

### B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on December 7, 2010.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

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### COMMODITY FUTURES TRADING COMMISSION

#### 17 CFR Part 43

**RIN 3038-AD08**

#### Real-Time Public Reporting of Swap Transaction Data

##### Correction

In proposed rule document 2010-29994 beginning on page 76140 in the issue of Tuesday, December 7, 2010, make the following correction:

##### Appendix A to Part 43 [Corrected]

On pages 76181 and 76182, in Appendix A to Part 43, in Table A2, the table heading should read "Table A2—Additional Real-Time Public Reporting Data Fields for Options, Swaptions and Swaps with Embedded Options."

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### DEPARTMENT OF STATE

#### 22 CFR Part 121

**[Public Notice: 7256]**

**RIN 1400-AC77**

#### Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VII

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category VII of the U.S. Munitions List. The proposed rule would revise Category VII (tanks and military vehicles) to describe more precisely the defense articles described therein.

**DATE: Effective Date:** The Department of State will accept comments on this proposed rule until February 8, 2011.

**ADDRESSES:** Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail:*

*DDTCResponseTeam@state.gov* with the subject line, "Category VII Revision."

- *Mail:* PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Category VII Revision, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522-0112.

- Persons with access to the Internet may also view this notice by searching for its RIN on the U.S. Government regulations Web site at <http://www.regulations.gov/index.cfm>.

**SUPPLEMENTARY INFORMATION:** The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The items subject to the jurisdiction of the ITAR, *i.e.*, "defense articles," are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items that are not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (EAR) (15 CFR parts 730 through 774). The Bureau of Industry and Security (BIS), U.S. Department of Commerce, administers the EAR, which include the Commerce Control List (CCL) (15 CFR part 774). The descriptions in many USML categories are general and include design intent as an element of causing an item to be controlled. The

descriptions in most CCL categories are specific and generally include technical parameters as an element for causing an item to be controlled.

#### Export Control Reform

Both the ITAR and the EAR impose license requirements on exports and re-exports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR. A key part of the Administration's Export Control Reform effort is to review and revise these two lists of controlled items to enhance national security so that they: (1) Are "tiered" consistent with the criteria the U.S. Government is establishing to distinguish the types of items that should be controlled at different levels for different types of destinations, end-uses, and end-users ("Criteria"); (2) create a "bright line" between the two lists to clarify jurisdictional determinations and reduce government and industry uncertainty about whether particular items are subject to the jurisdiction of the ITAR or the EAR; and (3) are structurally "aligned" so that they later can be combined into a single list of controlled items. The Department will seek public comment on the "bright line" methodology by means of a separate **Federal Register** notice. In the process of revising the USML, articles will be screened to determine which items that are currently USML-controlled defense articles should remain on the USML, which items that are currently USML controlled defense articles could be controlled under the CCL, and which items should be subject to the EAR without a specific Export Control Classification Number (ECCN) on the CCL. This proposed rule addresses both the need for "tiering" Category VII and the need for establishing a "bright line" between the USML and the CCL so that, after application of this process to the remaining categories of the USML and meeting the statutory and other requirements of Export Control Reform, the two lists can be combined into a single list of controlled items. Prior to the completion of a single U.S. Government control list, DDTC plans to publish in the existing ITAR a final rule amending Category VII after it has reviewed and considered all comments received on this proposed rule, received interagency input and approval, and satisfied its obligations under section 38(f) of the Arms Export Control Act. The final rule to be published amending Category VII will also take in to account and adjust for internal cross-references to other USML categories that have not yet been reviewed or revised. DDTC will

follow the same process described in this Notice with respect to the remaining USML Categories on a category-by-category basis.

