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

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 772 and 774

[Docket No. 111229800-2073-01]

RIN 0694-AF51

Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items That No Longer Warrant Control Under the United States Munitions List and Items on the Wassenaar Arrangement Munitions List

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

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this action to propose how auxiliary and miscellaneous military equipment and related articles the President determines no longer warrant control under Category XIII (Auxiliary Military Equipment) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 0A617, 0B617, 0C617, 0D617, and 0E617 as part of the proposed new "600 series" of ECCNs.

This rule proposes also to integrate into those five new ECCNs items within the scope of Wassenaar Arrangement Munitions List (WAML) Category 17 that would be removed from the USML, or that are not specifically identified on the USML or CCL but that are currently subject to USML jurisdiction. Finally, this rule proposes to control some items now classified under ECCNs 0A018, 0A918 and 0E018 under new ECCNs 0A617 and 0E617. This action would consolidate the above-mentioned auxiliary and miscellaneous military equipment and related articles on the CCL in the proposed new "600 series." This rule is one of a planned series proposing how various types of articles that the President determines, as part of

the Administration's Export Control Reform Initiative, no longer warrant control on the USML under the International Traffic in Arms Regulations (ITAR), would be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR). This proposed rule is being published 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 Category XIII.

DATES: Comments must be received by July 2, 2012.

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-2012-0014.

- By email directly to publiccomments@bis.doc.gov. Include RIN 0694-AF51 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-AF51.

FOR FURTHER INFORMATION CONTACT: Michael Rithmire, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482-6105, Email: Michael.Rithmire@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (herein the "July 15 proposed rule") that set forth a framework for how to transfer articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), no longer warrant control on the United States Munitions List (USML) to control under the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR). That framework included a proposal by BIS describing a new "600 series" set of Export Control Classification Numbers (ECCNs) to control defense articles that move to the CCL from the USML, as well as

Wassenaar Arrangement Munitions List (WAML) items. Specifically, the proposed new "600 series" entries would capture WAML and formerly USML end items and related items that have been removed from the USML or that are not specifically identified on the USML or CCL. It would also control some items now classified on the CCL. These actions would consolidate control of munitions items and related articles on the CCL.

On November 7, 2011 (76 FR 68675), BIS published a proposed rule (herein the "November 7 proposed rule") proposing several changes to the framework initially proposed in the July 15 proposed rule.

Following the structure of the July 15 and November 7 proposed rules, this action proposes to control in new ECCNs 0A617, 0B617, 0C617, 0D617, and 0E617: Auxiliary and miscellaneous military equipment and related items from WAML 17 that would be removed from USML Category XIII under the International Traffic in Arms Regulations (ITAR) because the President determines they no longer warrant control under USML Category XIII; items not specifically identified on the USML or CCL, but that currently are subject to USML jurisdiction; and items ending in "018" on the CCL.

The proposed changes described in this rule and the State Department's proposed amendments to Category XIII of the USML are based on a review of the USML by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed rules. That review focused on identifying the types of articles that are now controlled by USML Category XIII and other relevant USML Categories that are either: (i) Inherently military and otherwise warrant control on the USML; or (ii) a type common to civil applications, possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States. If an article satisfied either or both of those criteria, the article remains on the USML. If an article did not satisfy either criterion, but was determined, nonetheless, to be a type of article that is now on the corresponding USML or the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and

Dual-Use Goods and Technologies (Wassenaar Arrangement Munitions List or WAML), then it has been identified in one of the new ECCNs in this proposed rule. The license requirements, license policies and other EAR-specific controls for such items that are proposed in this action would, when considered in the context of the other proposed amendments to the USML and the CCL, enhance national security by: (i) Allowing for greater interoperability with North Atlantic Treaty Organization (NATO) and other allies while maintaining and expanding robust controls that, in some instances, include prohibitions on exports or reexports destined for other countries or intended for proscribed end users and end uses; (ii) enhancing the U.S. defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end users, and end uses of greater concern than NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall 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).

As noted above, this action proposes to control under the EAR auxiliary and miscellaneous military equipment and related articles currently in USML Category XIII under the ITAR that the President determines no longer warrant control on the USML. If implemented, this rule would control under the EAR: Items from WAML Category 17 that would be removed from USML Category XIII; items not specifically identified on the USML or CCL but that currently are subject to USML jurisdiction; and items ending in "018" on the CCL, specifically, some items now classified under ECCNs 0A018, 0A918 and 0E018 under new ECCNs 0A617 and 0E617. This would consolidate the above-mentioned auxiliary and miscellaneous military equipment and related articles on the CCL in a proposed new "600 series." As this rule describes the

controls that would be in place for miscellaneous items, it also specifies how the CCL would be amended to clarify where an item may be controlled under another USML Category or ECCN.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) Would be moved from the USML to the CCL; or (ii) are listed on the Wassenaar Arrangement Munitions List and are already controlled elsewhere on the CCL. That proposed rule referred to this series as the "600 series" because the third character in each of the new ECCNs would be a "6." The first two characters of the "600 series" ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the "600 series," the third character is the number 6. 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.

This proposed rule would create five new "600 series" ECCNs in CCL Category 0 (ECCNs 0A617, 0B617, 0C617, 0D617, and 0E617). ECCN 0A617 would cover miscellaneous equipment, materials, and related commodities, including crew kits. ECCN 0B617 would cover test, inspection, and production "equipment" and related commodities "specially designed" for the "development" or "production" of commodities controlled by ECCN 0A617 or USML Category XIII. ECCN 0C617 would cover miscellaneous materials "specially designed" for military use. ECCN 0D617 would cover "software" "specially designed" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 0A617, "equipment" controlled by 0B617, or materials controlled by 0C617. ECCN 0E617 would cover "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 0A617 "equipment" controlled by 0B617, materials controlled by 0C617, or "software" controlled by 0D617.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State

Department will publish, concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Detailed Description of Changes Proposed by This Rule

This proposed rule would create five new "600 series" ECCNs in CCL Category 0—0A617, 0B617, 0C617, 0D617, and 0E617—that would clarify the EAR controls that apply to auxiliary and miscellaneous military equipment and related articles the President determines no longer warrant control under USML Category XIII. This category also applies to items from WAML Category 17 that would be removed from USML Category XIII; items not specifically identified on the USML or CCL but that currently are subject to USML jurisdiction; and items ending in "018" on the CCL, specifically, some items now classified under ECCNs 0A018, 0A918 and 0E018 under new ECCNs 0A617 and 0E617. This action would consolidate the above-mentioned auxiliary and miscellaneous military equipment and related articles on the CCL in a proposed new "600 series" consistent with the regulatory construct identified in the July 15 proposed rule. Finally, this rule would add a corresponding new definition to section 772.1 of the EAR.

The proposed changes are discussed in more detail below.

New ECCN 0A617: Miscellaneous Equipment, Materials, and Related Commodities

ECCN 0A617.a would control construction equipment "specially designed" for military use, including such equipment "specially designed" for transport in aircraft controlled by USML Category VIII(a) or proposed ECCN 9A610.a (proposed in the November 7 rule); and "parts," "components" and "accessories and attachments" "specially designed" therefor, including crew protection kits used as protective cabs. Such items currently are controlled under ECCN 0A018.a as "construction equipment built to military specifications, including equipment specially designed for airborne transport; and specially designed parts and accessories for such construction equipment, including crew protection kits used as protective cabs," and are identified in WAML Category 17.b.

ECCN 0A617.b would control concealment and deception equipment "specially designed" for military application that are not controlled in USML Category XIII(g), as well as "parts," "components," "accessories and attachments" specially designed therefor. ECCN 0A617.c would control ferries, bridges (other than those described in ECCN 0A606 or USML Category VII), and pontoons if the ferries, bridges or pontoons are "specially designed" for military use, also identified in WAML Category 17.m. Although not explicitly named or described on the USML, these items are currently controlled by USML Category VII(g). ECCN 0A617.d would control test models "specially designed" for the "development" of defense articles controlled by the USML or commodities controlled in the "600 series." Such items are identified in WAML Category 17.n. Although not explicitly named or described on the USML, such items would be controlled in relation to the defense article they model, such as items in USML Categories VII(g) and VIII(h). ECCN 0A617.e would control photointerpretation, stereoscopic plotting and photogrammetry equipment that would not be controlled by USML Category XIII(a) or elsewhere in the USML, as well as "parts," "components," "accessories and attachments" "specially designed" therefor. ECCN 0A617.f would control "metal embrittlement agents", currently controlled by USML Category XIII(i) but not within the scope of the revised Category XIII the State Department has proposed. The term "metal embrittlement agents" would be defined in the EAR the same way it is now defined in the ITAR.

