



DEPARTMENT OF STATE

[Public Notice: 13088]

22 CFR Parts 120 and 121

RIN 1400-AG17

International Traffic in Arms Regulations: Modification of Civil Aircraft to Incorporate Aircraft Survivability Equipment

AGENCY: Department of State.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of State (the Department) amends the International Traffic in Arms Regulations (ITAR) to remove from the U.S. Munitions List (USML) certain aircraft that have been modified to incorporate aircraft survivability equipment (ASE) and to exclude from the ITAR certain activities that would otherwise meet the definition of reexport or temporary import of ASE incorporated into such aircraft.

DATES:

Effective date: This rule is effective **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comment due date: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties may submit comments to the Department of State by any of the following methods:

- Visit the Regulations.gov website at: <https://www.regulations.gov> and search for the docket number **[DOS-2026-0892]**.
- *Email:* DDTCPublicComments@state.gov. Commenting parties must include RIN 1400-AG17 in the subject line of the email message.

See **SUPPLEMENTARY INFORMATION** for other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Weil, Office of Defense Trade Controls Policy, Department of State, e-mail DDTCCustomerService@state.gov

SUBJECT: Aircraft Survivability Equipment – RIN 1400-AG17.

SUPPLEMENTARY INFORMATION: The Department of State’s Directorate of Defense Trade Controls (DDTC) administers the ITAR (22 CFR parts 120 through 130) to, among other things, regulate the export, reexport, retransfer, and temporary import of defense articles and defense services described on the USML at ITAR § 121.1. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other department or agency of the U.S. Government are subject to the Export Administration Regulations (EAR; 15 CFR parts 730 through 774), which include the Commerce Control List (CCL) in Supplement No. 1 to part 774. The EAR is administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. This rule does not modify the list of defense articles and defense services controlled for purposes of permanent import by the Attorney General, as enumerated on the U.S. Munitions Import List (USMIL) at 27 CFR 447.21.

Section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778), the authority from which the ITAR is derived, requires periodic review to determine what articles and services, if any, no longer warrant designation on the USML at ITAR § 121.1. In maintaining the USML, DDTC’s Office of Defense Trade Controls Policy (DTCP) identifies articles and services for review for addition to or removal from the USML, or for clarification on how they are described on the USML, through a variety of methods, including public feedback and interagency consultations, commodity jurisdiction reviews, advisory opinions, and technology monitoring. The Department maintains the USML such that it comprises those defense articles or defense services that

provide a critical military or intelligence advantage or, in the case of weapons, have an inherently military function. The Department, informed by consultations with its interagency partners, determined that those articles and services this rule removes from the USML no longer warrant ITAR control. Additionally, the Department has long used its delegated authority under the AECA to define which events are controlled as exports, reexports, retransfers, and temporary imports.

For the purposes of this rule the Department refers to civil aircraft that are subsequently modified to incorporate certain aircraft survivability equipment (ASE) as survivability-enhanced aircraft. ASE is a term generally used to refer to systems and equipment designed to reduce an aircraft's susceptibility and vulnerability to manufactured threats by detecting, alerting on, and mitigating threats. For purposes of this preamble, ASE specifically refers to directed infrared countermeasures (DIRCM) and infrared or ultraviolet missile warning systems necessary for the operation of DIRCM. Survivability-enhanced aircraft are often used to mitigate risk in the transport of passengers or goods, in various threat environments. These aircraft incorporate ASE described on the USML to protect the aircraft and its occupants from man-portable air defense systems (MANPADS) and other guided weapons that can pose a serious threat to aircraft. Foreign governments also utilize civil aircraft incorporating ASE to transport heads of state and other persons, and some airlines have incorporated ASE to protect passengers traveling in higher risk areas.

ASE is described in the subparagraphs of USML Category XI(a)(4), which describes electronic warfare (EW) systems and equipment; thus, survivability-enhanced aircraft are currently described in USML Category VIII(a)(8), as aircraft specially designed to incorporate a defense article for the purpose of performing an EW function. The Department notes that aircraft modified to facilitate incorporation of ASE are currently described in paragraph (a)(8) even when the ASE is not physically present in

the aircraft. Since such modifications are properties peculiarly responsible for the incorporation of the ASE, they satisfy the specially designed definition at § 120.41(a)(1).