The Department of State has revised Category VII to assign all controlled defense articles under this category one of the three control Criteria, that is Tier 1 (T1), Tier 2 (T2), or Tier 3 (T3). These tier designations were made upon a government-wide assessment of the appropriate level of export control for each item based upon different types of destinations, end-uses, and end-users. As other USML categories are reviewed and revised, the same "tiering" structure is planned to be applied to the remaining USML categories. The scope of the three tiers is as follows:

1. A Tier 1 control shall apply to:
  - a. A weapon of mass destruction (WMD);
  - b. A WMD-capable unmanned delivery system;
  - c. A plant, facility or item specially designed for producing, processing, or using:
    - (i) WMDs;
    - (ii) Special nuclear materials; or
    - (iii) WMD-capable unmanned delivery systems; or
  - d. An item almost exclusively available from the United States that provides a critical military or intelligence advantage.
2. A Tier 2 control shall apply to an item that is not in Tier 1, is almost exclusively available from Regime Partners or Adherents and:
  - a. Provides a substantial military or intelligence advantage; or
  - b. Makes a substantial contribution to the indigenous development, production, use, or enhancement of a Tier 1 or Tier 2 item.
3. A Tier 3 control shall apply to an item not in Tiers 1 or 2 that:
  - a. Provides a significant military or intelligence advantage;
  - b. Makes a significant contribution to the indigenous development, production, use, or enhancement of a Tier 1, 2, or 3 item; or
  - c. Other items controlled for national security, foreign policy, or human rights reasons.

Tier 1 defense articles are those that are almost exclusively available from the United States and that provide a critical military or intelligence advantage.

Tier 2 defense articles are those that are almost exclusively available from countries that are members of the multilateral export control regimes that control such items and (i) provide a substantial military or intelligence advantage, or (ii) make a substantial contribution to the indigenous

development, production, use, or enhancement of a Tier 1 or Tier 2 item.

Tier 3 defense articles are those that provide a significant military or intelligence advantage, or make a significant contribution to the indigenous development, production, use, or enhancement of a Tier 1, 2, or 3 item.

Additional details on the bright line methodology and the tiering will be published by a separate Department of State advance notice of proposed rulemaking which should be used to assist the public in reviewing the proposed Category VII in this notice.

## Regulatory Analysis and Notices

### Administrative Procedure Act

This proposed amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

### Regulatory Flexibility Act

Since this proposed amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

### Unfunded Mandates Reform Act of 1995

This proposed amendment 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

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

### Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment 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 proposed amendment.

### Executive Order 12866

This proposed amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

### Executive Order 12988

The Department of State has reviewed the proposed amendment 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 pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this rulemaking.

### Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

## List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 121 is proposed to be amended as follows:

## PART 121—THE UNITED STATES MUNITIONS LIST

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

**Authority:** Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920.

2. Section 121.1 is amended by revising U.S. Munitions List Category VII to read as follows:

### § 121.1 General. The United States Munitions List.

\* \* \* \* \*

### Category VII—Tanks and Other Military Vehicles

(a) End items, systems, accessories, attachments, equipment, parts, and components.

(1) Armed, armored, or specialized vehicles, and other military equipment as follows:

\* (i) (Tier 1) Vehicles “specially designed” for deploying “weapons of mass destruction.”

\* (ii) (Tier 1) Vehicles “specially designed” to mount or contain any system designated as Tier 1 from any other Category.

\* (iii) Tanks

(A) (Tier 2) Tanks manufactured after 1955 with any of the following:

(1) 120 mm or larger gun;

(2) A weapon designated as a Tier 2 defense article;

(3) A fire control system or sensors designated as a Tier 2 defense article;

(4) Armored components or materials designated as Tier 2 defense articles;

(5) An autoloader or similar assisted loading/round selection;

(6) A hybrid electric propulsion drive system; or

(7) Countermeasures (e.g., radar jamming, infrared tailored smoke, electromagnetic pulse generator) designated as Tier 2 defense articles.

(B) (Tier 3) Tanks not specified in VII(a)(1)(iii)(A) and built after 1955.

