment on whether there is a sufficiently clear line drawn between the biological items proposed for control by USML Category XIV(b) and those proposed for control under 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, or associated technical data, if any, that would be controlled in the revised USML Categories XIV or XVIII that are now in normal commercial use, or that are commonly used or produced in civilian scientific laboratories. The examples should demonstrate actual commercial or civilian scientific use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items. Additionally, for any criteria the public believes control items in normal commercial or civilian scientific use, the public is asked to identify parameters or characteristics that cover items exclusively or primarily in military use. Finally, 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.

5) The public is asked to provide comment on the proposed definition of "non-naturally occurring" in Note 2 to Category XIV(b), if the proposed definition does not appear to be comprehensive. The public is also asked to comment on "non-naturally occurring" in the context of genetic modification and consider whether the definition is sufficient to distinguish military or intelligence purposes from commercial or civilian purposes.

6) The public is asked to provide specific examples of reagents that may be inadvertently controlled by Category XIV(b), XIV(f), XIV(g), or XIV(m), that are commonly used for scientific research and development, or medical countermeasures that may similarly be inadvertently controlled and the dissemination of which would be in the interest of public health or medical preparedness.

7) The public is asked to specifically evaluate and comment on the decision process outlined in the proposed rule that would be used to determine whether vaccines that are intended to be developed and used to protect public and veterinary health against any event resulting from exposure to naturally occurring or non-naturally occurring pathogens or toxins is sufficiently clear to allow research and commercial entities to determine whether a vaccine would unintentionally be captured under this rule. Please provide specific examples that demonstrate how the proposed rule would prevent or hinder the ability to develop or utilize vaccines for public health or veterinary benefit under this proposed language and decision process.

8) In the interest of ensuring the security of and control over certain types of chemical and biological detection equipment, Category XIV(f)(2) could incidentally impose ITAR controls on certain civilian and public health equipment containing the items listed in paragraph (f)(2). Accordingly, as proposed, paragraph (f)(2) may control detection equipment that may not warrant ITAR control, but contains items that are fully or partially Defense-funded. The Department requests comment from the public, including specific examples of equipment that the public believes may be unintentionally controlled by this text by virtue of Defense funding.

In addition, the Department acknowledges that some members of the public may not be able comment meaningfully on this matter because they lack full awareness of items that have previously been fully or partially developed under Defense funding. To the extent that commenters require specific additional information about the scope of Defense funding in certain contexts, the Department requests that commenters identify any relevant gaps in knowledge.

## 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. 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 60-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. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400-AC78) on December 10, 2010 (75 FR 76935), and accepted comments for 60 days.

*Regulatory Flexibility Act*

Since the Department is of the opinion that 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 Order 12866 and 13563*

Executive Orders 12866 and 13563 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, 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 sections 3(a) and 3(b)(2) 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 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. This rule continues the implementation of ECR. 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. 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 affected 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 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 International Traffic in Arms Regulations (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.

2. Section 121.1 is amended by revising U.S. Munitions List Categories XIV and XVIII to read as follows:

**§121.1 The United States Munitions List.**

* * * * *

**Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment**

*(a) Chemical agents, to include:

(1) Nerve agents, as follows:

(i) O-Alkyl (equal to or less than $C_{10}$, including cycloalkyl) alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonofluoridates, such as: Sarin (GB): O-Isopropyl methylphosphonofluoridate (CAS 107–44–8) (CWC Schedule 1A); and Soman (GD): O-Pinacolyl methylphosphonofluoridate (CAS 96–64–0) (CWC Schedule 1A);

(ii) O-Alkyl (equal to or less than $C_{10}$, including cycloalkyl) N,N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphoramidocyanidates, such as: Tabun (GA): O-Ethyl N, N-dimethylphosphoramidocyanidate (CAS 77–81–6) (CWC Schedule 1A); or

(iii) O-Alkyl (H or equal to or less than $C_{10}$, including cycloalkyl) S–2-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) aminoethyl alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonothiolates and corresponding alkylated and protonated salts, such as VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate (CAS 50782–69–9) (CWC Schedule 1A);

(2) Amiton: O,O-Diethyl S-[2(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (CAS 78–53–5) (CWC Schedule 2A);

(3) Vesicant agents, as follows:

