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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 9378]

Temporary Modification of Category XI of the United States Munitions List

RIN: 1400-AD74

AGENCY: Department of State.

ACTION: Final rule; notice of temporary modification.

SUMMARY: The Department of State, pursuant to its regulations and in the interest of the security of the United States, temporarily modifies Category XI of the United States Munitions List (USML).

DATES: Amendatory instructions 1 and 2 are effective December 29, 2015. Amendatory instruction No. 3 is effective August 30, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; e-mail DDTCResponseTeam@state.gov. ATTN: Temporary Modification of Category XI.

SUPPLEMENTARY INFORMATION: On July 1, 2014, the Department published a final rule revising Category XI of the USML, 79 FR 37536,

effective December 30, 2014. This final rule, consistent with the two prior proposed rules for USML Category XI (78 FR 45018, July 25, 2013 and 77 FR 70958, November 28, 2012), revised paragraph (b) of Category XI to clarify the extent of control and maintain the existing scope of control on items described in paragraph (b) and the directly related software described in paragraph (d). The Department has determined that exporters may read the revised control language to exclude certain intelligence analytics software that has been and remains controlled on the USML. Therefore, the Deputy Assistant Secretary of State for Defense Trade Controls determined that it is in the interest of the security of the United States to temporarily revise USML Category XI paragraph (b), pursuant to the provisions of 22 CFR 126.2, while a long term solution is developed. The Department will publish any permanent revision to USML Category XI paragraph (b) addressing this issue as a proposed rule for public comment.

This temporary revision clarifies that the scope of control in existence prior to December 30, 2014 for USML paragraph (b) and directly related software in paragraph (d) remains in effect. This clarification is achieved by reinserting the words “analyze and produce information from” and by adding software to the description of items controlled.

The Department previously published a final rule on July 2, 2015 (80 FR 37974) that temporarily modified USML Category XI(b) until December 29, 2015. This rule will extend the July 2, 2015 modification to allow the U.S. government to consider the controls in USML Category XI(b). Due to the current status of the review an extension until August 30, 2017 is appropriate.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule based upon good cause, and its determination that delaying the effect of this rule during a period of public comment would be impractical, unnecessary and contrary to public interest. 5 U.S.C. 553(b)(3)(B). In addition, the Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA).

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department does not believe this rulemaking is a major rule under the criteria of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

The Department believes that benefits of the rulemaking outweigh any costs, which are estimated to be insignificant. It is the Department's position that this rulemaking is not a significant rule under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For reasons stated in the preamble, the State Department amends 22 CFR part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

2. In § 121.1, under Category XI, revise paragraph (b), effective December 29, 2015 to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XI—Military Electronics

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*(b) Electronic systems, equipment or software, not elsewhere enumerated in this sub-chapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit, or analyze and produce information from, the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

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3. In § 121.1, under Category XI, revise paragraph (b), effective August 30, 2017, to read as follows:

§ 121.1 The United States Munitions List.

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Category XI—Military Electronics

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*(b) Electronic systems or equipment, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

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Brian H. Nilsson,
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Defense Trade Controls,
Bureau of Political-Military Affairs,
U.S. Department of State.

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