\* (iv) Armored combat vehicles, manufactured after 1955, not specified in VII(a)(1)(i) through (iii), capable of off-road or amphibious use, mounting a weapon controlled in Categories II, IV or XVIII, and that:

(A) (Tier 2) Have any of the following:

(1) A weapon designated as Tier 2;

(2) A fire control system or sensors designated as Tier 2;

(3) Armored components or materials designated as Tier 2 defense articles; or

(4) A hybrid electric propulsion drive system.

(B) (Tier 3) Is an armored combat vehicle mounting a Category II, IV, or XVIII weapon, not controlled in VII(a)(1)(iv)(A).

\* (v) Armored combat support vehicles (e.g., personnel carriers, resupply vehicles, recovery vehicles, combat engineer vehicles, reconnaissance vehicles, bridge launching vehicles, ambulances, and command and control vehicles), manufactured after 1955, not specified in VII(a)(1)(i) through (iv), and capable of off-road or amphibious use as follows:

(A) (Tier 2) Have any of the following:

(1) Sensors or mission equipment designated as Tier 2;

(2) Armored components or materials designated as Tier 2 defense articles; or

(3) The same chassis/hull as the vehicles specified in VII(a)(1)(iii)(A) or (iv)(A).

(B) (Tier 3) Combat support vehicles not elsewhere specified in this Category with armor meeting NIJ Level III or better.

(vi) (Tier 2) Trucks, trailers, or containers with installed defense

articles designated as Tier 2 for command, or communications, or control, intelligence, or sensor or radar operations, or unmanned air or ground vehicle control, except for vehicles controlled elsewhere in this Category or in other Categories.

**Note to paragraph (a)(1)(vi):** trucks, trailers, or containers that do not contain defense articles are controlled on the Commerce Control List.

(vii) Unmanned ground vehicles, except those controlled in VII(a)(1)(i) through (v), or in other Categories, that:

(A) (Tier 2) Have mission systems, data links, sensors, or other defense articles designated as Tier 2;

(B) (Tier 2) Mount firearms or other weapons not designated as Tier 1;

(C) (Tier 2) Are capable of off-road or amphibious operation; or

(D) (Tier 3) Is a vehicle otherwise export controlled as a military vehicle that has been modified for unmanned operation.

**Technical Note 1 to paragraph (a)(1)(vii):**

As used in this paragraph, unmanned vehicles include vehicles which are fitted with controls for either manned or unmanned operation.

**Technical Note 2 to paragraph (a)(1)(vii):**

Vehicles in VII(a)(1)(vii)(D) that provide operation beyond visual control range are designated for Tier 2 control.

(2) Components, parts, assemblies, and associated equipment for the end-item vehicles controlled by this Category as follows:

(i) (Tier 2) Control modules/circuits “specially designed” for the electric hybrid propulsion drives for the vehicles specified in VII(a) of this Category.

(ii) Hulls, turrets or turret rings for armored vehicles as follows:

(A) (Tier 2) Hulls or turrets incorporating armor controlled in VII(c)(1), (c)(2), (c)(3)(i), (c)(7), or (c)(8); and turret rings “specially designed” for these hulls or turrets.

(B) (Tier 3) Hulls or turrets not controlled in VII(a)(2)(ii)(A) and associated turret rings.

(iii) Armor systems, components, or parts (e.g., active protection systems, plates, appliques, tiles) as follows:

(A) (Tier 1) Developmental armor components or parts.

(B) (Tier 2) Transparent armor components or parts produced from armor materials controlled in VII(c)(3) as follows:

(1) (Tier 2) Having  $E_m$  greater than or equal to 1.3; or

(2) Having  $E_m$  less than 1.3 and meeting NIJ Level III standards with areal density as follows:

(i) (Tier 2) Less than or equal to 30 pounds per square foot; or

(ii) (Tier 3) Between 30 and 40 pounds per square foot.

(C) (Tier 2) Active protection systems.

(D) (Tier 2) Composite armor components or parts with  $E_m > 1.4$ , not controlled in VII(a)(2)(v)(B).

