



DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 10779]

RIN 1400-AE88

Adjustment of Controls for Lower Performing Radar and Continued Temporary Modification of Category XI of the United States Munitions List

AGENCY: Department of State.

ACTION: Final rule; notification of temporary modification.

SUMMARY: The Department of State, in response to public comments, revises Category XI on the United States Munitions List to remove items that do not warrant continued inclusion, and, pursuant to its regulations and in the interest of the security of the United States, temporarily modifies paragraph (b) in Category XI of the United States Munitions List (USML).

DATES: This rule is effective August 30, 2019, except for amendatory instruction 3 which is effective August 30, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Heidema, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-1282; e-mail DDTCRESPONSETEAM@STATE.GOV. ATTN: Radar Revision and 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. That 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 later 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 Department determined that it was 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 was developed. The Department published a final rule on July 2, 2015 (80 FR 37974) that temporarily modified USML Category XI(b) until December 29, 2015. The Department published a final rule on December 16, 2015 (80 FR 78130) that continued the July 2, 2015 modification to August 30, 2017. The Department published a final rule on August 30, 2017 (82 FR 41172) that continued the December 16, 2015 modification to August 30, 2018. The Department published a final rule on August 30, 2018 (83 FR 44228) that continued the December 16, 2015 modification to August 30, 2019.

The temporary revision clarified that the scope of control in existence prior to December 30, 2014 for USML Category XI 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, with its interagency partners, continues to develop a long term solution for USML Category XI(b). However, that solution will not be in place when the current temporary modification expires on August 30, 2019. Therefore, the Department

has determined, for the national security and foreign policy of the United States and in the best interest of the U.S. defense industry, to publish a final rule that extends the temporary modification of USML XI(b) for two years, to August 30, 2021, to allow it to be revised as part of the wholesale revision of USML Category XI.

Adjustment of Controls for Lower Performing Radar

On February 12, 2018, the Department published a Notice of Inquiry (83 FR 5970) requesting public comment on USML Categories V, X, and XI. The Department and the interagency are reviewing the public comments submitted in response, and the Department intends to draft a proposed rule setting out revised versions of the three categories for public comment. Extending the temporary revisions of USML Category XI(b) now will allow the U.S. government to finalize its review of USML Category XI, which might include proposing further modification to USML Category XI paragraph (b) as may be warranted.

In the public comments that the Department received in response to the Notice of Inquiry were several that identified current and imminent commercial uses for certain lower performing radars, including in driver-assisted and self-driving ground vehicles and in detect and avoid systems for autonomous aerial systems. In its review of the public comments and development of a rulemaking on USML Category XI, the Department and its interagency partners have determined that revisions to USML Category XI can be made to exclude these radars and radar components from the USML. The control for certain air surveillance radar in paragraph (a)(3)(ix) of USML Category XI is reserved and a note is added to Category XI that removes from the USML those transmit/receive modules and transmit/receive monolithic microwave integrated circuits (MMICs)

fabricated exclusively with homojunction complementary metal-oxide-semiconductor (CMOS) silicon-based circuits on silicon substrates, as well as radars and radar antennas that are specially designed to use only such modules or MMICs. These radars and radar components will become subject to the Export Administration Regulations upon the effective date of this revision as a matter of law, pursuant to 15 CFR 734.3(a).

Regulatory Findings

Administrative Procedure Act

This rulemaking is exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the United States Government.

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

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking is a significant but not an economically 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.

Executive Order 13771

This rule is not subject to the requirements of EO 13771 as the impacts are considered de minimis (82 FR 9339, February 3, 2017).

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. Effective August 30, 2019, in § 121.1, under Category XI, remove and reserve paragraph (a)(3)(ix), revise paragraph (b), and add a note to Category XI 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, equipment or software, not elsewhere enumerated in this subchapter, 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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Note to Category XI: Category XI does not control transmit/receive modules, transmit/receive MMICs, transmit modules, or transmit MMICs that incorporate or are MMICs fabricated exclusively with homojunction CMOS silicon-based circuits on silicon substrates, or radars and radar antennas specially designed to use only such modules or MMICs.

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3. Effective August 30, 2021, in § 121.1, under Category XI, revise paragraph (b) 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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Andrea Thompson,

Under Secretary for Arms Control and International Security.

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