(i) Sulfur mustards, such as: 2-Chloroethylchloromethylsulfide (CAS 2625–76–5) (CWC Schedule 1A); Bis(2-chloroethyl)sulfide (HD) (CAS 505–60–2) (CWC Schedule 1A); Bis(2-chloroethylthio)methane (CAS 63839–13–6) (CWC Schedule 1A); 1,2-bis (2-chloroethylthio)ethane (CAS 3563–36–8) (CWC Schedule 1A); 1,3-bis (2-chloroethylthio)-n-propane (CAS 63905–10–2) (CWC Schedule 1A); 1,4-bis (2-chloroethylthio)-n-butane (CWC Schedule 1A); 1,5-bis (2-chloroethylthio)-n-pentane (CWC Schedule 1A); Bis (2-chloroethylthiomethyl)ether (CWC Schedule 1A); Bis (2-chloroethylthioethyl)ether (CAS 63918–89–8) (CWC Schedule 1A);

(ii) Lewisites, such as: 2-chlorovinyldichloroarsine (CAS 541–25–3) (CWC Schedule 1A); Tris (2-chlorovinyl) arsine (CAS 40334–70–1) (CWC Schedule 1A); Bis (2-chlorovinyl) chloroarsine (CAS 40334–69–8) (CWC Schedule 1A);

(iii) Nitrogen mustards, or their protonated salts, as follows:

(A) HN1: bis (2-chloroethyl) ethylamine (CAS 538–07–8) (CWC Schedule 1A);

(B) HN2: bis (2-chloroethyl) methylamine (CAS 51–75–2) (CWC Schedule 1A);

(C) HN3: tris (2-chloroethyl) amine (CAS 555–77–1) (CWC Schedule 1A); or

(D) Other nitrogen mustards, or their salts, having a propyl, isopropyl, butyl, isobutyl, or tertiary butyl group on the bis(2-chloroethyl) amine base;

*Note 1 to paragraph (a)(3)(iii):* Pharmaceutical formulations containing nitrogen mustards or certain reference standards for these formulations are not considered to be chemical agents and are subject to the EAR when: 1) the pharmaceutical is in the form of a final medical product, or 2) the

reference standard contains salts of HN2 [bis(2-chloroethyl) methylamine], the quantity to be shipped is 150 milligrams or less, and individual shipments do not exceed twelve per calendar year per end user.

*Note 2 to paragraph (a)(3)(iii):* A "final medical product," as used in this paragraph, is a pharmaceutical formulation that is (1) designed for testing and administration in the treatment of human medical conditions, (2) prepackaged for distribution as a clinical or medical product, and (3) approved by the Food and Drug Administration to be marketed as a clinical or medical product or for use as an "Investigational New Drug" (IND) (see 21 CFR part 312)

(iv) Ethyldichloroarsine (ED) (CAS 598-14-1); or

(v) Methyldichloroarsine (MD) (CAS 593-89-5);

(4) Incapacitating agents, such as:

(i) 3-Quinuclindinyl benzilate (BZ) (CAS 6581–06–2) (CWC Schedule 2A);

(ii) Diphenylchloroarsine (DA) (CAS 712–48–1); or

(iii) Diphenylcyanoarsine (DC) (CAS 23525-22-6);

(5) Chemical warfare agents not enumerated above adapted for use in war to produce casualties in humans or animals, degrade equipment, or damage crops or the environment. (*See* the CCL at ECCNs 1C350, 1C355, and 1C395 for control of certain chemicals not adapted for use in war.)

*Note to paragraph (a)(5):* "Adapted for use in war" means any modification or selection (such as altering purity, shelf life, dissemination characteristics, or resistance to ultraviolet radiation) designed to increase the effectiveness in producing casualties in humans or animals, degrading equipment, or damaging crops or the environment.

*Note 1 to paragraph (a):* Paragraph (a) of this category does not include the following: Cyanogen chloride, Hydrocyanic acid, Chlorine, Carbonyl

chloride (Phosgene), Ethyl bromoacetate, Xylyl bromide, Benzyl bromide, Benzyl iodide, Chloro acetone, Chloropicrin (trichloronitromethane), Fluorine, and Liquid pepper.

*Note 2 to paragraph (a):* Regarding U.S. obligations under the Chemical Weapons Convention (CWC), refer to Chemical Weapons Convention Regulations (CWCR) (15 CFR Parts 710 through 722). As appropriate, the CWC schedule is provided to assist the exporter.