(E) (Tier 2) Spaced armor components or parts, including slat armor components or parts.

(F) (Tier 2) Reactive armor components or parts.

(G) (Tier 2) Electromagnetic armor components or parts, including pulsed power components or parts “specially designed” for electromagnetic armor.

**Technical Note 1 to paragraph (a)(2)(iii):**

See Notes to paragraph (c) for related armor descriptions and definitions.

**Technical Note 2 to paragraph (a)(2)(iii):**

VII(a)(2)(iii) also includes B kits (add-on armor).

(iv) (Tier 3) Deep water fording kits for the vehicles controlled in this Category.

(v) (Tier 2) Gun mount, stabilization, elevating systems or the vehicles controlled in this Category.

(vi) Self-launching bridge components for deployment by the vehicles designated as Tier 2 in VII(a)(1)(v) as follows:

(A) (Tier 2) Self-launching bridges that are rated above class 60 (as determined IAW SSTANAG2021/QSTAG 180 or equivalent); or

(B) (Tier 3) Self-launching bridges that are rated at or below class 60.

(vii) (Tier 3) Built-in test equipment (BITE) “specially designed” to evaluate the condition of weapon or other mission systems for the vehicles designated as Tier 2 or above in this Category. **Note:** This control does not apply to BITE that provides diagnostics solely for a subsystem or component not specifically controlled in this Category.

(viii) (Tier 2) Suspension components as follows:

(A) Rotary shock absorbers specially designed for vehicles greater than 30 tons.

(B) Torsion bars “specially designed” for vehicles controlled in VII(a)(1)(iii)(A) having a mass of greater than 50 tons.

(ix) (Tier 2) Kits to convert a vehicle specified in this Category into either an unmanned or a driver optional vehicle. At minimum, such a kit includes equipment for remote or autonomous steering, acceleration and braking and a control system.

(x) (Tier 2) Signature management components or parts “specially designed” to modify the thermal, acoustic, radar or other electromagnetic signatures of the vehicles in this Category. This does not include

components or parts commonly used with commercial vehicles (e.g., mufflers, resonators, electrical filters/capacitors, acoustic or thermal insulation).

\* (xi) (Tier 2) Gas turbine engines "specially designed" for ground vehicles.

(xii) (Tier 2) Hot section parts or components "specially designed" for the gas turbine engines in VII(a)(2)(xi).

**Note 1 to paragraph (a):** For controls related to major systems or subsystems of the vehicles controlled above, see USML Categories I, II, III, IV, XI, XII, XIII, XIV, XV and XVIII.

**Note 2 to paragraph (a):** Parts or components are controlled in this Category only to the extent listed in VII(a)(2). It does not include any "part" as defined in § 121.8(d) of this subchapter that is not specifically listed. For the purposes of export or reexport, a parts "kit" that contains the unassembled elements of a component is considered a component.

**Note 3 to paragraph (a):** Developmental vehicles are controlled at the highest tier associated with the functions proposed to be accomplished by that vehicle, and are controlled once the vehicle is placed in full scale production.

**Note 4 to paragraph (a):** Vehicles are considered manufactured after 1955 if, at any time after 1955, any of the following changes occur:

1. Propulsion upgrade to a formerly gasoline powered armored vehicle with either diesel or multi-fuel capability.
2. Armor upgrade to employ reactive armor.
3. Fire control upgrade with a digital control system.
4. Addition of laser designator or laser rangefinder.
5. Addition of autoloader or similar assisted loading/round selection.
6. Increase of gun bore to larger than 90 mm.
7. Conversion to unmanned operation.

**Note 5 to paragraph (a):** Vehicles manufactured in 1955 or prior that retain a functional weapon are controlled based on the Category that controls the weapon.

(b) Test, inspection, and production equipment.

(1) (Tier 2) Production equipment, tooling, and test equipment "specially designed" for armored vehicles designated as Tier 2 in this Category.