Paragraphs .g through .x would be reserved for possible future use. Unlike other proposed Category rules previously published as a part of the Export Control Reform Initiative, ECCN 0A617, and the other ECCNs in the 0X617 series, would not contain a catch-all control in the ".x" subparagraph for all parts and components "specially designed" for items in that category because neither USML Category XIII nor WAML Category 17 contain such a catch-all for auxiliary or miscellaneous military equipment. To the extent a part or component is controlled in this ECCN, it is described in the applicable subparagraphs.

Paragraph .y would control other commodities, as listed in the .y subparagraphs. Specifically, ECCN 0A617.y.1 would control containers "specially designed" for military use, which are currently identified in WAML Category 17.l. ECCN 0A617.y.2 would

control military field generators, which are currently identified in WAML 17.k. ECCN 0A617.y.3 would control military power-controlled searchlights and related items. Such items are currently classified under ECCN 0A918.a as "miscellaneous military equipment." Paragraphs y.4 through y.98 would be reserved for future use.

Finally, to the extent an item referred to in WAML 17 is already clearly controlled in another existing USML Category or ECCN, then the "related controls" note at the beginning of proposed ECCN 0A617 would identify where in the CCL and/or USML it is controlled.

New ECCN 0B617: "Equipment" "Specially Designed" for Commodities Controlled by ECCN 0A617.a or USML Category XIII

ECCN 0B617.a would control test, inspection, and production "equipment" not controlled by USML Category XIII(k) "specially designed" for the "production" or "development" of commodities controlled by ECCN 0A617 or USML Category XIII. Paragraphs .b through .x would be reserved for possible future use.

ECCN 0B617.y would control specific test, inspection, and production "equipment" "specially designed" for the "production" or "development" of commodities controlled by ECCN 0A617 (except 0A617.y) and "parts," "components," and "accessories and attachments" "specially designed" therefor. Since this proposed rule does not list specific equipment under paragraph .y, sub-paragraphs .y.1 through .y.98 would be reserved for possible future use.

A note to 0B617 explains that field engineer equipment "specially designed" for use in a combat zone and mobile repair shops "specially designed or modified to service military equipment, which are identified in WAML Categories 17.d and 17.j," respectively, are classified under ECCN 0B617 to the extent that the items are not included in USML XIII(k).

New ECCN 0C617: Miscellaneous Materials "Specially Designed" for Military Use

ECCN 0C617.a would control materials, coatings and treatments for signature suppression, "specially designed" for military use and that are not controlled by the USML or ECCNs 1C001 or 1C101. Paragraphs .b through .x would be reserved for possible future use. ECCN 0C617.y would control materials "specially designed" for military use, which are currently identified in WAML Category 17.c.

However, this proposed rule would not include in paragraph .y those items that are "specially designed" for defense articles on the USML. Because this proposed rule does not list specific materials under paragraph .y, subparagraphs .y.1 through .y.98 would be reserved for possible future use.

Of particular significance to this rule, as noted in the November 7 rule, materials currently controlled by USML Category XIII(f), not identified in another USML Category, and not identified in ECCN 0C617 through this proposed rule, will likely be captured in other "600 series" ECCNs published in future proposed rules. In each instance, the materials will likely be classified in the C entry related to the end items for which the materials are specially designed. For example, as stated in the November 7 proposed rule, materials specially designed for military aircraft that are currently controlled under USML Category XIII(f) would be captured by ECCN 9C610, which controls materials "specially designed" for military aircraft controlled by ECCN 9A610.

New ECCN 0D617: "Software" "Specially Designed" for Items Controlled by ECCN 0A617, 0B617 or 0C617

ECCN 0D617.a would control "software" "specially designed" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 0A617, "equipment" controlled by ECCN 0B617, or materials controlled by ECCN 0C617. Consistent with the other proposed "600 series" software controls, the .y paragraphs for ECCN 0D617 would control specific "software" "specially designed" for the "production," "development," or operation or maintenance of commodities controlled by ECCN 0A617.y, 0B617.y or 0C617.y. Paragraphs .b through .x would be reserved for possible for future use. Because this proposed rule does not list specific materials under paragraph .y, sub-paragraphs .y.1 through .y.98 also would be reserved for possible future use.

New ECCN 0E617: "Technology" "Required" for Items Controlled by ECCN 0A617, 0B617, 0C617 or 0D617

ECCN 0E617.a would control "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 0A617, "equipment" controlled by

ECCN 0B617, materials controlled by ECCN 0C617, or "software" controlled by ECCN 0D617. Items controlled by ECCN 0E617 would include "technology" currently in ECCN 0E018 for the "production" of crew protection kits used as protective cabs (currently in ECCN 0A018.a and proposed for ECCN 0A617). Paragraphs .b through .x would be reserved for possible for future use.

Subparagraph .y.1 of ECCN 0E617 would control specific "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of items controlled by ECCNs 0A617.y, 0B617.y, 0C617.y or 0D617.y. ECCN 0E617.y.1 would control "technology" for military power-controlled searchlights and related items, which would be classified under proposed ECCN 0A617.y.3 (moving from ECCN 0A918.a). The "technology" for such items is currently not classified on the CCL, but if this rule is implemented, it would be classified under ECCN 0E617.y.1. Subparagraphs .y.2 through .y.98 would be reserved for possible future use.

Including ".y.99" Paragraphs in "600 Series" ECCNs

ECCNs 0A617, 0B617, 0C617, 0D617 and 0E617 would also contain a paragraph ".y.99," that would control any item that: (i) Has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR; and (ii) would otherwise be controlled elsewhere under one of the Category 0, "600 series."

Applicable Controls

All items in these proposed 0Y617 ECCNs (except items in the .y paragraphs) would be subject to national security (NS Column 1), regional stability (RS Column 1) and antiterrorism (AT Column 1) controls. Items in the .y paragraphs would be subject only to antiterrorism (AT Column 1) controls.

Under ECCN 0A018, "construction equipment built to military specifications, including equipment specially designed for airborne transport; and specially designed parts and accessories for such construction equipment, including crew protection kits used as protective cabs" are currently controlled for national security, antiterrorism and United Nations reasons. Under proposed ECCN 0A617.a, they would be controlled for national security, regional stability and antiterrorism reasons, but no longer for United Nations reasons. Controlling these items for United Nations reasons

is unnecessary in light of the November 7 proposed rule's amendment to the RS Column 1 licensing policy, which stated that there would be a general policy of denial for "600 series" items if the destination is subject to a United States arms embargo. A list of such destinations is identified in proposed section 740.2(a)(12), set forth in the November 7 proposed rule.

In addition, control of power controlled searchlights and control units therefor, designed for military use, and equipment mounting such units; and "parts," "components," and "accessories and attachments" "specially designed" therefor, would be moved from ECCN 0A918.a to ECCN 0A617.y.3. Under ECCN 0A918, such items are controlled for regional stability, antiterrorism and United Nations reasons, but under proposed ECCN 0A617.y.3, they would be controlled for antiterrorism reasons only. More advanced alternatives to ECCN 0A918 items exist today compared to items currently controlled under ECCN 0A918. For this reason, there is no longer a need to control such items for regional stability reasons. The rationale for removing the United Nations reason for control is the same as that for crew protection kits discussed above.

Revision to Three ECCNs: 0A018, 0A918 and 0E018

As discussed above, this proposed rule would remove "construction equipment built to military specifications, including specially designed for airborne transport; and specially designed parts and accessories for such construction equipment, including crew protection kits used as protective cabs" from ECCN 0A018.a and add them to the .a paragraph of proposed ECCN 0A617. It would also move "power controlled searchlights and control units therefor, designed for military use, and equipment mounting such units; and specially designed parts and accessories therefor" from ECCN 0A918.a to the .y.3 paragraph of proposed ECCN 0A617.

Accordingly, this rule would amend ECCN 0A918 to remove paragraph .a and provisions related to that paragraph. The related controls paragraph would be amended to provide a cross-reference to proposed ECCN 0A617.y.3.

In addition, this rule would amend ECCN 0A018.a to cross-reference new ECCN 0A617.a, and would amend ECCN 0E018 to add a note stating that this ECCN no longer controls "technology" for items formerly classified under ECCN 0A018.a, which would now be classified under ECCN 0A617.a. Under

this rule, the technology for such items, as noted above, would be classified under ECCN 0E617.a.

Note with respect to the proposed movement of ECCN 0A018.a items to proposed ECCN 0A617.a that in the July 15 proposed rule, BIS proposed moving ECCN 0A018.a items to proposed ECCN 0A606.a. Thereafter, on December 6, 2011, BIS published another proposed rule (76 FR 76085) that included revisions to the text of ECCN 0A606.a to cover a broad array of military vehicles, both armed and unarmed. While the revised proposal for ECCN 0A606.a was intended to include 0A018.a items, it did not explicitly name such items. After further reflection, BIS has concluded that expressly identifying military construction equipment in ECCN 0A617.a, rather than including it in a broad category of armed and unarmed military vehicles in ECCN 0A606.a, would be more informative and less likely to confuse the public. In addition, the items currently classified under ECCN 0A018.a are identified in WAML Category 17. Accordingly, this rule would include construction equipment specially designed for military use and related items in proposed ECCN 0A617.a, to promote clarity and to further the Administration's goal of aligning the 600 series ECCNs with the WAML. Neither the December 6 proposed rule nor this proposed rule would change the license requirements or the license exception eligibility originally proposed for construction equipment and related items in the July 15 proposed rule.