Based on its assessments and the discretion afforded it, and to facilitate the operation and maintenance of certain aircraft that have been modified to incorporate ASE, the Department is amending USML Category VIII(a)(8), adding corresponding definitions to § 121.0, and adding two new entries to § 120.54 to expand the definition of “activities that are not exports, reexports, retransfers, or temporary imports.” Activities listed in ITAR § 120.54 do not require an authorization from DDTC.

USML Category VIII

The Department is revising USML Category VIII(a)(8) to exclude certain aircraft that have been modified to incorporate ASE. To concisely implement this exclusion, the Department is also adding new definitions of secured ASE and survivability-enhanced aircraft, and the acronyms “ASE” and “USML,” to § 121.0.

Furnishing assistance to a foreign person in maintaining, repairing, or operating an aircraft described in paragraph (a)(8) is a defense service even for repairs limited to an aircraft component otherwise subject to the EAR, such as brakes controlled in the EAR’s Export Control Classification Number (ECCN) 9A991.d, while that item is incorporated into the aircraft. This is because such activities furnish assistance to the foreign person in maintaining the aircraft, which is a defense article.

Servicing activities for aircraft described on the USML continue to warrant control under the ITAR because maintenance of an aircraft helps maintain the foreign person’s access to the capabilities of the aircraft. However, the Department assesses that incorporating secured ASE to protect an aircraft and its occupants should not, by itself, subject an otherwise civil aircraft to regulation under the ITAR. Such regulation of maintenance services, when not directly related to the incorporated ASE, may place U.S. companies at an unnecessary competitive disadvantage due to the widespread availability

of such services and a lack of similar foreign regulation. The Department assesses that, when incorporated into an otherwise civil aircraft without modifications to incorporate other defense articles, ASE supports a purely protective function. For this and other reasons, the Department assesses commercial servicing and maintenance of survivability-enhanced aircraft does not provide a critical military or intelligence advantage that warrants continued ITAR control.

Following the changes in this rule to remove certain aircraft from paragraph (a)(8), ASE will still be described on the USML in Category XI. The Department has determined that ASE, and directly related technical data and defense services, continue to provide a critical military or intelligence advantage and therefore should remain on the USML. ITAR § 120.11(c) will continue to apply to ASE incorporated into an aircraft, regardless of the export jurisdiction of the aircraft. As a result, servicing ASE for a foreign person continues to be a defense service. Furthermore, assisting a foreign person in the modification of an aircraft to facilitate incorporation of ASE is a defense service described in USML Category XI(d) even before the ASE is installed. Such assistance is directly related to the ASE and, at a minimum, assists the foreign person in the use of the ASE. Similarly, assisting a foreign person in maintaining or repairing portions of the aircraft modified for the purpose of incorporating ASE (e.g., upgraded power supplies, dedicated wiring) are defense services described in USML Category XI(d). Even when such services are performed on aircraft components subject to the EAR, they both directly relate to the ASE and assist the foreign person in the use of the ASE.

The new definition of secured ASE in § 121.0 limits the scope of that term to specific types of defensive EW equipment. The Department considered further limiting the scope of the exclusion to ASE designed to provide protection against MANPADS; however, the Department's review of civil aircraft losses concluded that the threat is no longer limited to MANPADS. The new definition of secured ASE also specifies that

certain anti-tamper protections must be in place when the ASE is incorporated into the aircraft.

The new definition of survivability-enhanced aircraft specifically excludes unmanned aircraft, aircraft that did not start out as civil aircraft (as described in paragraph (1) of the new definition for “survivability-enhanced aircraft”), and aircraft described in USML Category VIII(a)(8) or elsewhere on the USML for reasons other than incorporating secured ASE.