(2) (Tier 3) Test or calibration equipment "specially designed" for the articles controlled in this Category.

**Note 1 to paragraph (b):** For production of major systems or subsystems, see the controls specific to those items in Categories II, III, IV, etc., or in the EAR (e.g., Armor plate machining equipment and tank turret bearing grinding machines are "subject to the EAR" and controlled in ECCN 2B018).

**Note 2 to paragraph (b):** This control does not apply to test, inspection and production

equipment "specially designed" for a subsystem or component not specifically controlled in this Category.

(c) Materials.

(1) (Tier 1) Developmental armor for the vehicles controlled in this Category.

(2) (Tier 2) Spaced armor.

(3) Transparent armor containing a transparent crystalline laminate such as spinel, aluminum oxynitride, or sapphire as follows:

(i) (T2) Having  $E_m$  greater than or equal to 1.3; or

(ii) Having  $E_m$  less than 1.3 and meeting NIJ Level III standards with areal density as follows:

(A) (Tier 2) Less than or equal to 30 pounds per square foot; or

(B) (Tier 3) Between 30 and 40 pounds per square foot.

(4) (Tier 2) Transparent ceramic plate greater than or equal to 1/2" thick and larger than 8" x 8", excluding glass, for transparent armor.

(5) (Tier 3) Transparent ceramic plate greater than 1/4" thick but less than 1/2" thick and larger than 8" x 8", excluding glass, for transparent armor.

(6) (Tier 3) Non-transparent ceramic plate or blanks greater than 1/4" thick and larger than 8" x 8" for transparent armor. This includes spinel and aluminum oxynitride (ALON).

(7) (Tier 2) Composite armor with  $E_m > 1.4$  and meeting NIJ Level III or better.

(8) (Tier 3) Metal Laminate Armor with  $E_m > 1.4$  and meeting NIJ Level III or better.

**Note 1 to paragraph (c):** Composite armor is defined for this Category as:

1. More than one layer of different materials, or
2. A matrix composite.

**Note 2 to paragraph (c):** Spaced Armors are metallic or non-metallic armors that incorporate an air space and/or obliquity or discontinuous material path effects as part of the defeat mechanism.

**Note 3 to paragraph (c):** Reactive armor employs explosives, propellants, or other materials between plates for the purpose of enhancing plate motion during a ballistic event or otherwise defeating the penetrator.

**Note 4 to paragraph (c):** Electromagnetic armor (EMA) employs electricity to defeat threats such as shaped charges.

**Note 5 to paragraph (c):** Materials used in composite armor could include layers of metals, plastics, elastomers, fibers, glass, ceramics, etc. and ceramic-glass reinforced plastic laminates, encapsulated ceramics in metallic or non-metallic matrix, functionally gradient ceramic-metal materials, ceramic balls in a cast metal matrix.

**Note 6 to paragraph (c):** For this Category, a material is considered transparent if it allows 75% or greater transmission of light

in the visible spectrum through a 1 mm thick nominal sample.

**Note 7 to paragraph (c):** The material controlled in VII(c)(6) has not been treated to reach the 75% transmission level referenced in Note 6.

**Note 8 to paragraph (c):** Metal laminate armors are two or more layers of metallic materials which are mechanically or adhesively bonded together to form an armor system.  $E_m$  is the line-of-sight target mass effectiveness and provides a ratio of the tested armors performance to that of rolled homogenous armor.

**Note 9 to paragraph (c):**  $E_m$  is the line-of-sight target mass effectiveness ratio and provides a measure of the tested armor's performance to that of rolled homogenous armor, where  $E_m$  is defined as follows:

$$E_m = \frac{\rho_{RHA}(Po - Pr)}{AD_{Target}}$$

Where:

$\rho_{RHA}$  = density of RHA (7.85 g/cm<sup>3</sup>)

Po = Baseline Penetration of RHA (mm)

Pr = Residual Line of Sight Penetration, either positive or negative (mm RHA equivalent)

AD<sub>TARGET</sub> = Line-of-Sight Areal Density of Target (kg/m<sup>2</sup>).

