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Subject: ITAR Amendments - Category VIII RIN 1400-AC96
EAR Revisions - Control of Aircraft and Related Items RIN 0694-AF36

This supplements my November 27 comments to suggest additional clarifications of individual items in the two proposed subject rules.

A. "Military" The Category VIII proposal requests public suggestions for objective language to replace subjective terms such as "military." The one example given was proposed "unarmed military UAVs" (VIII.a.6). My November 27 comments recommended that this be changed to "armored UAVs" and "UAVs equipped with mounts for weapons." The following suggests ways to avoid the ambiguous use of "military" in other proposed VIII and 9x610 items:

1. Existing Category VIII.a includes "surveillance", and "reconnaissance" aircraft "specifically designed, modified, or equipped for military purposes." Existing WML 10.b controls aircraft "specially designed or modified for military use, including military reconnaissance." Proposed VIII.a.7 would control "military intelligence, surveillance, and reconnaissance aircraft." Proposed 9A610.a would control "military aircraft" "specially designed " for a "military use," including "observation" aircraft. A civil aircraft with no discernible features to identify it for intelligence, surveillance, reconnaissance, or observation use by the military could be used for these purposes. There may be objective features, such as larger windows or camera equipment, which would improve aircraft use for these functions..Such features are not particularly significant and are probably common to aircraft used for civil such purposes. If there is, nevertheless, a need to continue to control such aircraft, it is recommended that this be done in 9A610.a, rather than VIII.a, and by using objective characteristics rather than "military" or "specially designed" or "military use."

2. Proposed 9A610.a would control "Military Aircraft" "specially designed" for a military use not enumerated in VIII.a. In addition to "observation aircraft," the Note would include in such "Military Aircraft":
   a, Trainer aircraft. Objective language might be "Aircraft for training military personnel other than those described in VIII.a.3." Similarly, "military aircraft instrument flight trainers that are not specially designed to simulate combat" in 9A610.k might be changed to "aircraft instrument training for military personnel not simulating combat."
   b. Cargo aircraft. Most aircraft used to transport military cargo, e.g., C-130, do not differ from those used to transport civil cargo. Those which differ should be

described using objective language (e.g., size of cargo door and/or tonnage lifting capacity).

c Utility fixed-wing aircraft. One cannot suggest objective language to describe a particular military function without knowing the function which prompts inclusion of this new sub-item in the proposal. Words to this effect do not now appear in either the USML or the WML.This may be a subset of surveillance, etc. or cargo aircraft.

d. Military helicopters. This would clearly overlap not only VIII.a.4 attack helicopters but also many other VIII.a aircraft sub-items. The definition of "aircraft" in 15 CFR 772.1 includes helicopters.

e. Military non-expansive balloons and other lighter-than-air aircraft. One cannot suggest objective terminology to replace "military" as a modifier for non-expansive balloons and other lighter-than-air aircraft without knowing what military uses they have. This may be a subset of surveillance, etc., aircraft.

f. Unarmed military aircraft manufactured before 1956. This might be revised to read "Aircraft described in VIII.a or other portions of 9A610.a if unarmed and manufactured before 1956."

g. "Non-military" UAVs in ECCN 9A012 could be replaced by UAVs "other than those described in VIII.a or ECCN 9A120 (which should be renumbered 9A112).

3. WML 10.b, c, d include the phrase "specially designed or modified for military use." This is arguably applicable to all WML 10 sub-items, because the same words appear in the item heading. Proposed Category VIII did a fine job in replacing "military use" with objective descriptions for all but the few VIII sub-items noted above. This indicates the possibility of replacing "military use" with objective descriptions in WML 10 and other WML items. The United States is obligated to comply with WML controls. Therefore, at least to avoid inconsistencies, the United States will have to propose many WML changes as a pre-requisite to putting proposed USML and CCL changes into effect. .

4. There may already be sufficient objective wording in 9A610.g (crash helmets, etc.) to permit deletion of "Military" and in 9A610.i (controlled opening jumps) to permit deletion of "specially designed for military use."