Corresponding Amendments

To implement the regional stability controls that apply to the five new "600 series" ECCNs noted above, this proposed rule would amend § 742.6(a)(1) of the EAR to apply the RS Column 1 licensing policy to items classified under ECCNs 0A617, 0B617, 0C617, 0D617 and 0E617 (except the .y paragraphs).

In conjunction with the proposed control on "metal embrittlement agents" in new ECCN 0A617.f, this rule proposes adding to section 772.1 of the EAR (Definitions of terms as used in the EAR) to define that term as it currently is in USML Category XIII(m).

Relationship to the July 15 and November 7 Proposed Rules

As referenced above, the purpose of the July 15 proposed rule was to establish the framework to support the transfer of items that the President determines no longer warrant control on the USML from the USML to the CCL. To facilitate that goal, the July 15

proposed rule contains definitions and concepts that were meant to be applied across categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule closed on December 22, 2011.

To the extent that this rule's proposals affect any provision in either of those proposed rules or that any provisions in either of those proposed rules affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule.

BIS believes that the following provisions of the July 15 proposed rule and the November 7 proposed rule are among those that could affect this proposed rule, but because those rules remain under review, BIS does not know yet how exactly they may impact this rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Requirement to request authorization to use License Exception STA (strategic trade authorization) for end items in 600 series ECCNs and procedures for submitting such requests in §§ 740.2, 740.20, 748.8 and Supp. No. 2 to part 748;
- Addition of "600 series" items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Definitions of terms in § 772.1.

BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:

- Additional "600 series" items identified in the RS Column 1 licensing policy described in § 742.6.

Effects of This Proposed Rule

BIS believes that the principal effect of this rule 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 will be in the form of: availability of license

exceptions, particularly License Exceptions RPL (servicing and replacement of parts and equipment) and STA (strategic trade authorization); eliminating the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; reducing or eliminating exporter and manufacturer registration requirements and associated registration fees; and applying 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. Some of these specific effects are discussed in more detail below.

De minimis

The July 15 proposed rule would impose 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. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule's amendments at § 734.4 of the EAR are adopted, the new ECCNs 0A617, 0B617, 0C617, 0D617, and 0E617 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule. Foreign-made items incorporating items controlled under the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (*i.e.*, a foreign-made item is not subject to the EAR, for *de minimis* purposes, if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item's value). 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). In addition, foreign-made items that incorporate any items that are currently classified under an 018 ECCN (e.g., ECCN 0E018) and that are moved to a new "600 series" ECCN (e.g., ECCN 0E617) would be subject to the EAR if those foreign-made items contain more than 10 percent U.S.-origin controlled content, regardless of the destination and the proportion of the U.S.-origin

controlled content accounted for by the former 018 ECCN items.

Use of License Exceptions

The July 15 proposed rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new "600 series" ECCNs on the CCL. For example, proposed § 740.2(a)(12) would make "600 series" items that are destined for a country subject to a United States arms embargo ineligible for shipment under a license exception, except where authorized by License Exception GOV under § 740.11(b)(2)(ii) of the EAR. BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for "600 series" items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 0A617, 0B617 or 0C617. BIS also believes that, in practice, moving items from a 018 ECCN to a new "600 series" ECCN (e.g., the construction equipment built to military specifications and related items that would move from ECCN 0A018.a to proposed ECCN 0A617.a) would have little effect on license exception availability for those items. However, BIS is aware of two situations (the use of License Exceptions GOV and STA) in which movement of items from a 018 ECCN to a new "600 series" ECCN could, in practice, impose greater limits on the use of license exceptions than currently is the case.

First, the July 15 proposed rule would limit the use of License Exception GOV for "600 series" commodities to situations in which the U.S. Government is the consignee and end user, or to situations in which the consignee or end user is the government of a country listed in § 740.20(c)(1). Currently, construction equipment built to military specifications and related items, classified under ECCN 0A018.a, may be exported under any provision of License Exception GOV to any destination authorized by that provision if all of the conditions of that provision are met and nothing else in the EAR precludes such shipment.

Second, the July 15 proposed rule would: (i) Limit the use of License Exception STA for "end items" in "600 series" ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved; and (ii) require that the end item be for ultimate end use by a foreign government agency of a type

specified in the July 15 proposed rule. The July 15 proposed rule also would limit exports of "600 series" parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users. Neither the end-item restriction nor the restriction applicable to parts, components, accessories, and attachments currently applies to the use of License Exception STA for commodities classified under ECCN 0A018.a, but the latter restriction would apply to these commodities under new ECCN 0A617.a. In addition, the July 15 proposed rule would limit the shipment of "600 series" items under License Exception STA to destinations listed in § 740.20(c)(1). Currently, the commodities classified under ECCN 0A018.a (which would be moved to ECCN 0A617.a by this proposed rule) may be shipped under License Exception STA to destinations listed in § 740.20(c)(1) or (c)(2).

In addition, this proposed rule provides that STA-eligible items controlled under new ECCN 0A617, 0B617, or 0C617 would not be subject to the restriction, proposed in the July 15 rule, on using of License Exception STA for "end items" in "600 series" ECCNs unless a specific request for License Exception STA eligibility has been submitted to, and approved by, BIS.

Items controlled under proposed ECCNs 0A617, 0B617 or 0C617 would be eligible for License Exception LVS (limited value shipments) up to a value of \$1,500. Note that for items previously classified under ECCN 0A018.a that would, under this proposal, be classified under ECCN 0A918.a, the threshold for LVS availability would generally drop from \$5,000 to \$1,500 with this proposed change (and increase from \$0 to \$1,500 for Rwanda). Items controlled under proposed ECCNs 0A617, 0B617, 0C617, 0D617 or 0E617 also would be eligible for License Exception TMP (temporary exports), and items controlled under proposed ECCNs 0A617, 0B617 or 0D617 would be eligible for License Exception RPL (servicing and replacement parts).

Making U.S. Export Controls More Consistent With the Wassenaar Arrangement Munitions List Controls

Since the beginning of the Export Control Reform Initiative, 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 and subsequent proposed rules, exercise its national discretion to

implement, clarify, and, to the extent feasible, align its controls with those of the regimes. For example, proposed ECCNs 0A617 and 0C617 implement, to the extent possible, the controls in WAML Category 17 pertaining to miscellaneous munitions items, while proposed ECCNs 0B617.a, 0D617 and 0E617, to the extent possible, implement the controls in WAML Category 18 for production equipment, the controls in WAML Category 21 for software, and the controls in WAML Category 22 for technology.

Other Effects: National Security and Regional Stability Controls

Pursuant to the framework identified in the July 15 proposed rule, auxiliary and miscellaneous military commodities classified under ECCN 0A617 (other than ECCN 0A617.y), along with related test inspection and production equipment, materials, software, and technology classified under ECCNs 0B617, 0C617, 0D617 or 0E617 (except items classified under the .y paragraphs of these ECCNs) would be subject to the licensing policies that apply to items controlled for national security reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. In addition, commodities in ECCN 0A617 (other than 0A617.y), along with related test, inspection and production equipment, materials, software and technology classified under ECCNs 0B617, 0C617, 0D617 or 0E617 (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1)—specifically, RS Column 1.

The July 15 proposed rule would change § 742.4 to apply a general policy of denial to "600 series" items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that general policy of denial to include "600 series" items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1)—specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any "600 series" items that are controlled for missile technology (MT) and regional stability (RS) reasons, but not for national security (NS) reasons (as would be the case for certain items affected by the November 7 proposed rule).

Section-by-Section Description of the Proposed Changes

- Section 742.6—ECCNs 0A617, 0B617, 0C617, 0D617 and 0E617 would be added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1), for applications to export or reexport "600 series" items to destinations that are subject to a United States arms embargo.

- Section 772.1—The definition section of the EAR would be amended to include, in alphabetical order, the definition of the term "metal embrittlement agents" to correspond with the proposed classification of such items under ECCN 0A617.f.