New Entries in § 120.54(a)

The Department is adding two new paragraphs to § 120.54(a) to remove the ITAR authorization requirement for certain reexports and temporary imports of defense articles that meet the new § 121.0 definition of secured ASE. Pursuant to § 120.11(c), ASE retains its status as a defense article following incorporation or integration into an aircraft, regardless of the jurisdiction of the aircraft. For example, an ITAR license or other authorization type is currently required for all exports of ASE out of the United States and for all temporary imports of ASE into the United States, including instances in which the ASE is incorporated into an aircraft not described on the USML. Similarly, when ASE is subject to the reexport or retransfer restrictions of the ITAR (e.g., U.S.-origin defense articles and defense articles subject to ITAR § 124.8(a)(5)), an ITAR authorization is currently required for all reexports and retransfers, including when an aircraft incorporating secured ASE travels to a third country.

The Department determined ASE provides a critical military or intelligence advantage such that it warrants description on the USML. ASE is military technology, regardless of its use by civilian entities. In providing notifications of guided missile threats and assisting pilots in defending against those threats, ASE provides a critical advantage – including during contested airspace operations. However, standard ITAR requirements impose an unnecessary compliance burden on international partners using

secured ASE to protect dignitaries and commercial passengers, particularly when traveling to a country identified in ITAR § 126.1. The requirements also place U.S. manufacturers at a competitive disadvantage relative to foreign manufacturers whose products are not subject to ITAR regulation of reexports.

The Department assesses that, when ASE has previously been authorized for export from the United States pursuant to a license issued under the ITAR (and thus subjected to a U.S. national security review), for incorporation into a survivability-enhanced aircraft, and continues to be utilized only for its authorized use by an authorized end user, it is not necessary for the Department to review the operational movements of that aircraft. Similarly, the Department assesses that temporary imports of secured ASE incorporated into survivability-enhanced aircraft, without other modifications that make the aircraft described on the USML, do not require its review while the ASE remains incorporated.

For these reasons, the Department is adding two new paragraphs to § 120.54(a) to exclude what would otherwise be a reexport or temporary import of secured ASE while it is incorporated into survivability-enhanced aircraft, under specified conditions. Defense services directly related to ASE and transfer to a foreign person of technical data directly related to ASE remain controlled events, regardless of the ASE status.

The primary purpose of the new § 120.54(a)(8) is to remove certain restrictions on otherwise civil aircraft temporarily entering and exiting the United States with secured ASE installed. Similarly, the primary purpose of the new § 120.54(a)(9) is to remove certain restrictions on the movement of aircraft that incorporate secured ASE already approved for export from the United States pursuant to a license and remaining under the control of users already authorized to possess the ASE. Such aircraft may include those operated by civilian airlines or those maintained or operated for the benefit of heads of state, international organizations like the United Nations, and humanitarian organizations.

New paragraphs (a)(8) and (9) apply only to the physical movement of the secured ASE while it is incorporated into a survivability-enhanced aircraft; these paragraphs do not authorize any defense services or release of technical data directly related to the ASE (including removal of the ASE from the aircraft). New paragraph (a)(9) applies only to ASE previously authorized for export from the United States pursuant to a license; it does not apply to ASE that has only been exported pursuant to an exemption.

Retransfer of ASE to a foreign person while outside the United States remains a controlled event in all cases. The new § 120.54(a)(8) does not enable temporary imports that involve transfers of the aircraft or the incorporated ASE to a different foreign person while inside the United States. If the ASE has been authorized for export under a separate ITAR authorization, for use by a particular organization and its employees, then a transfer of control of the aircraft and secured ASE between employees of the same organization must be completed using that ITAR authorization.

Effective Date and Updating of Licenses and Agreements

The Department is implementing an effective date of **[INSERT DATE 45 DAYS FOLLOWING PUBLICATION IN THE *FEDERAL REGISTER*]**, in making the revisions described in this interim final rule. The Department's website (www.pmddtc.state.gov) includes guidance for practitioners on the treatment of items removed from the USML.

