



22 CFR Part 121

[Public Notice: 12276]

Temporary Modification of Category VIII of the U.S. Munitions List

ACTION: Final rule; notification of temporary modification.

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

DATES: This temporary modification is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and will expire on December 1, 2024 or when terminated by the Department, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rasmussen, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2217; e-mail DDTCCustomerService@state.gov SUBJECT: Temporary Modification – Note to paragraph (h)(1) of USML Category VIII

SUPPLEMENTARY INFORMATION: On April 16, 2013, the Department published a final rule revising Category VIII of the USML (78 FR 22740). That final rule added USML Category VIII(h)(1) to describe parts, components, accessories, attachments, and equipment specially designed for certain advanced U.S.-origin aircraft. Paragraph (h)(1) was the exception to the revised Category VIII's positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. Other parts, components, accessories, and attachments specially designed for a military aircraft and related articles became subject to the new “600 series” controls in Category 9 of the Commerce Control List (CCL).

On October 3, 2013, the Department published a rule (78 FR 61750) that added a Note to USML Category VIII(h)(1) to clarify that parts, components, accessories, and attachments that

are common to aircraft enumerated in paragraph (a) but not identified in paragraph (h)(1), and those identified in paragraph (h)(1), are not specially designed.

On November 21, 2016, the Department published another final rule revising Category VIII (81 FR 83126), which updated the list of aircraft in paragraph (h)(1) and revised the Note to paragraph (h)(1) to incorporate technical corrections and enhance its clarity. The rule also removed equipment from paragraph (h)(1) and created paragraph (h)(29) to describe certain equipment specially designed for articles described in paragraph (h)(1). Paragraph (h)(1) currently describes parts, components, accessories, and attachments specially designed for the following U.S.-origin aircraft: B-1B, B-2, B-21, F-15SE, F/A-18 E/F, EA-18G, F-22, F-35, and future variants thereof; or the F-117 or U.S. Government technology demonstrators. Paragraph (h)(1) further states that parts, components, accessories, and attachments of the F-15SE and F/A-18 E/F that are common to earlier models of these aircraft, unless listed elsewhere in paragraph (h) of Category VIII, are subject to the EAR.

The Note to paragraph (h)(1) states that paragraph (h)(1) does not control parts, components, accessories, and attachments that are common to aircraft described in paragraph (a) of Category VIII but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, when applying § 120.41(b)(3), a part common to only the F-16 and F-35 is not specially designed for purposes of paragraph (h)(1). A part common to only the F-22 and F-35—two aircraft models identified in paragraph (h)(1)—is specially designed for purposes of paragraph (h)(1), unless one of the other paragraphs under ITAR § 120.41(b) is applicable.

Section 126.2 of the ITAR provides that the Deputy Assistant Secretary for Defense Trade Controls may order the temporary suspension or modification of any or all provisions of the ITAR when in the interest of the security and foreign policy of the United States. This authority may also be exercised by the Assistant Secretary for Political-Military Affairs according to ITAR § 120.1(b).

The Department assesses that it is in the security and foreign policy interests of the United States to allow manufacturers to apply for export authorizations to participate in development of the KF-21 aircraft by reusing certain defense articles described in paragraph (h)(1) without removing those defense articles from the USML simply because they are re-used in the KF-21.

Accordingly, pursuant to ITAR § 126.2, the Assistant Secretary of State for Political-Military Affairs hereby temporarily modifies the Note to paragraph (h)(1) of USML Category VIII such that parts, components, accessories, and attachments specially designed for aircraft identified in paragraph (h)(1) are not released from that paragraph due to their reuse in the KF-21 aircraft or variants thereof.

The Department assessed that this temporary modification does not change the export jurisdiction or classification of any existing commodities, as it only prevents the possibility of future release from paragraph (h)(1) due to use in the KF-21, which has not yet entered into production. Therefore, when the KF-21 enters production, any paragraph (h)(1) commodities authorized for export for this purpose will retain their current export classification described in paragraph (h)(1).

This temporary modification will be effective until December 1, 2024, or when terminated by the Department, whichever occurs first.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from section 553 of the Administrative Procedure Act (APA) pursuant to section 553(a)(1) as a military or foreign affairs function of the United States.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require 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.

Congressional Review Act

The Department assesses that this rule is not 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, 13563, and 14094

Executive Orders 12866 (as amended by Executive Order 14094) 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 rule has not been deemed a “significant regulatory action” under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

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 the reasons stated in the preamble, the Department of State amends Title 22, Chapter I, Subchapter M, part 121 as follows:

PART 121 – THE UNITED STATES MUNITIONS LIST

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

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

2. Amend § 121.1 under Category VIII by revising the Note to paragraph (h)(1) to read as follows:

§ 121.1 The United States Munitions List.

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Category VIII—Aircraft and Related Articles

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NOTE TO PARAGRAPH (h)(1): This paragraph does not control parts, components, accessories, and attachments that are common to aircraft, other than the KF-21 and variants thereof, described in paragraph (a) of this category but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, when applying § 120.41(b)(3), a part common

to only the F-16 and F-35 is not specially designed for purposes of this paragraph. A part common to only the F-22 and F-35—two aircraft models identified in paragraph (h)(1)—is specially designed for purposes of this paragraph, unless one of the other paragraphs is applicable under § 120.41(b) of this subchapter. Commodities otherwise described in this paragraph that are utilized in the KF-21 are not released from this paragraph due to use in the KF-21.

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Jessica Lewis,

Assistant Secretary,

Bureau of Political-Military Affairs,

U.S. Department of State.

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