

June 15, 2012

To: DDTCResponseTeam@state.gov
Publiccomments@bis.doc.gov

Subject: ITAR Amendment - Category IX RIN 1400-AD15 and
EAR Revision - Training Equipment RIN 0694-AF54

What follows includes responses to the State requests that the public identify:

- (1) any potential lack of coverage in the June 13 State and Commerce rules compared with Wassenaar Munitions List (WML) Item 14 (or 18, 21, or 22); and
- (2) specific examples of materials and miscellaneous articles whose jurisdiction would be in doubt based on this revision (this includes examples of double coverage).

What follows also identifies:

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

Proposed U.S. omission of WML13 coverage should not continue or, if new, now be put into effect without Wassenaar concurrence. Proposed continued or new 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 14, 18, 21, or 22 coverage:

14 Specialized equipment for military training or for simulating military scenarios to the extent “specialized” is broader than “specially designed” and the U.S. definition of “equipment” may be narrower than the undefined word equipment in the WML

14 Note 1 Image generating and interactive environment systems for simulators specially designed or modified for military use
if not otherwise described in Category IX and not controlled by 0A614.a or .x because modified but not specially designed for military use

But, rather than conform with WML 14, the U.S. should seek changes in WML 14 along the lines of the June 13 proposed rules, in order to further the “bright line” objective.

18 Equipment and components modified to produce 0A614 or Category IX

21 Software for software

21 Software modified for 0A614 or 0B614

22 Technology for portions of WML 14, 18, and 21 described above

(2) Examples of doubtful jurisdiction

IX.a.2 mock-ups, IXb.1 simulators, and 0A614 military training not in Category IX all overlap 0A617.d test models for development USML or 600 series

IX.a.9 and IX.b.5 Jurisdiction for classified items is unknown to exporters who have not been informed that the items are classified. If they have been informed, then regulations for classified items, rather than less restrictive export control regulations, should apply.

IX.e Differing definitions of “technical data” and no definition of “directly related” give rise to significant doubts concerning jurisdiction.

0A614.a equipment for military training not in Category IX includes VIII.a.3, 9A610.a, and 9A991.a.2 military trainer aircraft.

0A614.a Note This entry does not apply to “equipment” “specially designed” for training in the use of hunting or sporting weapons

Except for putting equipment in quotation marks, this is identical to WML 14 Note 2. Using the unique interpretation of specially designed, training equipment for both military and hunting or sporting would be neither controlled nor not controlled. A definition of specially designed which is superior to something would have unintended consequences when used in a decontrol Note.

0A614.y heading is limited to parts, components, accessories, and attachments; but 0A614.y.99 is not so limited

0B614 is included in 2B018

0D614 for 0B614 is included in 2D018

0E614.a for 0B614 and for 0D614 for 0B614 is included in 2E018

(3) Proposed coverage not now included in the WML

IX.a.1 Airborne targets that mimic an item other than a defense article or person

IX.a.9 and b.5 Classified items

IX.b.1 System specific simulators other than for training in the use of ML1 or ML2 firearms

IX.b.4 Software and data bases to simulate portions of a.1, a.9, b.1, b.5 described above

IXe Technical data for portions of IX.a.1, a.9, b.1, b.4, b.5 described above

0A614.x & y Parts and attachments

0A614.x Components and accessories for portions of IX.a.1, a.9, b.1, b.4, b.5 described above and for portions of 0B614 described below

0B614.a for production of portions of IX.a.1, a.9, b.1, b.4, b.5 described above

0B614.y.99

0D614.a software for portions of 0A614 and 0B614 described above

0E614.a technology for portions of 0A614, 0B614, and 0D614 described above



July 18, 2012

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

Subject: RIN 0694-AF54

Reference: Federal Register/Vol. 77, No. 114/Wednesday, June 13, 2012
Proposed Rule - Revisions to the Export Administration Regulations (EAR): Control of
Military Training Equipment and Related Items the President Determines No Longer
Warrant Control under the United States Munitions List (USML)

The Boeing Company ("Boeing") appreciates the opportunity to respond to the above-referenced Proposed Rule. We reiterate our continued support for the Export Control Reform Initiative and its efforts to rationalize the U.S. export control system in a manner that allows both government and industry to focus its licensing and compliance resources on those products and technologies that truly impact U.S. national security.

We welcome a simplified, narrowly-scoped, positive-list ECCN structure. We appreciate the overall clarity of the proposed rule's qualifying language and believe that its focused controls represent an appropriate balance between national security protection and international business opportunity.

While we do not have comments related to specific items captured under proposed new ECCNs 0A614, 0B614, 0D614 and 0E614, we do have a comment on paragraph, ".y.99" in the Proposed Rule. This paragraph would control any item that: 1) was transferred from the USML to the CCL via a commodity jurisdiction determination; 2) is not currently listed on the CCL; and, 3) would otherwise be controlled under one of these ECCNs because, "for example, the item was 'specially designed' for a military use."

We believe design intent should not be relevant for purposes of assessing controls on items currently classified as EAR99. If an item was determined by the Department of State to be of no real significance from a national security and foreign policy perspective that it did not warrant listing on the Commerce Control List, with the tacit consent of the Congress pursuant to a certification made in compliance with the requirement in Section 38(f) of the Arms Export Control Act, that determination should stand. In our opinion, recapturing these items represents an unnecessary roll-back in control that is contrary to the objectives and intent of the current export reform effort.



Thank you, again, for the opportunity to provide comments. Please do not hesitate to contact me if you have any questions or would like to discuss this issue further. I can be reached at 703-465-3505 or via e-mail at stephanie.a.reuer@boeing.com.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie A. Reuer". The signature is fluid and cursive, with a large initial 'S'.

Stephanie A. Reuer
Director, International, Policy, and Licensing Administration
Global Trade Controls