- Supplement No. 1 to part 774—ECCNs 0A617, 0B617, 0C617, 0D617 and 0E617 would be added to Supplement No. 1 to part 774. ECCN 0A018 would be removed and reserved, and the related controls paragraph would be amended to include a cross-reference directing the public to proposed new ECCN 0A617.a for items currently controlled by ECCN 0A018.a. ECCN 0A918 would be amended to remove paragraph .a and provisions related to that paragraph. The related controls paragraph would be amended to include a cross-reference directing the public to proposed new ECCN 0A617.y.3. And ECCN 0E018 would be amended to add a note cross-referencing controls in proposed ECCN 0E617.a.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before July 2, 2012. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. 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.

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 extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent

permitted by law, pursuant to Executive Order 13222.

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 two approved collections: Simplified Network Application Processing + System (control number 0694-0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694-0137).

As stated in the July 15, 2011, proposed rule (76 FR 41958), BIS believes 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 submitted 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.

Some items formerly on the USML would become eligible for License Exception STA under this rule. As specified in the STA eligibility paragraph for proposed new ECCNs 0A617, 0B617, and 0C617, such items would not need a determination of eligibility per § 740.20(g) of the EAR. As stated in the July 15 proposed rule, 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 would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on auxiliary and miscellaneous equipment, materials and related parts, components, test and production equipment, software, and technology. The largest impact of the proposed rule would likely apply to exporters of end items. Under the EAR, such items would become eligible for export to NATO member states 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 being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration understands 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 reliable customers in countries that are close allies or members of export control regimes, or both.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 0E617 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. However, under section 605(b) of the RFA, 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. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, 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.

Number of Small Entities

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

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) will be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that the President determines no longer warrant control on the USML will become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the "600 series" ECCNs. In addition, some items currently on the Commerce Control List will move from existing ECCNs to the new "600 series" ECCNs.

This rule addresses certain miscellaneous equipment and related articles currently controlled in WAML Category 17 (Miscellaneous equipment, materials and 'libraries' and specially designed components) and USML Category XIII (Materials and Miscellaneous Articles).

Changing the jurisdictional status of these USML articles would, potentially, reduce the burden on small entities (and other entities as well) through: (i) Eliminating some license requirements;

(ii) increasing availability of license exceptions; (iii) simplifying license application procedures; and (iv) reducing or eliminating registration fees.

These amendments are part of the Administration's effort to make the USML the U.S. Government's list of critical military and intelligence items that warrant the stringent worldwide controls of the ITAR, while controlling all other military and intelligence items, particularly generic parts and components, through the CCL. BIS believes that the economic benefits for the proposed amendments include the significant reduction in the time spent determining and addressing issues associated with determining the jurisdictional status of such items now.

In addition, parts and components currently 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 for items that are transferred to control under the EAR may reduce the disincentive to foreign manufacturers for purchasing U.S.-origin parts and components.

Many exports and reexports of the Category XIII articles that would be placed on the CCL by this rule would become eligible for license exceptions that apply to shipments to U.S. Government agencies, 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 and low level parts to NATO member states 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 Strategic Trade Authorization (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 impose 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 under the proposed rule, the process would be simpler and less costly under the EAR. When a USML Category XIII 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 license 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 two 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 would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the 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 exporters 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 XIII items that are the subject to this rulemaking are moved from the USML

to the CCL, entities currently applying for licenses from the Department of State will 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 will be eliminated.

De minimis treatment under the EAR would also become available for all items that this rule proposes to transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S. content in that foreign-made product. However, foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new "600 series," license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, BIS believes that any increased burden imposed by those actions would be offset substantially by the reduction in burden attributable to moving items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs. These changes also would reduce the burden on small entities by resolving actual and potential jurisdictional uncertainty with respect to items that are related to articles controlled by USML Category XIII.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by 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, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, no IRFA is required, and none has been prepared.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 742, 772 and 774 of the Export Administration Regulations (15 CFR parts 730-774) are proposed to be amended as follows:

PART 742—[AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and .y); 0A617 (except 0A617.y); 0B521; 0B606 (except 0B606.y); 0B617 (except 0B617.y); 0C521; 0C606 (except

0C606.y); 0C617 (except 0C617.y), 0D521; 0D606 (except 0D606.y); 0D617 (except 0D617.y) 0E521; 0E606 (except 0E606.y); 0E617 (except 0E617.y); 1A607 (except 1A607.y); 1B607 (except 1B607.y); 1B608 (except 1B608.y); 1C607; 1C608; 1D607 (except 1D607.y); 1D608 (except 1D608.y); 1E607 (except 1E607.y); 1E608 (except 1E608.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only "software" for the "development" or "production" of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only "software" for the "use" of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only "software" for the "development," "production," or "use" of equipment classified under 6A002.e or 6A998.b); 6E001 (only "technology" for "development" of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only "technology" for "production" of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only "technology" for the "development," "production," or "use" of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11-00100-100/101 and QRS11-0050-443/569 Micromachined Angular Rate Sensors); 7D001 (only "software" for "development" or "production" of items in 7A001, 7A002, or 7A003); 7E001 (only "technology" for the "development" of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only "technology" for the "production" of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only "technology" for the "use" of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8B609 (except 8B609.y); 8C609 (except 8C609.y); 8D609 (except software for the "development," "production," operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E609 (except "technology" for the "development," "production," operation, installation, maintenance, repair, or overhaul of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the "development,"

"production," operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the "development," "production," operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except "technology" for the "development," "production," operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except "technology" for the "development," "production" operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

* * * * *

PART 772—[AMENDED]

3. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

4. Section 772.1 is amended by adding a definition for "metal embrittlement agents" in alphabetical order to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Metal embrittlement agents. (Cat. 0)—Non-lethal weapon substances that alter the crystal structure of metals within a short time span. Metal embrittling agents severely weaken metals by chemically changing their molecular structure. These agents are compounded in various substances to include adhesives, liquids, aerosols, foams and lubricants.

* * * * *

PART 774—[AMENDED]

5. 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 12, 2011, 76 FR 50661 (August 16, 2011).

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]—Export Control Classification Number (ECCN) 0A018 is amended

a. By adding a sentence to the end of the Related Controls paragraph in the List of Items Controlled section; and

b. By removing and reserving paragraph .a in the Items paragraph of the List of Items Controlled section to read as follows:

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

* * * * *

0A018 Items on the Wassenaar Munitions List

* * * * *

List of Items Controlled:
Unit: * * *
Related Controls: * * * 3) See ECCN 0A617.a for items formerly controlled by ECCN 0A018.a.
Related Definitions: * * *
Items:
 a. [RESERVED].
 * * * * *

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] add a new ECCN 0A617 between ECCNs 0A018 and 0A918 to read as follows:

0A617 Miscellaneous "Equipment," Materials, and Related Commodities License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0A617.y	NS Column 1.
RS applies to entire entry except 0A617.y	RS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: \$1500
 GBS: N/A
 CIV: N/A
 STA:

(1) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0A617.

(2) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 0A617 without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: End items in number; parts, components, accessories and attachments in \$ value.

Related Controls: (1) Defense articles, such as materials made from classified information, that are controlled by USML Category XIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than 10% U.S.-origin "600 series" items. (3) For controls on self-contained diving and underwater swimming apparatus and related commodities, see ECCN 8A620.f. (4) For controls on robots, robot controllers, and robot end-effectors, see USML Category VII and ECCNs 0A606 and 2B007. (5) "Libraries," i.e., parametric technical databases, "specially designed" for military use with equipment controlled by USML or a "600 series" ECCN are controlled by the technical data and technology controls pertaining to such items. (6) For controls on nuclear power generating equipment or propulsion equipment, including "nuclear reactors," "specially designed" for military use, and parts and components "specially designed" therefor, see USML Categories VI, XIII, XV, and XX. (7) Simulators "specially designed" for

military "nuclear reactors" are controlled by USML Category IX(b). (8) Laser protection equipment (e.g., eye and sensor protection) "specially designed" for military use are subject to the controls of USML Category X(a)(7). (9) "Fuel cells" "specially designed" for a defense article not on the USML or a commodity controlled by a "600 series" ECCN are controlled according to the corresponding "600 series" ECCN for such end items. (10) See USML Category XV and ECCN 9A515 for controls on fuel cells specially designed for satellite or spacecraft.

