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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 9050]

Notice of Inquiry; Request for Comments Regarding Review of United States Munitions List Categories VIII and XIX

AGENCY: Department of State.

ACTION: Notice of Inquiry, Request for Comments.

SUMMARY: The Department of State requests comments from the public to inform its review of the controls implemented in recent revisions to Categories VIII and XIX of the United States Munitions List (USML). In light of the ongoing transition of the USML to a more “positive list” pursuant to the President’s Export Control Reform (ECR) initiative, the Department intends to periodically review the revised USML categories to ensure that they are clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the reform effort. This review will also consider any technical issues related to the USML categories under review.

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

ADDRESSES: Interested parties may submit comments by one of the following methods:

- E-mail: DDTCPublicComments@state.gov with the subject line, “Review of USML Categories VIII and XIX.”

- Internet: At *www.regulations.gov*, search for this notice using its docket number, DOS-2014-0030.

Comments submitted through *www.regulations.gov* will be visible to other members of the public; the Department will publish all comments on the Directorate of Defense Trade Controls website (*www.pmdtdc.state.gov*). Therefore, commenters are cautioned not to include proprietary or other sensitive information in their comments.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; e-mail *DDTCTPublicComments@state.gov*.
ATTN: Review of USML Categories VIII and XIX.

SUPPLEMENTARY INFORMATION:

List Review

On December 10, 2010, the Department provided notice to the public of its intent, pursuant to the ECR initiative, to revise the USML to create a “positive list” that describes controlled items using, to the extent possible, objective criteria rather than broad, open-ended, subjective, or design intent-based criteria (*see* 75 FR 76935). As a practical matter, this meant revising USML categories so that, with some exceptions, the descriptions of defense articles that continued to warrant control under the USML did not use catch-all phrases to control unspecified items. With limited exceptions, the defense articles that warranted control under the USML were those that provided the United States with a critical military or intelligence advantage. All other items were to become subject to the Export Administration Regulations. Since that time, the Department has published final rules

setting forth revisions for fifteen USML categories, each of which have been reorganized into a uniform and more positive list structure.

The advantage of revising the USML into a more positive list is that its controls can be tailored to satisfy the national security and foreign policy objectives of the U.S. government by maintaining control over those defense articles that provide a critical military or intelligence advantage, or otherwise warrant control under the International Traffic in Arms Regulations (ITAR), without inadvertently controlling items in normal commercial use. This approach, however, requires that the lists be regularly revised and updated to account for technological developments, practical application issues identified by exporters and reexporters, and changes in the military and commercial applications of items affected by the list. In addition, the USML and the Commerce Control List require regular revision in order to ensure that they satisfy the national security and foreign policy objectives of the reform effort, which are to (i) improve interoperability of U.S. military forces with allied countries, (ii) strengthen the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, which ensures continued U.S. visibility and control, and (iii) allow export control officials to focus government resources on transactions that pose greater concern.

The first USML revisions conducted pursuant to the ECR initiative became effective on October 15, 2013, and implemented revisions to Category VIII and created Category XIX (*see* 78 FR 22740). With the passing of the one-year anniversary of the effective date of the revision to and creation of these categories, the Department seeks comment from the public on the condition and efficacy of these categories and whether they are meeting the ECR objectives for the list revisions. The Department

anticipates a similar review process for each revised USML category, to be communicated to the public through publication of a notice of inquiry in the *Federal Register*.

Request for Comments

The Department requests public comment regarding the control text of USML Categories VIII and XIX. General comments on the overall ECR initiative or other aspects of the ITAR, to include other categories of the USML that do not relate to or are not affected by Categories VIII or XIX, are outside of the scope of this inquiry. In order to contribute effectively to the USML review process, all commenters are encouraged to provide comments that are responsive specifically to the prompts set forth below.

The Department requests comment on the following topics, as they relate to Categories VIII and XIX:

1. Emerging and new technologies that are appropriately controlled by one of the referenced categories, but which are not currently described in the control text or not described with sufficient clarity.

2. Defense articles that are described in the control text, but which have entered into normal commercial use since the most recent revisions to the category at issue. For such comments, be sure to include documentation to support claims that defense articles have entered into normal commercial use.

3. Defense articles for which commercial use is proposed, intended, or anticipated in the next five years.

4. Drafting or other technical issues in the text of either of the referenced categories.

The Department will review all comments from the public. If a rulemaking is warranted based on the comments received, the Department

will respond to comments received in a proposed rulemaking in the *Federal Register*.

C. Edward Peartree,
Director, Office of Defense Trade Controls Policy,
Bureau of Political-Military Affairs,
U.S. Department of State.

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