*(b) Biological agents and biologically derived substances and genetic elements thereof as follows:

(1) Genetically modified biological agents:

(i) Having non-naturally occurring genetic modifications which result in an increase in any of the following:

(A) Persistence in a field environment (*e.g.*, resistance to oxygen, UV damage, temperature extremes, or arid conditions); or

(B) The ability to defeat or overcome standard detection methods, personnel protection, natural or acquired host immunity, host immune response, or response to standard medical countermeasures; and

(ii) Being any micro-organisms/toxins or their non-naturally occurring genetic elements as listed below:

(A) Bacillus anthracis;

(B) Botulinum neurotoxin producing species of Clostridium;

(C) Burkholderia mallei;

(D) Burkholderia pseudomallei;

(E) Ebola virus;

(F) Foot-and-mouth disease virus;

(G) Francisella tularensis;

(H) Marburg virus;

(I) Variola major virus (Smallpox virus);

(J) Variola minor virus (Alastrim);

(K) Yersinia pestis; or

(L) Rinderpest virus.

(2) Biological agent or biologically derived substances controlled in ECCNs 1C351, 1C352, 1C353, or 1C354:

(i) Physically modified, formulated, or produced as any of the following:

(A) 1 – 10 micron particle size;

(B) Particle-absorbed or combined with nano-particles;

(C) Having coatings/surfactants, or

(D) By microencapsulation; and

(ii) Meeting the criteria of paragraph (b)(2)(i) of this category in a manner that results in an increase in any of the following:

(A) Persistence in a field environment (*e.g.*, resistant to oxygen, UV damage, temperature extremes, or arid conditions);

(B) Dispersal characteristics (*e.g.*, reduce the susceptibility to shear forces, optimize electrostatic charges); or

(C) The ability to defeat or overcome: standard detection methods, personnel protection, natural or acquired host immunity, or response to standard medical countermeasures.

*Note 1 to paragraph (b):* Non-naturally occurring means that the modification has not already been observed in nature, was not discovered from samples obtained from nature, and was developed with human intervention.

*Note 2 to paragraph (b):* This paragraph does not control biological agents or biologically derived substances, when these agents or substances have been demonstrated to be attenuated relative to natural

pathogenic isolates, and are incapable of causing disease or intoxication of ordinarily affected and relevant species (*e.g.*, humans, livestock, crop plants) due to the attenuation of virulence or pathogenic factors. This paragraph also does not control genetic elements, nucleic acids, or nucleic acid sequences (whether recombinant or synthetic) that are unable to produce or direct the biosynthesis of infectious or functional forms of the biological agents or biologically derived substances that are capable of causing disease or intoxication of ordinarily affected and relevant species.

*Note 3 to paragraph (b):* Biological agents or biologically derived substances that meet both paragraphs (b)(1) and (b)(2) of this category are controlled in paragraph (b)(1).

*(c) Chemical agent binary precursors and key precursors, as follows:

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyl difluorides, such as: DF: Methyl Phosphonyldifluoride (CAS 676–99–3) (CWC Schedule 1B); Methylphosphinyldifluoride (CAS 753–59–3) (CWC Schedule 2B);

(2) O-Alkyl (H or equal to or less than $C_{10}$, including cycloalkyl) O–2-dialkyl (methyl, ethyl, n-Propyl or isopropyl) aminoethyl alkyl (methyl, ethyl, N-propyl or isopropyl) phosphonite and corresponding alkylated and protonated salts, such as QL: O-Ethyl-2-di-isopropylaminoethyl methylphosphonite (CAS 57856–11–8) (CWC Schedule 1B);

(3) Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445–76–7) (CWC Schedule 1B);

(4) Chlorosoman: O-Pinakolyl methylphosphonochloridate (CAS 7040–57–5) (CWC Schedule 1B); or

(5) Methlyphosphonyl dichloride (CAS 676–97–1) (CWC Schedule 2B); Methylphosphinyldichloride (CAS 676–83–5) (CWC Schedule 2B).

(d) [Reserved]

(e) Defoliants, as follows:

(1) 2,4,5-trichlorophenoxyacetic acid (CAS 93-76-5) mixed with 2,4-dichlorophenoxyacetic acid (CAS 94-75-7) (Agent Orange (CAS 39277-47-9));or

(2) Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

*(f) Equipment or items, as follows:

(1) Any equipment for the dissemination, dispersion, or testing of items controlled in paragraphs (a), (b), (c), or (e) of this category, as follows:

(i) Any equipment "specially designed" for the dissemination and dispersion of items controlled in paragraphs (a), (b), (c), or (e) of this category; or

(ii) Any equipment "specially designed" for testing the items controlled in paragraphs (a), (b), (c), (e), or (f)(4) of this category developed under a Department of Defense contract or other funding authorization.