Items:
 a. Construction equipment "specially designed" for military use, including such equipment "specially designed" for transport in aircraft controlled by USML VIII(a) or ECCN 9A610.a; and "parts," "components" and "accessories and attachments" "specially designed" therefor, including crew protection kits used as protective cabs;
 b. Concealment and deception equipment "specially designed" for military application, including special paints, decoys, smoke or obscuration equipment and simulators, and "parts," "components," "accessories and attachments" "specially designed" therefor, not controlled by USML Category XIII.
 c. Ferries, bridges (other than those described in ECCN 0A606 or USML Category VII), and pontoons "specially designed" for military use.
 d. Test models "specially designed" for the "development" of defense articles controlled by the USML or commodities controlled by a "600 series" ECCN.
 e. Photointerpretation, stereoscopic plotting and photogrammetry equipment "specially designed" for military use, and "parts," "components," "accessories and

attachments" "specially designed" therefor.

f. "Metal embrittlement agents."
 g. Through x. [RESERVED]
 y. Other commodities as follows:
 y.1. Containers "specially designed" for defense articles or items controlled by a "600 series" ECCN.
 y.2. Field generators "specially designed" for military use.
 y.3. Power controlled searchlights and control units therefor, "specially designed" for military use, and "equipment" mounting such units; and "parts," "components" and "accessories and attachments" "specially designed" therefor.
 y.4 to y.98. [RESERVED]
 y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 0A617.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A918 is amended

a. By revising the License Exception section; and
 b. By revising the List of Items Controlled section to read as follows:

0A918 Miscellaneous Military Equipment Not on the Wassenaar Munitions List

* * * * *

License Exceptions

LVS: \$1,500, \$0 for Rwanda
 GBS: N/A
 CIV: N/A

List of Items Controlled

Unit: In Number.

Related Controls: See ECCN 0A617.y.3 for items formerly controlled by ECCN 0A918.a.

Related Definitions: N/A
Items: Bayonets.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items],

add a new ECCN 0B617 between ECCNs 0B006 and 0B986 to read as follows:

0B617 Test, Inspection, and Production “Equipment” and Related Commodities “Specially Designed” for the “Development” or “Production” of Commodities Controlled by ECCN 0A617.a or USML Category XIII

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0B617.y	NS Column 1.
RS applies to entire entry except 0B617.y	RS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: \$1500
GBS: N/A
CIV: N/A
STA:

(1) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0B617.

(2) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 0B617 without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: N/A
Related Controls:
Related Definitions: N/A

Items: a. Test, inspection, and production “equipment” not controlled by USML Category XIII(k) “specially designed” for the “production” or “development” of commodities controlled by ECCN 0A617 or USML Category XIII.

b. through .x [RESERVED].
y.1 through .y.98 [RESERVED]
y.99 Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 0B617.

NOTE TO 0B617: Field engineer equipment “specially designed” for use in a combat zone, identified in WAML

Category 17.d, and mobile repair shops “specially designed” or modified to service military equipment, identified in WAML Category 17.j, are controlled by 0B617 to the extent that the items are not included in USML Category XIII(k).

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add a new ECCN 0C617 after ECCN 0C201 to read as follows:

0C617 Miscellaneous Materials “Specially Designed” for Military Use

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0C617.y	NS Column 1.
RS applies to entire entry except 0C617.y	RS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: \$1500
GBS: N/A
CIV: N/A

(1) STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0C617.

(2) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 0C617 without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: End items in number; parts, component, accessories and attachments in \$ value.

Related Controls: For controls on other signature suppression materials, see USML Category XIII and ECCNs 1C001 and 1C101.

Related Definitions:

Items:

a. Materials, coatings and treatments for signature suppression, “specially designed” for military use and that are not controlled by USML Category XIII or ECCNs 1C001 or 1C101.

b. through x. [RESERVED].
y.1 through y.98 [RESERVED].
y.99. Materials not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the

EAR and (ii) would otherwise be controlled elsewhere in ECCN 0C617.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add a new ECCN 0D617 between ECCNs 0D001 and 0D999 to read as follows:

0D617 “Software” “Specially Designed” for the “Development,” “Production,” Operation, Installation, Maintenance, Repair, Overhaul or Refurbishing of Commodities Controlled by 0A617, “Equipment” Controlled by 0B617, or Materials Controlled by 0C617

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0D617.y	NS Column 1.
RS applies to entire entry except 0D617.y	RS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A
 TSR: N/A
 STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any "software" in 0D617.

List of Items Controlled

Unit: \$ value
 Related Controls: "Software" directly related to articles controlled by USML Category XIII is subject to the control of USML paragraph XIII(l).

Related Definitions: N/A
 Items:
 a. "Software" (other than "software" controlled in paragraph .y of this entry) "specially designed" for the "development," "production," operation or maintenance of commodities controlled by ECCNs 0A617 (except 0A617.y), 0B617 (except 0B617.y), or 0C617 (except 0C617.y).
 b. to x. [RESERVED].
 y. Specific "software" "specially designed" for the "production," "development," or operation or

maintenance of commodities controlled by ECCN 0A617, 0B617 or 0C617, as follows:

y.1. Specific "software" "specially designed" for the "production," "development," operation or maintenance of commodities controlled by ECCN 0A617.y, 0B617.y or 0C617.y.
 y.2 through y.98 [RESERVED].

y.99. Software not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 0D617.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]—ECCN 0E018 is amended by adding a note at the end of the entry to read as follows:

0E018 "Technology" for the "Development," "Production," or "Use" of Items Controlled by 0A018

* * * * *

Note: This ECCN no longer controls "technology" for items formerly controlled by 0A018.a. See ECCN 0A617.a for items formerly controlled by 0A018.a and see the "technology" controls for those items in ECCN 0E617.a.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] add a new ECCN 0E617 between ECCNs 0E018 and 0E982 to read as follows:

0E617 "Technology" "Required" for the "Development," "Production," Operation, Installation, Maintenance, Repair, Overhaul or Refurbishing of Commodities Controlled by 0A617, "Equipment" Controlled by 0B617, Materials Controlled by 0C617, or "Software" Controlled by 0D617

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0E617.y	NS Column 1.
RS applies to entire entry except 0E617.y	RS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A
 TSR: N/A
 STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 0E617.

List of Items Controlled

Unit: \$ value
 Related Controls: Technical data directly related to articles controlled by USML Category XIII are subject to the control of USML paragraph XIII(l).

Related Definitions: N/A
 Items:
 a. "Technology" (other than "technology" controlled by paragraph .y of this entry) "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or "software" controlled by ECCN 0A617 (except 0A617.y), 0B617 (except 0B617.y), 0C617 (except 0C617.y), or 0D617 (except 0D617.y).
 b. through x. [RESERVED].
 y. Specific "technology" "required" for the "production," "development," operation, installation, maintenance, repair, or overhaul of items controlled by ECCN 0A617, 0B617, 0C617 or 0D617, as follows:

y.1. Specific "technology" "required" for the "production," "development," operation, installation, maintenance, repair or overhaul of items controlled by ECCN 0A617.y, 0B617.y, 0C617.y or 0D617.y.

y.2. through y.98 [RESERVED].
 y.99. "Technology" not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 0E617.

Dated: May 14, 2012.
Kevin J. Wolf,
Assistant Secretary of Commerce for Export Administration.
 [FR Doc. 2012-12124 Filed 5-17-12; 8:45 am]
BILLING CODE 3510-33-P

DEPARTMENT OF STATE

22 CFR Part 121

RIN 1400-AD13

[Public Notice 7883]

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

AGENCY: Department of State.
 ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category XIII (materials and miscellaneous articles) of the U.S. Munitions List (USML) to describe more precisely the materials warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until July 2, 2012.

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

- Email: DDTCResponseTeam@state.gov with the

RECORD OF PUBLIC COMMENTS

NOTICE OF PROPOSED RULEMAKING: *Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items that No Longer Warrant Control Under the United States Munitions List and Items on the Wassenaar Arrangement Munitions List, 77 FR 29564 (May 18, 2012) (Proposal to amend 15 CFR parts 742, 772 and 774).*

Comments due July 2, 2012

No.	Source	Signer(s) of Comment	Date	Number of Pages
1.	William Root	William Root	06/01/12	7
2.	Lockheed Martin Corporation	Gerald Musarra	07/02/12	6
3.	DRS Technologies, Inc.	Heather C. Sears	07/02/12	2

June 1, 2012

To: DDTCTeam@state.gov
PublicComments@bis.doc.gov

Subject: ITAR Amendment - Category XIII RIN 1400-AD13 and
EAR Revision - Miscellaneous Items RIN 0694-AF51

What follows responds to the May 18 State proposed rule requests that the public identify:

- (1) any potential lack of coverage in the May 18 State and Commerce rules compared with Wassenaar Munitions List (WML) Item 17; and
- (2) specific examples of materials and miscellaneous articles whose jurisdiction would be in doubt based on this revision (this includes double coverage).

What follows also identifies:

- (3) proposed coverage not now included in the WML or the MTCR Annex.

Proposed U.S. omission of WML17 coverage should not be put into effect without Wassenaar concurrence. Proposed U.S. unilateral coverage would be more effective if included on the WML. It is recommended that the United States seek Wassenaar agreement along the lines of the proposed rules before putting them into effect in U.S. regulations.

- (1) The two proposed rules would omit the following WML 17 coverage :

17.a Self-contained diving and underwater swimming apparatus

- 3 Articles designed exclusively for military use with self-contained diving and underwater swimming apparatus.