(d) Software.

(1) (Tier 2) Software "specially designed" for the integration or control of vehicle combat systems or subsystems, both offensive and defensive, that is not controlled in other Categories. This includes software that is "specially designed" to stabilize weapon motion for shooting on the move.

\* (2) (Tier 2) Software, algorithms, and modules "specially designed" for the design of ballistic armor protection for vehicles controlled in VII(a)(1)(iii) through (v).

(3) (Tier 2) Software "specially designed" for controlling the gas turbine engines controlled in this Category.

(4) (Tier 2) Software containing the control laws or algorithms for unmanned ground vehicles controlled in this Category.

(5) (Tier 2) Built-in test and diagnostic software "specially designed" for built-in test equipment controlled in VII(a)(2)(vii).

(6) (Tier 2) Software "specially designed" for autonomous logistics for the vehicles controlled in this Category that are designated as Tier 2.

\* (7) (Tier 1) Software "specially designed" for the design, production, or use of articles controlled in this Category that are designated as Tier 1.

\* (8) (Tier 2) Software "specially designed" for the design, production, or

use of articles specified in this Category that are designated as Tier 2.

(9) (Tier 2) Software “specially designed” for the electric hybrid propulsion drive control modules/circuits specified in VII(a)(2)(i) of this Category.

**Note paragraph (d):** This Category does not control software for major systems, subsystems, parts or components controlled in other Categories or that are incorporated into an end item. For controls of major systems or subsystems of the vehicles controlled under paragraph (a) of this Category, see USML Categories I, II, III, IV, VIII, XI, XII, XIII, XIV, XV, and XVIII. See also controls on related simulation and training items in Category IX.

(e) Technology.

\* (1) Design or manufacturing technology “required” for the articles controlled in this Category as follows:

(i) (Tier 1) Design or manufacturing technology “required” for articles controlled in this Category designated as Tier 1.

(ii) (Tier 1) Design or manufacturing technology “required” for armor materials specified in VII(c) and armor systems, components, or parts specified in VII(a)(2)(iii) of this Category.

(iii) (Tier 1) Design or manufacturing technology “required” for rotary shock absorbers or torsion bars for vehicles specified in VII(a)(1)(iii)(A) having a mass greater than 50 tons. This includes design technology “required” for the complete suspensions incorporating the shock absorbers and torsion bars.

(iv) (Tier 1) Design or manufacturing technology “required” for armored vehicle hulls for vehicles designated as Tier 2 or better controlled in this Category.

(v) (Tier 2) Design or manufacturing technology “required” for articles controlled in this Category and not elsewhere specified.

\* (2) Test technology as follows:

(i) (Tier 1) Test technology directly related to defense articles designated as Tier 1 and controlled in this Category.

(ii) (Tier 1) Test technology directly related to armor materials specified in VII.C and armor systems, components, or parts specified in VII(a)(2)(v) of this Category.

(iii) (Tier 1) Test technology directly related to armored vehicle hull design for vehicles designated as Tier 2 or better controlled in this Category.

(iv) (Tier 2) Test technology directly related to developmental vehicles controlled in this Category or to other vehicles designated as Tier 2 that are controlled in this Category.

(v) (Tier 3) Test technology, not elsewhere specified, directly related to defense articles controlled in this Category.

(3) Technology “required” for the operation, maintenance, and repair of the vehicles controlled in this Category as follows:

(i) (Tier 1) Technology “required” for maintenance or operation on any defense article designated as Tier 1 and controlled in this Category.

(ii) (Tier 2) Technology “required” for intermediate or depot level maintenance of any defense article designated as Tier 2 or 3 and controlled in this Category.

(iii) (Tier 3) Operator or organizational level maintenance or repair technology “required” for any defense article controlled in this Category.