(2) Any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under a Department of Defense contract or other funding authorization for the detection, identification, warning, or monitoring of:

(i) Items controlled in paragraphs (a) or (b) of this category; or

(ii) Chemical or biological agents specified by a Department of Defense contract or other funding authorization.

*Note 1 to paragraph (f)(2)*: This paragraph does not control items that are (a) determined to be subject to the EAR via a commodity jurisdiction determination (see §120.4 of this subchapter), or (b) 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 (f)(2)*: Note 1 does not apply to defense articles enumerated on the USML.

*Note 3 to paragraph (f)(2)*: This paragraph is applicable only to those contracts and funding authorizations that are dated [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE], or later.

(3) [Reserved]

(4) For individual protection or collective protection against the items controlled in paragraphs (a) and (b) of this category, as follows:

(i) M53 Chemical Biological Protective Mask or M50 Joint Service General Purpose Mask (JSGPM);

(ii) Filter cartridges containing sorbents controlled in paragraph (f)(4)(iii) of this category;

(iii) ASZM-TEDA carbon; or

(iv) Ensembles, garments, suits, jackets, pants, boots, or socks for individual protection, and liners for collective protection that allow no more than 1% breakthrough of GD or no more than 2% of HD;

*Note to paragraph (f)(4)(iv)*: Evaluation is made by applying 10 mg of GD or HD to a 1-inch swatch. Ambient air is directed through the swatch for 24 hours and sampled/tested from the opposite side of the swatch using a gas chromatograph with flame photometric detector (FPD) or pulsed FPD (PFPD) and using sorption/desorption tools to increase sensitivity.

(5) [Reserved]

(6) [Reserved]

(7) Chemical Agent Resistant Coatings that have been qualified to military specifications (MIL-DTL-64159, MIL-C-46168, or MIL-C-53039); or

(8) Any equipment, material, tooling, hardware or test equipment that:

(i) Is classified;

(ii) Is manufactured using classified production data; or

(iii) Is being developed using classified information.

*Note to paragraph (f)(8)*: "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.

(g) Antibodies, recombinant protective antigens, polynucleotides, biopolymers, or biocatalysts (including their expression vectors, viruses, plasmids, or cultures of specific cells modified to produce them) as follows:

(1) When exclusively funded by a Department of Defense contract for detection of the biological agents at paragraph (b)(1)(ii) of this category even if naturally occurring;

(2) Joint Biological Agent Identification and Diagnostic System (JBAIDS) Freeze Dried reagents listed by JRPD-ASY-No and Description respectively as follows:

(i) JRPD-ASY-0016 Q-Fever IVD Kit;

(ii) JRPD-ASY-0100 Vaccinia (Orthopox) ;

(iii) JRPD-ASY-0106 Brucella melitensis (Brucellosis);

(iv) JRPD-ASY-0108 Rickettsia prowazekii (Rickettsia);

(v) JRPD-ASY-0109 Burkholderia ssp. (Burkholderia) ;

(vi) JRPD-ASY-0112 Eastern equine encephalitis (EEE);

(vii) JRPD-ASY-0113 Western equine encephalitis (WEE);

(viii) JRPD-ASY-0114 Venezuelan equine encephalitis (VEE);

(ix) JRPD-ASY-0122 Coxiella burnetii (Coxiella);

(x) JRPD-ASY-0136 Influenza A/H5 IVD Detection Kit;

(xi) JRPD-ASY-0137 Influenza A/B IVD Detection Kit; or

(xii) JRPD-ASY-0138 Influenza A Subtype IVD Detection Kit ;

(3) Critical Reagent Polymerase (CRP) Chain Reactions (PCR) assay kits with Catalog-ID and Catalog-ID Product respectively as follows:

(i) PCR-BRU-1FB-B-K Brucella Target 1 FastBlock Master Mix Biotinylated;

(ii) PCR-BRU-1FB-K Brucella Target 1 FastBlock Master Mix;

(iii) PCR-BRU-1R-K Brucella Target 1 LightCycler/RAPID Master Mix;

(iv) PCR-BURK-2FB-B-K Burkholderia Target 2 FastBlock Master Mix Biotinylated;