Current USML XIII.c includes WML 17.a.3; but the May 18 proposed rule would reserve XIII.c and ECCN 8A620.f, as proposed on December 23, 2011, omits WML 17.a.3.

17.c Fittings for signature suppression

17.d Field engineer equipment specially designed for use in a combat zone

17.e "Robots", "robot" controllers and "robot" "end-effectors", having any of the following characteristics:

1. Specially designed for military use;
2. Incorporating means of protecting hydraulic lines against externally induced punctures caused by ballistic fragments (e.g., incorporating self-sealing lines) and designed to use hydraulic fluids with flash points higher than 839K (566°C); or
3. Specially designed or rated for operating in an electro-magnetic pulse (EMP) environment

To the extent not controlled by USML Category VII,
ECCN 0A606, or ECCN 2B007

- 17.g Nuclear power generating equipment or propulsion equipment, including “nuclear reactors”, specially designed for military use and components therefor specially designed or ‘modified’ for military use.

Technical Note: For the purpose of ML17, ‘modified’ means any structural, electrical mechanical, or other change that provides a non-military item with military capabilities equivalent to an item which is specially designed for military use.

To the extent not controlled by NRC, USML Categories VI.e or XX.b, or ECCN 2A290. Proposed 0A617 Related Controls (6) also refers to USML Categories XIII and XV; but nothing relevant was found in those Categories.

- 17.h Equipment and material, coated or treated for signature suppression, specially designed for military use, other than those specified elsewhere in the Munitions List
WML 17.h is in addition to WML 17.c, which would be covered by 0C617.a.

- 17.i Simulators specially designed for military “nuclear reactors”

Proposed 0A617 Related Controls (6) states that USML Category IX.b controls WML 17.i. However, IX.b reads: “Simulation devices for the items covered by this subchapter” and NRC, not ITAR, covers nuclear reactors. On the other hand, ECCN 2A291.b, which reads “Simulators specially designed for “nuclear reactors,” appears to cover WML 17.i.

- 17.j Mobile repair shops specially designed or ‘modified’ to service military equipment.
Technical Note: For the purpose of ML17, ‘modified’ means any structural, electrical mechanical, or other change that provides a non-military item with military capabilities equivalent to an item which is specially designed for military use.

- 17.o Laser protection equipment (e.g., eye and sensor protection) specially designed for military use
to the extent not controlled by USML Category X(a)(7) or proposed XIII.j.1.

- 17.p “Fuel cells”, other than those specified elsewhere in the Munitions List, specially designed or ‘modified’ for military use

Technical Note: For the purpose of ML17, ‘modified’ means any structural, electrical mechanical, or other change that provides a non-military item with military capabilities equivalent to an item which is specially designed for military use.

to the extent not controlled unilaterally by the USML. In this connection, proposed 0A617 Related Controls (9) refers to “a defense article not on the USML”; whereas 120.6 defines “defense article” as an item or technical data designated in 121.1, which is the USML. The reference in proposed 0A617 Related Controls (10) to “USML Category XV and ECCN 9A515 controls on fuel cells specially designed for satellite or spacecraft” cannot now be evaluated by the public. Existing Category XV does not mention fuel cells and there is as yet no proposed ECCN 9A515 available for public review.

(2) Examples of doubtful jurisdiction

XIII.b Information security/information assurance systems and equipment, cryptographic devices, software, and components “specially designed” for military applications (e.g., command, control, and communications C³), and government intelligence applications) as follows:

The meanings of “information assurance,” “specially designed,” “military,” “command, control, and communications,” and “government intelligence applications” are unclear, leaving in doubt the jurisdictional difference from CCL Category 5 Part 2 Information Security.

XIIIb1 Military cryptographic (including key management) systems, equipment assemblies, modules, integrated circuits, components, and software (e.g., cryptographic interfaces) capable of maintaining secrecy or confidentiality of information or information systems, including equipment and software for tracking, telemetry, and control (TT&C) encryption and decryption.

The lack of any technical limits in XIII.b.1, leaves the unclear interpretation of “military” as the only jurisdictional discriminator. “Key management” has been abandoned in the EAR as not being a helpful discriminator. The vague term “capable of” is not used in 5A002.

XIIIb2 Military cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components, and software (e.g., cryptographic interfaces) capable of generating spreading or hopping codes for spread spectrum systems or equipment.

Spread spectrum and frequency hopping is explicitly covered in ECCNs 5A001.b.3 for radio equipment, 5E001.b.4 for development technology, and 5A002.a.5 (and related 5B002, 5D002 and 5E002) for information security.

XIIIb3 Military cryptanalytic systems, equipment, assemblies, modules, integrated circuits, components and software.

Cryptanalytic is covered in 5A002.a.2 (and related 5B002, 5D002 and 5E002) and 5A992.b.

XIIIb4 Military systems, equipment, assemblies, modules, integrated circuits, components, and software that provide certified or certifiable multi-level security, user isolation, or control of the exchange of or access to information between or among systems operating at different classification levels, and software to certify such systems, equipment or software.

Multi-level and user isolation parameters were recently deleted from 5A002 as no longer warranting that level of control. 5D002.c.2 controls software to certify software having the characteristics, or performing or simulating the functions of 5A002 equipment.

XIIIb5 Ancillary equipment specially designed for the articles in paragraphs (b)(1) - (b)(4).
 "Ancillary" is an undefined term.

XIII.d Ablative materials, as follows (MT):

1. Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) "specially designed" for the articles in Category IV; or
2. Carbon/carbon billets and preforms which are reinforced with continuous unidirectional fibers, tows, tapes, or woven cloths in three or more dimensional planes.

Note: This does not control carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only.

This proposal combines existing IV.f and XIII.d. To avoid double coverage, IV.f would have to be deleted. This proposal is marked MT. It is related to, but differs from, MTCR 6.A.2 and 6.C.2. It is recommended that proposed XIII.d be revised as follows to conform with MTCR and to recognize that unfabricated materials are dual-use:

XIII.d Resaturated pyrolyzed (i.e., carbon/carbon) components designed for rockets and usable in rockets with a "range" equal to or greater than 300 km and materials fabricated or semi-fabricated therefor.

OC617.b Resaturated pyrolyzed (i.e., carbon/carbon) materials designed for rockets and usable in rockets with a "range" equal to or greater than 300 km not controlled by USML XIII.d.

XIII.e Armor ...

Categories VI and VII also control armor. To avoid double coverage, ", not controlled by Categories VI or VII," should be inserted after "Armor"

XIII.f Classified item

Export controls are unenforceable if the exporter had not been informed that the item is classified. If the exporter knew it was classified, enforcement should be pursuant to the rules on classification.

XIII.g Concealment and deception equipment, as follows (MT) and

XIII.i Signature reduction software, technical data, and services as follows (MT):

Stealth MTCR Item 17 is completely covered by CCL ECCNs 1A101, 1C001, 1C101, 1D103, 1E001, 1E101, 6B008, 6B108, 6E001, 6E002, 6E101. Related Controls paragraphs in these ECCNs refer to "similar" items being subject to the jurisdiction of the Department of State but do not state that any portion of these ECCNs is subject to State jurisdiction. Therefore, "(MT)" should be deleted from both XIII.g and XIII.i. Also, in the heading of XIII.i, software is redundant, since software is included in the 120.10 definition of technical data.

XIIIj2 Specially treated or formulated dyes, coatings, and fabrics used in the design, manufacture, or production of personnel protection clothing, equipment, or face paints designed to protect against or reduce detection by radar, infrared, or other sensors at wavelengths greater than 900 nanometers.

The clothing portion of XIII.j.2 is duplicated in USML Category X.a.2

XIIIj3 Equipment, materials, coatings, and treatments that are “specially designed” to modify the electro-optical, radio frequency, infrared, electric, laser, magnetic, electromagnetic, acoustic, electro-static, or wake signatures of defense articles or military items subject to the EAR through control of absorption, reflection, or emission.

The materials portion of XIII.j.3 is partially covered by 1C001 and 1C101.

XIII.1 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 (h), (j), and (k) of this chapter. (See also 123.20 of this subchapter.) (MT for technical data and defense services related to articles designated as such.)

“Technical data” is defined in 120.10 to include not only “technical data” as defined in 772.1 of the EAR but also software. WML and MTCR rules for software differ from those for technology, which include technical data. For example MTCR controls technology but not software for thermal batteries.

The undefined term “directly related” contrasts with CCL and WDUL use of “according to the General Technology Note (GTN).” The GTN includes the defined word “required.” The WML uses “required.”

123.20 states that the provisions of this subchapter do not apply to the portions of VI.e and XVI which are under the jurisdiction of DOE or NRC. There does not appear to be any portion of XIII.1 to which 123.20 would apply. If there were, 123.20 would be an exception from the XIII.1 control, rather than just a cross-reference.

