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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 10568; Docket Number DOS-2018-0048]

RIN 1400-AE73

Request for Comments Regarding Review of United States Munitions List Categories IV and XV

AGENCY: Department of State.

ACTION: Advanced notice of proposed rulemaking; request for comments.

SUMMARY: As part of its work with the National Space Council, the Department of State requests comments from the public to inform its review of the controls implemented in recent revisions to Categories IV and XV of the United States Munitions List (USML). The Department periodically reviews 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 United States.

DATES: The Department will accept comments up to [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments by any of the following methods:

- E-mail: DDTCPublicComments@state.gov. Please include “USML Categories IV and XV” in the subject line.
- Internet: At www.regulations.gov Follow the instructions for sending comments using docket number, DOS-2018-0048.

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.pmddtc.state.gov). Therefore, commenters are cautioned not to include proprietary or other sensitive information in their comments.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Monjay, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2817; e-mail publiccomments@state.gov. ATTN: Request for Comments Regarding Review of USML Categories IV and XV.

SUPPLEMENTARY INFORMATION:

One advantage of revising the USML into a more positive list is its controls can be tailored to satisfy the national security and foreign policy objectives of the U.S. government by maintaining control over those 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 list 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.

Request for Comments

Consistent with the objectives in Space Policy Directive-2 (*see* <https://www.whitehouse.gov/presidential-actions/space-policy-directive-2-streamlining-regulations-commercial-use-space/>) the Department is requesting public comments on USML Categories IV (Launch Vehicles) and

XV (Spacecraft). In particular, the Department is requesting comment on ways to thoughtfully streamline export control regulations for these categories for the benefit of U.S. industry as well as our international partners. Streamlining controls could lower administrative burden and regulatory compliance costs and present the opportunity for increased exports, thus bolstering the U.S. space commercial sector and industrial base.

For reference, Category IV was most recently fully revised on July 1, 2014 (*see* 79 FR 34, Jan. 2, 2014). Category XV was most recently revised on January 15, 2017 (*see* 82 FR 2889, Jan. 10, 2017). In order for your comments to be most useful, the Department encourages the public to provide comments responsive to the prompts described below. Please note general comments on other aspects of the ITAR, to include other categories of the USML, are outside of the scope of this inquiry. In particular, the Department requests comments on the following.

1. Are there emerging or new technologies that warrant control in one of the referenced categories, but which are not currently described or not described with sufficient clarity?

2. Are there specific defense articles described in the referenced categories that have entered into normal commercial use since the most recent revision of that category? If so, please include documentation to support this claim.

3. Are there defense articles described in the referenced categories for which commercial use is proposed, intended, or anticipated in the next five years? If so, please provide any documentation.

4. Are there other technical issues for these categories which the Department should address?

5. The export control system uses the size of space-based optical telescopes as the technical parameter differentiating between items controlled by the Department of Commerce in Commerce Control List (CCL) Export Control Classification Number (ECCN) 9A515.a.1 and by the Department of State in USML Category XV(a)(7) and XV(e)(2). This is based on physics, and specifically the fact that larger optical telescopes generally can generate higher-resolution images than smaller ones. NASA tends to use larger optical telescopes for astrophysics missions because the celestial bodies these missions observe are many light years away, and smaller optical capabilities cannot physically meet the relevant science requirements. At the same time, because NASA missions are designed and calibrated to observe distant celestial objects, they are physically incapable of observing the Earth, which is so bright relative to distant objects that NASA's telescopes would suffer permanent physical damage if pointed at Earth. Essentially, NASA astrophysics missions form a class of spacecraft which meet the technical definition for national security-sensitive spacecraft regulated by the Department of State, but are incapable of observing the Earth.

In the past, this issue has been addressed by creating separate regulatory categories for specific missions. For example, the James Webb Space Telescope, NASA's next flagship astrophysics mission, was the subject of specific regulatory activity (*see*, 82 FR 2875 and 2889, Jan. 10, 2017) to ensure that it is controlled by the Department of Commerce under ECCN

9A004 even though it otherwise meets the control text of USML Category XV. However, since it would be impractical to issue an updated regulation every time NASA initiates a new astrophysics mission, the Department is seeking comments from the public on a way to provide technical differentiation within U.S. export control regulations between the space-based optical telescopes for astrophysics missions and those used for Earth observation.

6. The control in USML Category XV(a)(7) and XV(e)(2) is based, in part, on the size of the clear aperture of the telescope's optics. However, not all space-based telescopes use a disc-shaped viewer and thus it is not always possible to definitively determine the size of the "clear aperture" of a specific space-based electro-optical/infrared (EO/IR) remote sensing system for the purpose of the regulations. Are there suggested revisions that would clarify the scope of Categories XV(a)(7) and XV(e)(2), such as a definition of "clear aperture"?

7. Many spacecraft are designed to provide supplies to the International Space Station and other future space stations. This activity is commonly referred to as "servicing" the space stations, which is an activity that can lead to USML control under Category XV(a)(12). Are there suggested revisions that would clarify the scope of this paragraph, such as a definition of "servicing"?

8. NASA continues to pursue development of the future Lunar Gateway, which may be described in Category XV(a). Are there any public comments regarding the potential control status of the future Lunar Gateway?

9. What are the cost savings to private entities from shifting control of a suggested specific item from USML to the CCL? To the extent possible, please quantify the current cost of compliance with USML control of an item and any cost savings if a particular change was implemented. Cost savings could include time saved in terms of regulatory uncertainty over whether a certain item is regulated as on the USML or the CCL. This reduced uncertainty, under the “bright line” approach described in the Administration’s Export Reform Initiative, would allow both State and industry to avoid spending hours and resources on case by case determinations for certain items. As much as possible, please quantify time saved, reduction in compliance costs, and reduction in paperwork for a particular change.

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.

Dated: March 1, 2019.

Sarah Heidema,
Director,
Defense Trade Control Policy Office,
U.S. Department of State.

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