Submission of Voluntary Disclosures or Voluntary Self-Disclosures

In reviewing the clarifications provided by this rule, if you identify a potential violation of the ITAR, you may submit a voluntary disclosure to DDTC, consistent with the procedures outlined in ITAR § 127.12. For potential violations of the EAR, persons are encouraged to disclose violations to BIS, including through the submission of voluntary self-disclosures, consistent with the procedures outlined in EAR §§ 764.4 and

764.5. For potential violations of both the EAR and the ITAR, persons are encouraged to submit disclosures to both agencies.

Request for Comments

Comments Requested

The Department is requesting public comments on the revisions described in this rulemaking. The Department encourages the public to provide comments related to this rule, as well as comments specifically responsive to the five questions described in this section. To facilitate timely review and assessment of the comments, comments should be provided in a concise sentence or paragraph, followed by supporting explanatory paragraphs and examples, with each distinct comment treated separately (as opposed to multiple comments in one paragraph or section). The Department requests comments focused on the following questions:

1. How much would practitioners benefit from the Department defining the terms for the eligible types of ASE?
2. Are there commodities, services, or technical data closely related to these revisions that warrant ITAR control, but are currently either not described on the USML, or not described with sufficient clarity? If so, please provide examples and a concise explanation.
3. Are there commodities, services, or technical data closely related to these revisions that do not warrant ITAR control? If so, please provide examples and a concise explanation.
4. Are there specific functions, performance levels, or characteristics related to these revisions that could better:
 - a. Distinguish between the commodities that do, and do not, warrant ITAR control;
 - or

- b. Align with the constructions or language used elsewhere in the ITAR?
5. Can any of these revisions be more clearly or concisely stated?

Comment Submission Instructions

Include the Regulatory Information Number (RIN) (1400-AG17) for all submissions related to this rule. Parties who wish to comment anonymously may do so by submitting their comments via www.regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Commenters are cautioned not to include proprietary, export-controlled, personal, or other sensitive information in their comments that they would not want to be made public. If such information would provide useful insight to the comment: (1) assemble that information in a separate document with proprietary markings; (2) include “Proprietary supplement on file with: [provide POC]” as the first line in the body of the email submission; (3) submit the public portion of the comment via e-mail; and (4) call DDTC at (202) 663-1282 to coordinate submission of the proprietary supplement.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from the rulemaking requirements of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as it involves a military or foreign affairs function of the United States. Nevertheless, and without prejudice to this determination, the Department seeks certain public comments in this rule.

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 are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule does not meet the criteria of 5 U.S.C. 804(2).

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 Order 12866, as supplemented and affirmed by Executive Order 13563, directs 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. The Department specifically welcomes public comment on the effects, including costs and benefits, of this rule. After review by the Office of Management and Budget (OMB), this rule has been deemed a “significant regulatory action” under section 3(f) of Executive Order 12866.

This rule was undertaken pursuant to a statutory directive to periodically review the items on the USML. The Department generally determines which items warrant addition to, or removal from, the USML by assessing whether each provides a critical

military or intelligence advantage based on national security and foreign policy considerations. Because the costs and benefits of changing what is controlled focus on the effect or utility of the item or service, rather than its market prevalence or economic value, quantitative analyses cannot be usefully estimated and are not available, particularly since the global prevalence or availability of the item or service are not known. Qualitatively, the rule was assessed for costs and benefits. These revisions are also informed by confidential commodity jurisdiction determination and advisory opinion requests, submitted by industry. The Department takes into account common questions and strives to streamline and simplify USML entries based on how it understands industry experience with certain parts of the USML.

This rule moves the export regulation of certain aircraft from the ITAR to the EAR, and it excludes from ITAR authorization requirements certain transfers of defense articles while they are incorporated into those aircraft. These actions reduce the regulatory burden on those who transfer, repair, or maintain such aircraft. The Department assesses that continuing to regulate these modified aircraft under the ITAR is unnecessary and that removing them will add options for U.S. participation in improving aviation safety. The Department assesses the benefits of this rulemaking outweigh any costs, that modifying the USML in this manner is the most cost-effective method to achieve the Department's regulatory objectives on this matter, and that doing so will result in a net reduction of the burden on the regulated community.