MT is not applicable to technical data related to the non-MT portion of XIII.d nor to any portion of XIII.g, MT is also not applicable to the software portion of technical data for the MT portion of XIII.d and for XIII.h.3.

(3) Proposed coverage not now included in the WML or the MTCR Annex

XIII.b Information security

XIII.d Ablative materials non-MT portion

XIII.e Armor

- XIII.f Classified material
- XIII.g Concealment and deception equipment
- XIII.h Energy conversion devices except thermal batteries
- XIII.i Signature reduction software, technical data, and services.
- XIII.j Equipment, materials, coatings, and treatments
- XIII.k Tooling and equipment
- XIII.l Technical data for the above and software for the MT portion of XIII.d ablative materials and for XIII.h.3 thermal batteries
- 0A617.a To the extent that others might not construe construction equipment specially designed for transport in controlled aircraft as specially designed for military use.
- 0A617.a Construction equipment parts, accessories, and attachments
- 0A617.a Crew protection kits used as protective cabs
- 0A617.b Concealment and deception equipment
- 0A617.d Test models other than for WML 4, 6, 9, or 10
- 0A617.e Photointerpretation, stereoscopic plotting and photogrammetry equipment
- 0A617.f Metal embrittlement agents
- 0A617.y.3 Power-controlled searchlights
- 0A617.y.99
- 0B617.a Test, inspection, and production equipment for the above
- 0B617.y.99
- 0C617.a Materials for signature suppression
- 0C617.y.99
- 0D617.a Software for the above portions of 0A617.a and .d, 0B617.a, and 0C617.a and for all of 0A617.b, e, f

- 0D617.y.1 Software for 0A617.y.3, y.99, 0B617.y.99, and 0C617.y.99
- 0D617.y.99
- 0E617.a Technology for the above portions of 0A617.a and .d, 0B617.a, 0C617.a, and 0D617.a and for all of 0A617.b, e, f
- 0E617.y.1 Technoloigy for 0A617.y.3, y.99, 0B617.y.99, 0C617.y.99, the above portion of 0D617.y.1, and all of 0D617.y.99
- 8A620.f Self-contained diving and underwater swimming apparatus
Proposed 8A620.f coverage of WML17.a.1 and 2 omits this
WML 17.a chapeau, thereby expanding coverage by removing one of the
conditions for control.

July 2, 2012

Via E-Mail (publiccomments@bis.doc.gov)

Attn: Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th St. and Pennsylvania Ave., NW
Washington, DC 20230

Re: RIN 0694-AF51: Comments on Proposed Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items That No Longer Warrant Control Under the United States Munitions List (USML)

Lockheed Martin Corporation (Lockheed Martin) is pleased to submit comments on the proposed rules issued by the U.S. Department of Commerce, Bureau of Industry and Security and by the U.S. Department of State, published in the Federal Register on Friday, May 18, 2012 (77 Fed Reg. 97.) Taken together, the proposed rules describe the articles that warrant continued control under Category XIII (Auxiliary Military Equipment) of the U.S. Munitions List (USML) and address how articles that are no longer controlled under Category XIII would be controlled under the Commerce Control List (CCL).

The proposed rules to modify Category XIII and create new Export Control Classification Numbers (ECCNs) 0A617, 0B617, 0C617, 0D617, and 0E617 as part of the new "600 series" of controls on the CCL continue the significant effort undertaken by the Departments of State and Commerce to create an export control system that strengthens U.S. national security and focuses export license requirements on the items of greatest sensitivity.

Lockheed Martin expects that the proposed modifications to the existing control lists will help to streamline export licensing for certain parts and component suppliers that support our systems and programs in many countries. However, it is imperative that revisions to the control list consider how the proposed control parameters not only capture the items of greatest concern but also reflect market conditions and industry standards in order to ensure that the potential benefits of list reform are passed along to these suppliers. As currently written, the proposed changes to Category XIII essentially stay within the current scope of the USML, resulting in only a small number of items proposed to be moved to the "600 series" on the CCL. Jurisdictional clarity will provide few benefits for U.S. exporters if items that no longer warrant control as munitions items continue to be identified on the USML.

Moreover, one of the guiding principles of export control list reform efforts has been to ensure that more items are not controlled as munitions items than are currently controlled on the USML, with few exceptions. When crafting revisions to the "auxiliary" and "miscellaneous" control

categories, this principle is paramount to ensure that controls do not become unnecessarily inclusive. Indeed, efforts to add broad categories of control within the new ECCNs may inadvertently create extensive new controls on some items not currently subject to the USML, such as certain software programs.

Finally, the proposed rule highlights the importance of clarity to the export control list reform effort. Several new terms have also been introduced in the proposed rule (e.g., “multi-layer camouflage systems,” “soldier systems,” “tooling,” etc.) without sufficient definitions, which will make it more difficult for U.S. exporters to identify at which point in the process a license may be required. In addition the proposed rule is lacking “bright lines” in a number of entries, which will make it more difficult for exporters to assess the jurisdictional status of individual articles. For example, undefined terms, such as “low observable,” “methodologies,” and “techniques,” without additional control criteria do not provide a clear definition of control.

Accordingly, Lockheed Martin provides the following specific comments on the proposed rules that modify USML Category XIII and create five new ECCNs in the “600 series” of the CCL.

I. RECOMMENDED CHANGES TO THE PROPOSED RULES

A. USML Category XIII

1. Section (e)(1): Developmental Armor

This new proposed entry covering “developmental armor” provides no positive criteria, but simply applies the control to products developed under a contract with the Department of Defense (“DoD”). Accordingly, the acceptance of any DoD funding apparently would provide the basis for determining jurisdictional control. Without a clear delineation of when the “developmental” phase for such programs begins, this could be overbroad. For example, if a company accepted basic research funding from DoD to develop a new material, which ultimately did not meet the military requirements (e.g., NIJ levels), but eventually has applications in a commercial market, it would remain controlled under the USML. Such items are good examples of why the “600 series” is being created. Universities could also be affected by these controls when undertaking fundamental research programs for DoD. Since sub-items (e)(2) thru (e)(7) provide positive criteria, there is no apparent value added by (e)(1). Lockheed Martin recommends that section (e)(1) be deleted.

2. Section (f): Classified Items

The proposal would represent a significant expansion of the current USML controls related to classified materials. Currently, Category XVII(a) covers “all articles, technical data ... and defense services ... which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.” The proposal would maintain the control on classified materials, but would add new controls on material that “is manufactured using classified production data” or “is being developed using classified information.”

There are three principal concerns regarding this expansion. First, the rule could be interpreted to apply where the U.S. Government has developed the requirement based on classified information (e.g., threat analysis) and shares some of that classified information with the manufacturer, even though the classified information is not directly related to the manufacturing of the material. Manufacturers would have to treat material as subject to the ITAR if they had ever received any classified information relating to the U.S. Government requirement. Considering the proposed wording (i.e., "is being developed using classified information"), it is possible that the control would apply if the U.S. Government's requirement is based on classified information even if such classified information is not shared with the manufacturer.

Second, the rule could result in different controls on identical material based on what information is known by the manufacturer. For example, if one manufacturer received classified production data, but the other did not, it appears that the first manufacturer's material would be controlled on the ITAR but the second manufacturer's identical material would not.

Third, from a national security standpoint, the control over a material should depend on the classified nature of the material, and not on the nature of the information used to produce the material. If an exporter cannot determine the classified information from the material, then the fact that classified information was used to produce the material is irrelevant to the appropriate level of control on the material. An item should be controlled based on its performance and sensitivity to U.S. national security, not based on the classified production parameters of development. Lockheed Martin therefore recommends that section (f) be limited to sub-item (f)(1) – classified items – and that (f)(2) and (f)(3) be deleted for both their ambiguity and overbreadth. Retaining just sub-item (f)(1) would avoid a significant expansion of the USML beyond the current controls and provides sufficient guidance for exporters to ensure continued control of classified materials on the USML.

3. Section (g): Concealment and Deception Equipment

Controls on polymers identified in (g)(1) are appropriately focused on absorption capability. However, a minimum value should be included in the control to provide a distinction between materials that absorb and those that conduct. Without the lower parameter, this sub-item could result in controlling materials used for basic electrical applications. A suggested breakpoint between conduction and absorption in materials is approximately 10 ohms/square. In addition, since composite materials are quasi-isotropic the inclusion of the term "electrical" is necessary to minimize and confusion. Recommended change:

"(1) Polymers loaded with carbonyl iron powder, ferrites, iron whiskers, fibers, flakes, or other magnetic additives having a surface resistivity of less than 5000 ohms/square and greater than 10 ohms/square with electrical isotropy of less than 5%"

In (g)(2), "multi-layer camouflage systems" is an undefined term. In general, multispectral camouflage nets are made of multiple layers of coated fabrics. The proposed wording does not provide sufficient guidance for export control parameters, i.e., it is unclear whether individual nets and/ or coated fabrics are controlled or whether the control is only

applicable when multiple layers are composited together to meet a particular military requirement (i.e., "specially designed.") Without a clear definition and the addition of positive criteria, exporters will have difficulty in determining licensing requirements.