(iv) (Tier 3) Operation manuals for any defense article controlled in this Category.

**Note to paragraph (e):** This Category does not control technology for major systems or subsystems or subsystems controlled in other Categories or incorporated into the end item. For controls of major systems or subsystems of the vehicles specified in (a) of this Category, see USML Categories I, II, III, IV, VIII, XI, XII, XIII, XIV, XV, and XVIII. See also controls on related simulation and training items in Category IX.

(f) Defense services.

\* (1) (Tier 1) Providing assistance in the design, development, production or depot level maintenance on any defense article designated as Tier 1 in this Category.

\* (2) (Tier 2) Providing assistance in the design, development, production or intermediate or depot level maintenance on any defense article designated as Tier 2 in this Category.

(3) (Tier 2) Providing training or advice in the tactical employment of the vehicles designated as Tier 1 or Tier 2 and controlled in this Category.

(g) Manufacturing or production.

(1) (Tier 1) Granting a right or license to manufacture any defense article designated as Tier 1 in this Category.

(2) (Tier 1) Granting a right or license to manufacture any defense article designated as Tier 2 in this Category.

(3) (T2) Granting a right or license to manufacture any defense article designated as Tier 3, enumerated in VII(a)(1)(iii) through VII(a)(2)(v) and VII(a)(2)(vii).

(4) (T2) Granting a right or license to manufacture any other defense article designated as Tier 3 in (a) in this Category.

(h) Defined terms.

(1) Certain terms used in the category:

(i) Specially designed. The term “specially designed” means that the end-item, equipment, accessory, attachment, system, component, or part (*see* ITAR § 121.8); or “software”; has properties that:

(A) Distinguish it for certain predetermined purposes,

(B) Are directly related to the functioning of a defense article, and

(C) Are used exclusively or predominantly in or with a defense article identified on the USML.

(ii) Required. As applied to technology, refers to only that portion of technology which is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. Such “required” technology may be shared by different products.

(iii) Weapon of mass destruction. Any destructive device or weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors, any weapon involving a biological agent, toxin, or vector, or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life. This includes, but is not limited to:

(A) Nuclear explosive devices and their major sub-systems;

(B) Chemicals covered by Schedule I of the Chemical Weapons Convention; and

(C) Biological agents and biologically derived substances specifically developed, configured, adapted, or modified for the purpose of increasing their capability to produce casualties in humans or livestock, degrade equipment, or damage crops.

(2) Certain terms defined in the Export Administration Regulations (contained in 15 CFR chapter VII, subchapter C) that may be related to Category VII:

“Software.” (Cat: all)—A collection of one or more “programs” or “microprograms” fixed in any tangible medium of expression.

“Program.” (Cat 2, 4, and 6)—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

“Microprogram.” (Cat 4 and 5)—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

“Technology.” (General Technology Note)—Specific information necessary for the “development,” “production,” or “use” of a product. The information takes the form of “technical data” or “technical assistance.” Controlled “technology” is defined in the Commerce Control List (Supplement No. 1 to 15 CFR part 774).

**Note:** Technical assistance—May take forms such as instruction, skills training,

working knowledge, consulting services. “Technical assistance” may involve transfer of “technical data.”

“Technical data.”—May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

Dated: December 1, 2010.

**Ellen O. Tauscher,**

*Under Secretary, Arms Control and International Security, Department of State.*

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**BILLING CODE 4710-25-P**

## DEPARTMENT OF STATE

### 22 CFR Part 121

**RIN 1400-AC78**

[Public Notice: 7257]