(v) PCR-BURK-2FB-K Burkholderia Target 2 FastBlock Master Mix;

(vi) PCR-BURK-2R-K Burkholderia Target 2 LightCycler/RAPID Master Mix;

(vii) PCR-BURK-3FB-B-K Burkholderia Target 3 FastBlock Master Mix Biotinylated;

(viii) PCR-BURK-3FB-K Burkholderia Target 3 FastBlock Master Mix;

(ix) PCR-BURK-3R-K Burkholderia Target 3 LightCycler/RAPID Master Mix;

(x) PCR-COX-1FB-B-K Coxiella burnetii Target 1 FastBlock Master Mix Biotinylated;

(xi) PCR-COX-1R-K Coxiella burnetii Target 1 LightCycler/RAPID Master Mix;

(xii) PCR-COX-2R-K Coxiella burnetii Target 2 LightCycler/RAPID Master Mix;

(xiii) PCR-OP-1FB-B-K Orthopox Target 1 FastBlock Master Mix Biotinylated;

(xiv) PCR-OP-1FB-K Orthopox Target 1 FastBlock Master Mix;

(xv) PCR-OP-1R-K Orthopox Target 1 LightCycler/RAPID Master Mix;

(xvi) PCR-OP-2FB-B-K Orthopox Target 2 FastBlock Master Mix Biotinylated;

(xvii) PCR-OP-3R-K Orthopox Target 3 LightCycler/RAPID Master Mix;

(xviii) PCR-RAZOR-BT-X PCR-RAZOR-BT-X RAZOR CRP BioThreat-X Screening Pouch;

(xix) PCR-RIC-1FB-K Ricin Target 1 FastBlock Master Mix;

(xx) PCR-RIC-1R-K Ricin Target 1 LightCycler/RAPID Master Mix;

(xxi) PCR-RIC-2R-K Ricin Target 2 LightCycler/RAPID Master Mix; or

(xxii) PCR-VEE-1R-K Venezuelan equine encephalitis Target 1 LightCycler/RAPID Master Mix; or

(4) Critical Reagent Program Antibodies with Catalog ID and Product respectively as follows:

(i) AB-AG-RIC Aff. Goat anti-Ricin;

(ii) AB-ALVG-MAB Anti-Alphavirus Generic Mab;

(iii) AB-AR-SEB Aff. Rabbit anti-SEB;

(iv) AB-BRU-M-MAB1 Anti-Brucella melitensis Mab 1;

(v) AB-BRU-M-MAB2 Anti-Brucella melitensis Mab 2;

(vi) AB-BRU-M-MAB3 Anti-Brucella melitensis Mab 3;

(vii) AB-BRU-M-MAB4 Anti-Brucella melitensis Mab 4;

(viii) AB-CHOL-0139-MAB Anti-V.cholerae 0139 Mab;

(ix) AB-CHOL-01-MAB Anti-V. cholerae 01 Mab;

(x) AB-COX-MAB Anti-Coxiella Mab;

(xi) AB-EEE-MAB Anti-EEE Mab;

(xii) AB-G-BRU-A Goat anti-Brucella abortus;

(xiii) AB-G-BRU-M Goat anti-Brucella melitensis;

(xiv) AB-G-BRU-S Goat anti-Brucella suis;

(xv) AB-G-CHOL-01 Goat anti-V.cholerae 0:1;

(xvi) AB-G-COL-139 Goat anti-V.cholerae 0:139;

(xvii) AB-G-DENG Goat anti-Dengue;

(xviii) AB-G-RIC Goat anti-Ricin;

(xix) AB-G-SAL-T Goat anti-S. typhi;

(xx) AB-G-SEA Goat anti-SEA;

(xxi) AB-G-SEB Goat anti-SEB;

(xxii) AB-G-SEC Goat anti-SEC;

(xxiii) AB-G-SED Goat anti-SED;

(xxiv) AB-G-SEE Goat anti-SEE;

(xxv) AB-G-SHIG-D Goat anti-Shigella dysenteriae;

(xxvi) AB-R-BA-PA Rabbit anti-Protective Antigen;

(xxvii) AB-R-COX Rabbit anti-C. burnetii;

(xxviii) AB-RIC-MAB1 Anti-Ricin Mab 1;

(xxix) AB-RIC-MAB2 Anti-Ricin Mab 2;

(xxx) AB-RIC-MAB3 Anti-Ricin Mab3;