Finally, in (g)(4), without specifying a specific bandwidth for this sub-section of magnetic absorption material, exporters may interpret this item (greater than 30 percent bandwidth) as covering the entire spectrum. A specific bandwidth should be included in this sub-item.

4. Section (h): Energy Conversion Devices

Lockheed Martin recommends that the proposed controls on energy conversion devices be deleted. Although foreign availability is not, by itself, a sufficient criterion for removal from the USML control, there are sufficient foreign suppliers of these types of energy devices to warrant control on the CCL. Indeed, for some listed items, such as thermal batteries, the United States is dependent upon foreign suppliers due to the lack of domestic suppliers. These relatively low-sensitivity items are good candidates for the "600 series" of control.

5. Section (i): Signature Reduction Software

Items identified in this section should be limited to software related to specific articles controlled on the USML for reduced observability (e.g., Category VIII stealth aircraft) and the software limited to those programs that are "specifically designed" for signature reduction, not structural design. As currently drafted, section (i) could result in the control of general purpose software design and test programs, especially with respect to composite structural design programs, that are not currently controlled on the USML. For instance, proposed section (i)(2) would control "software for design of low-observable platforms". This language could apply to any and all software used to design a low-observable platform, even if the software is not related to signature reduction.

Moreover, proposed Category XIII controls on signature reduction software may be redundant, as Category VIII(i) controls "technical data" directly related to the low-observable platforms controlled under VIII(a). "Technical data" includes software, per 120.10(a)(4). Section (I) of the proposed Category XIII also controls technical data for the all other sections of this category. This lack of consistency creates confusion. Accordingly, sub-item (i) should either be either included as a sub-set of XIII(I) or be eliminated in its entirety.

In addition, the terms "signature control design methodology," "signature management techniques," and "signature management solutions" require further clarification. As currently proposed, U.S. exporters would have significant difficulty in determining what aspects of "signature reduction software, technical data and services" are considered Significant Military Equipment (SME) and the applicable licensing requirements. Without a more precise control, the proposed rule could capture items that are not currently considered SME, which would constitute a further expansion of controls.

6. Section (j): Equipment, Materials, Coatings NES

In (j)(1), the optical density factor (“greater than 3”) will result in the control of standard commercial products, such as welding visors. Additional distinguishing criteria or clarifying note should be added that excludes items that have performance equivalence to those used in general industrial practices. Without additional clarification or more limiting technical parameters, this entry will require exporters to file commodity jurisdiction requests for standard industrial safety equipment.

In addition, identification of subcategory (j) as Significant Military Equipment (SME) should either be deleted or narrowed. If implemented as currently proposed, U.S. companies would be faced with significant new licensing burdens, including requirements to identify specific quantities of SME for these raw material or parts, provide Nontransfer and Use Certificates to obtain authorization, and increase the applications notified to Congress, due to reduced value thresholds on sales and for all manufacturing license agreements involving production abroad. Section (j) will also introduce confusion regarding licensing requirements if elements of an end item are SME when the end item itself is not. For example, items covered in the proposed regulations under (j)(2) used in the production of personnel protective clothing and equipment are SME, but the end items in the current and proposed Category X are not. Accordingly, the Department of State should consider moving this entry to USML Category X (“Personal Protective Equipment and Shelters”).

Items to be controlled by (j)(3) are ambiguous. Without further clarification as to what is meant by “equipment,” “materials,” “coatings,” and “treatments,” when the control covers the entire spectrum as well as items on the EAR, implementation would be extremely difficult. This item should be removed, due to the broad coverage of items.

7. Section (m): Definitions

Recommend that section (m)(4) be deleted; “electromagnetic armor” is not identified in this Category and does not require further explanation in this category.

B. Commerce Control List: ECCN 0A617

1. ECCN 0A617(a): Construction Equipment

The imposition of controls on “construction equipment” designed to fit on military cargo aircraft is expected to control a substantial amount of common construction material not currently controlled on the USML, subjecting these items to a worldwide licensing requirement, except for Canada. For example, a simple mobile crane designed to fit within a USML-controlled cargo aircraft would be subject to this entry simply on the basis of size. These items are precisely the type of militarily insignificant equipment that does not warrant the application of such a stringent control.

2. ECCN 0A617(d): Test Models

Without further clarification of what is a "test model," this control could have a significant licensing impact on all USML-controlled programs – as well as some systems controlled on the EAR. As currently written, "test models" could include both physical as well as standard computer test models/programs. Exporters would be required to obtain licenses for computer test models that are simply validating form, fit and function, or dynamic physical properties of an end item (e.g., standard computational fluid dynamic programs).

Currently, "test models" for USML items are controlled under the ITAR as technical data, if it is software, or within a specific USML Category, if it is a physical model. Accordingly, this sub-item should be deleted, as current USML and EAR controls are adequate to control sensitive test models.

II. CONCLUSION

Thank you for the opportunity to provide comments on the proposed rules. Lockheed Martin remains committed to supporting the ongoing efforts to clarify and update the current export control lists, and we look forward to reviewing additional proposed rules that will have a substantial, positive impact on our ability to support U.S. national security programs and international defense trade priorities.

Sincerely,



For Lockheed Martin Corporation
Gerald Musarra
Vice President
Government and Regulatory Affairs



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Trade & Security Compliance Office
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2 July 2012

Regulatory Policy Division
Bureau of Industry and Security, Room 2705
U.S. Department of Commerce
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Subject: Response to the Proposed Rule Revising the Export Administration Regulations, Auxiliary and Miscellaneous Items that No Longer Warrant Control Under the U.S. Munitions List and Items on the Wassenaar Arrangement Munitions List – 77 FR 29564, RIN 0694-AF51

Dear Sir or Madam:

DRS Technologies, Inc. is fully supportive of the U.S. Government efforts to reform the regulations and systems for controlling exports. As a 10,000 employee company with products and customers in both the international commercial and defense markets, we are very familiar with the current export control systems. The reforms are much needed to help the U.S. export control apparatus stay in step with the ever evolving and changing global markets and national security climates.

We have reviewed the subject proposed rule as well as the companion proposed rule revising USML Category XIII, published by the Department of State. We support the effort to create a U.S. Munitions List ("USML") based on positive criteria and amend the Commerce Control List such that many items would be regulated by the Export Administration Regulations rather than the severely restrictive International Traffic in Arms Regulations. Below are our specific comments regarding the subject proposed rule.

1. ECCN 0A617y.1, Containers "specially designed" for defense articles or items controlled by a "600 series" ECCN. Based on the latest proposed definition of "specially designed" published by the Departments of Commerce and State on 19 June 2012, the proposed wording should be sufficient to only control such containers that act as a part or component of a defense article or 600 series article, or as an accessory or attachment of the same as long as it also enhances its usefulness or effectiveness. If the proposed definition of "specially designed" is modified from this latest version or otherwise not adopted, we recommend the above language be modified to contain the positive criteria with regard to parts/components and accessories/attachments cited in the FRN.
2. ECCN 0A617y.2, Field Generators "specially designed" for military use. We recommend this entry be deleted. The Directorate of Defense Trade Controls ("DDTC") issued Commodity Jurisdiction CJ 0334-08 for field generators specially designed for military use determining they were not subject to the ITAR and were further classified

under ECCN 2A994. This existing ECCN for portable electric generators and specially designed parts appears to be a more suitable entry to control these items.

3. ECCN 0C617a, Materials, coatings, and treatments for signature suppression, "specifically designed" for military use that are not controlled by the USML Category XIII or ECCNs 1C001 or 1C101. Our comments regarding proposed changes to the USML Category XIII in the area of signature suppression were that there were numerous instances of entries being undefined, vague, and broad resulting in language that was open to a wide range of interpretation. We have similar concerns with this entry. The phrase "signature suppression" is undefined and lacking in any positive criteria as to what level of suppression would be required to be captured by this ECCN. As written, the use of thicker sheet metal or insulation (both are a material) to reduce the noise level (the acoustic signature) could be construed as being controlled by ECCN 0C617a. We recommend that specific positive criteria be applied to this entry to prevent such misinterpretation.

We sincerely appreciate the opportunity to provide comments on this proposed rule change. We are very supportive of the effort to reform the US export control system and the progress the Department is making towards that goal. Should you have any questions in this matter or require additional information, please contact Mr Greg Hill at (703) 412-0288, ghill@drs.com.

Sincerely,



Heather C. Sears
Vice President, Trade & Security Compliance
& Associate Corporate Counsel
DRS Technologies, Inc.