#### Revisions to the United States Munitions List

**AGENCY:** Department of State.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** As part of the President’s export control reform initiative, the Directorate of Defense Trade Controls (DDTC) seeks public comment on revisions to the United States Munitions List (USML) that would make it a “positive list” of controlled defense articles, requests that the public “tier” defense articles based on the Administration’s three-tier control criteria, and identify those current defense articles that the public believes do not fall within the scope of any of the criteria’s tiers. A “positive list” is a list that describes controlled items using objective criteria rather than broad, open-ended, subjective, or design intent-based criteria. DDTC is not seeking with this advance notice of proposed rulemaking (ANPRM) input on whether particular defense articles should or should not be controlled on the USML or whether any defense articles should be controlled differently. Rather, it is only seeking with this ANPRM input on how the USML can be revised so that it clearly describes what is subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR), how defense articles are identified by tier, and what current defense articles do not fall within the scope of any of the tiers. Guidelines for revision of the USML toward this end are provided in this ANPRM. Please see the proposed rule published elsewhere in this issue of the **Federal Register** for an example of a

USML Category that has been revised in this manner.

**DATES:** Comments must be received by February 8, 2011.

**ADDRESSES:** Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail:*

*DDTCResponseTeam@state.gov* with the subject line, “USML—Positive List.”

- *Mail:* PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: USML—Positive List, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522-0112.

- Persons with access to the Internet may also view this ANPRM by searching for its RIN on the U.S. Government regulations Web site at <http://regulations.gov/index.cfm>.

**FOR FURTHER INFORMATION CONTACT:**

Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2792 or Fax (202) 261-8199; E-mail *DDTCResponseTeam@state.gov*, ATTN: USML—Positive List.

**SUPPLEMENTARY INFORMATION:**

#### Existing Controls

The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The items subject to the jurisdiction of the ITAR, *i.e.*, “defense articles,” including related technical data, and “defense services,” are identified on the ITAR’s U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items that are not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (EAR), 15 CFR Parts 730-774. The Bureau of Industry and Security (BIS), U.S. Department of Commerce, administers the EAR, which include the Commerce Control List (CCL) (15 CFR part 774). The descriptions in many USML categories are general and include design intent as a reason for an item to be controlled. The descriptions in most CCL categories are specific and generally include technical parameters for an item to be controlled.

#### Export Control Reform

A key part of the Administration’s Export Control Reform effort is to review and revise both the ITAR and the CCL to enhance national security so that they: (1) Are “tiered” consistent with the criteria the U.S. Government has

established to distinguish the types of items that should be controlled at different levels for different types of destinations, end-uses, and end-users; (2) create a “bright line” between the two lists to clarify jurisdictional determinations and reduce government and industry uncertainty about whether a particular item is subject to the jurisdiction of the ITAR or the EAR; and (3) are structurally “aligned” so that they can eventually be combined into a single control list.

The Administration has determined that these changes are necessary to better focus its resources on protecting those items that need to be protected, to end jurisdictional confusion between the ITAR and EAR, and to provide clarity to make it easier for exporters to comply with the regulations and for the U.S. Government to administer and enforce them.

In order to accomplish the three above-referenced tasks simultaneously, the USML and, to a lesser degree, the CCL must be revised so that they are aligned into “positive lists.” A “positive list” is one that describes controlled items using objective criteria such as horsepower, microns, wavelength, speed, accuracy, hertz or other precise descriptions rather than broad, open-ended, subjective, or design intent-based criteria.

The U.S. Government has developed a methodology to transition the current control lists to this new structure. This methodology includes guidance on how to articulate the parameters for the items controlled and criteria to be used to screen these items to determine their tier of control. The full draft methodology that was developed for internal use by the U.S. Government was provided to the Department of State’s Defense Trade Advisory Group (DTAG) as well as to the Department of Commerce’s Technical Advisory Committees as it was being finalized. The full text is not included in this notice, as aspects are beyond the scope of the request for public comment; however, the full text is available for public review on the DDTC Web page at <http://www.pmdtdc.state.gov/DTAG/index.html>.

This notice provides a summary of the full methodology and the full text of its guidance for building a “positive” list to order to request input from the public on this key feature of the control list reform.

#### Request for Comments

As the U.S. Government continues its work on preparing proposed revisions to the USML, it seeks public input on how best to describe the USML in a positive