(xxxi) AB-R-SEB Rabbit anti-SEB;

(xxxii) AB-R-VACC Rabbit anti-Vaccinia;

(xxxiii) AB-SEB-MAB Anti-SEB Mab;

(xxxiv) AB-SLT2-MAB Anti-Shigella-like t x2 Mab;

(xxxv) AB-T2T-MAB1 Anti-T2 Mab 1;

(xxxvi) AB-T2T-MAB2 Anti-T2 Toxin 2;

(xxxvii) AB-VACC-MAB1 Anti-Vaccinia Mab 1;

(xxxviii) AB-VACC-MAB2 Anti-Vaccinia Mab 2;

(xxxix) AB-VACC-MAB3 Anti-Vaccinia Mab 3;

(xl) AB-VACC-MAB4 Anti-Vaccinia Mab 4;

(xli) AB-VACC-MAB5 Anti-Vaccinia Mab 5;

(xlii) AB-VACC-MAB6 Anti-Vaccinia Mab 6;

(xliii) AB-VEE-MAB1 Anti-VEE Mab 1;

(xliv) AB-VEE-MAB2 Anti-VEE Mab 2;

(xlv) AB-VEE-MAB3 Anti-VEE Mab 3;

(xlvi) AB-VEE-MAB4 Anti-VEE Mab 4;

(xlvii) AB-VEE-MAB5 Anti-VEE Mab 5

(xlviii) AB-VEE-MAB6 Anti-VEE Mab 6; or

(xlix) AB-WEE-MAB Anti-WEE Complex Mab.

(h) Vaccines exclusively funded by a Department of Defense contract, as follows:

(1) Recombinant Botulinum Toxin A/B Vaccine;

(2) Recombinant Plague Vaccine;

(3) Trivalent Filovirus Vaccine; or

(4) Vaccines specially designed for the sole purpose of protecting against biological agents and biologically derived substances identified in paragraph (b) of this category.

*Note to paragraph (h):* See ECCN 1A607.k for military medical countermeasures such as autoinjectors, combopens, and creams.

(i) Modeling or simulation tools, including software controlled in paragraph (m) of this category, for chemical or biological weapons design, development, or employment developed or produced under a Department of Defense contract or other funding authorization (*e.g.*, the Department of Defense's HPAC, SCIPUFF, and the Joint Effects Model (JEM)).

(j)—(l) [Reserved]

(m) Technical data (as defined in §120.10 of this subchapter) and defense services (as defined in §120.9 of this subchapter) directly related to the

defense articles enumerated in paragraphs (a) through (l) and (n) of this category; (*See* §125.4 of this subchapter for exemptions.)

(n) Developmental countermeasures or sorbents funded by the Department of Defense via contract or other funding authorization;

*Note 1 to paragraph (n):* This paragraph does not control countermeasures or sorbents that are (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 (n):* Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

*Note 3 to paragraph (n):* This paragraph is applicable only to those contracts and funding authorizations that are dated [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE], or later.

(o)-(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).

* * * * *

**Category XVIII – Directed Energy Weapons**

*(a) Directed energy weapons (DEW): systems or equipment that, as their sole or primary purpose (*i.e.*, not as a result of incidental, accidental or collateral effect), degrade, destroy or cause mission-abort of a target; disturb, disable, or damage electronic circuitry, sensors or explosive devices remotely; deny area access; cause lethal effects; or cause permanent or flash blindness using any non-acoustic technique such as lasers (including continuous wave or pulsed lasers), particle beams, particle accelerators that project a charged or neutral particle beam, high power radio-frequency (RF), or high pulsed power or high average power radio frequency beam transmitters.

*(b) Systems or equipment specially designed to detect, identify or provide defense against articles specified in paragraph (a) of this category.

(c)—(d) [Reserved]

(e) Components, parts, accessories, attachments, and associated systems or equipment specially designed for any of the articles in paragraphs (a) and (b) of this category.

(f) Developmental directed energy weapons funded by the Department of Defense via contract or other funding authorization;

*Note 1 to paragraph (f):* This paragraph does not control directed energy weapons (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 (f):* Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

*Note 3 to paragraph (f):* This paragraph is applicable only to those contracts and funding authorizations that are dated [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE], or later.

(g) Technical data (as defined in §120.10 of this subchapter) and defense services (as defined in §120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category;

(h)—(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).

June 3, 2015
(Date)

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