5. In 9A610.h, if there is a need to control any parachutes or paragliders, "specially designed or modified for military use" could be replaced by objective characteristics defining that need. The remainder of that sub-item suggests that the need might relate to altitude. In any event, "designed or modified for military high altitude" in describing controlled equipment for parachutists should be replaced by higher than a specific altitude.

6. Expansion of WML 8.a.2.f,g and CCL 8A002.f , g to cover ground effect machines would permit deletion of "specially designed for use by a military" in 9A610.j.

B. Launching Equipment. The launching portion of proposed VIII.d as it relates to VIII.a.5,6

overlaps the launching portion of 9A610.l as it relates to VIII.a.5,6.
C. To make 9A610.l (handling UAVs) effective requires amendment of 9A115. That ECCN is identified as subject to DDTC jurisdiction, which is inconsistent with BIS jurisdiction proposed for 9A610.l. 9A115 controls transport as well as handling, control, activation or launching of UAVs and covers missiles as well as UAVs. Re launching, see B above. It is suggested that 9A610.l include transport and delete launching of UAVs and that the UAV portion of 9A115 be limited to launching. Further 9A115 revisions may be required in connection with future proposed Category IV and related 600 series ECCNs. The ambiguous phrase "designed or modified" in MTCR 12.A.1 and 12.A.2 (and 9A610.l and 9A115) could probably be deleted.

D. 9A610.m (UAV altimeters) uses wording similar to that in 7A106. However, 7A106 is limited to missiles and omits portions of MTCR 11.A.1 for UAVs. It also omits radar and laser radar systems other than altimeters. On the other hand, 7A106 does cover laser radar altimeters and radar systems other than altimeters, which are omitted from 9A610.m . It is recommended that 9A610.m cover all of MTCR 11.A.1 as it relates to UAVs. Consideration of revisions of 7A106 should await future proposed Category IV and related 600 series ECCNs. The phrase "designed or modified" in MTCR 11.A.1 (and 9A610.m and 7A106) could probably be deleted.

E. 9A610.n (UAV flight control) uses wording similar to that in 7A116 and MTCR 10.A.1 and 10.A.2. However, 7A116 is limited to missiles, omitting portions of 10.A.1 and 10.A.2 for UAVs. 7A116 revisions may be required in connection with future proposed Category IV and related 600 series ECCNs. The phrase "designed or modified" in MTCR 10.A.1 and 10.A.2 (and 9A610.n and 7A116) could probably be deleted.

F. Inertial navigation systems are now controlled by VIII.e if specifically designed, modified, or configured for military use. Proposed VIII.e is "reserved." MTCR items corresponding to VIII.e (and XII.d, which is referred to in VIII.e) are 9.A.1-8. There are no corresponding WML items. MTCR 9.A.1 is now covered by 7A103.b, which is annotated as subject to DDTC jurisdiction. MTCR 9.A.2-9 controls are now covered by ECCNs 7A001-4, and 7A101, 102, 103.a, 103.c, 104, and 107. Of these, the only ECCN now annotated as partially subject to DDTC jurisdiction is 7A003 if specifically designed, modified, or configured for military use. It is recommended that annotations that portions of 7A003 and 7A103 are subject to DDTC jurisdiction be deleted. There does not appear to be a need to add an inertial navigation sub-item to 9A610, since the CCL already describes the MTCR controls.

G. Software for software. WML 21.a controls software for software specified by the WML. Neither existing nor proposed VIII.i controls such software. Similarly, proposed 9D610 does not do so.

H. Technology for software WML 22.a and 9E910 control technology for specified software. However, neither existing nor proposed VIII.i do so.

I Production software and technology 9B610.a would control equipment for the production of Category VIII as well as 9A610 items. However, 9D610 and 9E610 would not control software

and technology for production of Category VIII items, although “production facilities” in 9B610.c is defined to include software integrated into production installations. It is unclear whether or not “directly related” in Category VIII.i is intended to control software or technology for production of Category VIII.a through h. It is recommended that the agency having jurisdiction for equipment for the production of munitions on the USML also have jurisdiction for production software and technology.