The alternative to this rule was inaction or delay. The Department could have waited to amend larger parts of the USML at once or continued to gather data to evaluate the controls affected by this rule. These alternatives were rejected. Statutory requirements, including section 38(f) of the Arms Export Control Act (22 U.S.C. 2778(f)), and section 1345 of the National Defense Authorization Act for Fiscal Year 2024, require a periodic review of the USML for edits like those made by this rule. While

the Department continuously reviews the entire USML, it aims to focus on particular USML revisions in cycles, as it has done in implementing this rule.

Executive Order 14192

This rule is exempt from Executive Order 14192 as it is a regulation issued with respect to a foreign affairs or national security function of the United States.

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

22 CFR Part 120

Arms and munitions, Classified information, Exports.

22 CFR Part 121

Arms and munitions, Classified information, Exports.

For reasons stated in the preamble, the Department of State amends 22 CFR parts 120 and 121, the United States Munitions List, as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: 22 U.S.C. 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2785, 2794, 2797; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

2. Amend § 120.54 by revising paragraphs (a)(6) and (a)(7) and adding paragraphs (a)(8) and (a)(9), to read as follows:

§ 120.54 Activities that are not exports, reexports, retransfers, or temporary imports.

(a) * * *

(6) * * *

(iii) The defense article is not being exported from or temporarily imported into the United States;

(7) * * *

(iii) The defense article is not being exported from or temporarily imported into the United States;

(8) Temporarily bringing secured ASE (as defined in § 121.0) into the United States; provided that neither the ASE, nor the aircraft in which it is incorporated, is transferred without a license or other approval under this subchapter to another foreign person while in the United States; and

(9) Taking secured ASE (as defined in § 121.0), previously exported from the United States pursuant to a license under this subchapter, from one foreign country to another while it is incorporated into a survivability-enhanced aircraft (as defined in § 121.0).

PART 121—THE UNITED STATES MUNITIONS LIST

3. 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.

4. Amend § 121.0 by adding definitions of ASE, secured ASE, survivability-enhanced aircraft, and USML, as follows:

§ 121.0 United States Munitions List description and definitions.

* * * * *

ASE means Aircraft Survivability Equipment.

* * * * *

Secured ASE means a system or equipment that meets all of the following conditions:

(1) Is one of the following defense articles designed for the purpose of aircraft survivability:

- (i) Directed/directional infrared countermeasures (DIRCM) systems; or
- (ii) Infrared or ultraviolet missile warning systems necessary for the operation of DIRCM;

(2) Is incorporated into an aircraft; and

(3) Employs anti-tamper measures to deter, delay, and detect access to, or exploitation of, critical system components and software.

Survivability-enhanced aircraft means a manned aircraft meeting all of the following criteria:

(1) Prior to the modifications described in paragraph (2) of this definition, was an aircraft in production that:

- (i) Is not described on the USML;
- (ii) Is described only in ECCN 9A991.b; and
- (iii) Was issued either:

A. A type certificate by the U.S. Federal Aviation Administration as a transport airplane or small commuter airplane, or

B. An equivalent certification by the civil aviation authorities of one or more North Atlantic Treaty Organization member states or major non-NATO allies;

(2) Has been modified to facilitate the incorporation of one or more items of secured ASE as defined in this section;

(3) But for the modifications performed to incorporate secured ASE, would not be described in paragraph (a)(8) of USML Category VIII; and

(4) Is not described in any USML paragraph other than paragraph (a)(8) of USML Category VIII.

USML means the United States Munitions List in § 121.1.

* * * * *

5. Amend § 121.1 by revising paragraph (a)(8) under Category VIII, as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category VIII—Aircraft and Related Articles

(a) * * *

* (8) Aircraft specially designed to incorporate a defense article for the purpose of performing an electronic warfare function, excluding survivability-enhanced aircraft (see § 121.0 of this subchapter); airborne warning and control aircraft; or aircraft specially designed to incorporate a defense article for the purpose of performing a command, control, and communications function;

* * * * *

Thomas G. DiNanno,

Under Secretary for Arms Control and International Security,

U.S. Department of State.