RECORD OF PUBLIC COMMENTS

NOTICE OF PROPOSED RULEMAKING: *Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)*, 80 Fed. Reg. 34562 (June 17, 2015) (amending 15 CFR part 774).

Comments due on August 17, 2015

No.	Source	Signer(s) of Comment	Date	Number of Pages
1	William A. Root	William A. Root	06/28/2015	12
2	PPG Industries, Inc.	Patricia Doublet-Raymond	08/13/2015	12
3	American Society for Microbiology	Heather L. Garvey	08/17/2015	2
4	Anonymous	Anonymous	08/17/2015	1
5	Meridian Medical Technologies, Inc. (a Pfizer company)	Amy Weber	08/17/2015	2
6	Northrop Grumman	Thomas P. Donovan	08/17/2015	1
7	Ryan Jakobe	Ryan Jakobe	08/17/2015	2
8	Scott Safety (a Tyco business)	Deborah Allen	08/17/2015	2
9	Smith's Detection (a division of Smith's Group plc)	Michael J. Mendelson	08/17/2015	4
10	The Boeing Company	Christopher Haave	08/17/2015	2

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

General Electric Company: Docket No. FAA–2015–1658; Directorate Identifier 2015–NE–18–AD.

(a) Comments Due Date

We must receive comments by August 17, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) GEnx–1B model turbofan engines with oil filler cap, part number (P/N) 2349M62G01, installed, that does not contain any of the following markings after the P/N on the oil filler cap: "P/M BALL PP", or "RW", or "79–0022".

(d) Unsafe Condition

This AD was prompted by reports of GEnx–1B engine oil loss. We are issuing this AD to prevent loss of engine oil, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Within 360 cycles in service after the effective date of this AD, remove the ball valve, P/N 2349M68P01, from affected oil filler cap and replace with a part eligible for installation.

(2) Reserved.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

(2) GE GEnx–1B SB No. 79–0022, Revision 1, dated May 13, 2015 can be obtained from GE using the contact information in paragraph (g)(3) of this proposed AD.

(3) For service information identified in this proposed AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on June 4, 2015.

Robert J. Ganley,

Acting Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–14695 Filed 6–16–15; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 120105019–5328–01]

RIN 0694–AF52

Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes how articles the President determines no longer warrant control under Category XIV (Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment) or Category XVIII (Directed Energy Weapons) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL). The affected Category XIV articles consist primarily of dissemination, detection and protection "equipment" and related articles and would be controlled under new Export Control Classification Numbers (ECCNs) 1A607, 1B607, 1C607, 1D607, and 1E607, as proposed by this rule. The affected Category XVIII articles consist primarily of tooling, production "equipment," test and evaluation "equipment," test models and related articles and would be controlled under new ECCNs 6B619, 6D619 and 6E619, as proposed by this rule.

This rule is one in a series of proposed rules describing how various types of articles that the President determines no longer warrant control on the USML, as part of the Administration's Export Control Reform Initiative, would be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR).

This proposed rule is being published by the Bureau of Industry and Security (BIS) in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Categories XIV and XVIII. The citations in this BIS proposed rule to USML Categories XIV and XVIII reflect the proposed amendments contained in the Department of State's rule. The revisions proposed by BIS in this rule are part of Commerce's retrospective regulatory review plan under Executive Order 13563 completed in August 2011.

DATES: Comments must be received by August 17, 2015.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2015–0023.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF52 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF52.

FOR FURTHER INFORMATION CONTACT: For questions regarding dissemination, detection and protection "equipment" and related articles that would be controlled under new ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607, contact Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, telephone: (202) 482–3343, email: *Richard.Duncan@bis.doc.gov.*

For questions regarding tooling, production "equipment," test and evaluation "equipment" and test models that would be controlled under new ECCNs 6B619, 6D619 and 6E619, contact Mark Jaso, Sensors and Aviation Division, Office of National Security & Technology Transfer Controls, Bureau of Industry and Security, telephone: (202)

482–0987, email: *Mark.Jaso@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule is published by the Bureau of Industry and Security (BIS) as part of the Administration's Export Control Reform (ECR) Initiative, the object of which is to protect and enhance U.S. national security interests. The implementation of the ECR includes amendment of the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML), so that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and amendment of the Export Administration Regulations (EAR) to control military items that do not warrant USML controls. This series of amendments to the ITAR and the EAR will reform the U.S. export control system to enhance our national security by: (i) improving the interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services; and (iii) allowing export control officials to focus government resources on transactions that pose greater national security, foreign policy, or proliferation concerns than those involving our NATO allies and other multi-regime partners.

Following the structure set forth in the final rule titled "Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform" (78 FR 22660, April 16, 2013) (hereinafter the "April 16 (initial implementation) rule"), this proposed rule describes BIS's proposal for controlling under the EAR's CCL certain dissemination, detection and protection "equipment" and related articles currently controlled under USML Category XIV in the ITAR and certain tooling, production "equipment," test and evaluation "equipment," test models and related articles currently controlled under USML Category XVIII of the ITAR.

In the April 16 (initial implementation) rule, BIS created a series of new ECCNs to control items that would be removed from the USML and similar items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that were already controlled elsewhere on the CCL. That final rule referred to this series of new ECCNs as the "600 series," because the third character in each of these new ECCNs is the number "6." The first two characters of the "600 series" ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a number, within the range of 0 through 9, that identifies the Category on the CCL in which the ECCN is located. The second character is a letter, within the range of A through E, that identifies the product group in a CCL Category. As indicated above, the third character in the "600 series" ECCNs is the number "6," which distinguishes the items controlled under this series of ECCNs from items identified under other ECCNs on the CCL. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular "600 series" ECCN.

Pursuant to section 38(f) of the Arms Export Control Act (AECA), the President is obligated to review the USML "to determine what items, if any, no longer warrant export controls under" the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must "describe the nature of any controls to be imposed on that item under any other provision of law." 22 U.S. C. 2778(f)(1).

The changes proposed in this rule and the State Department's companion rule to Categories XIV and XVIII of the USML are based on a review of these USML Categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review focused on identifying the types of articles that are now controlled by USML Category XIV or Category XVIII that are either: (i) inherently military and otherwise warrant control on the USML; or (ii) of a type common to civil applications, possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article was found to satisfy either or both of these criteria, the article remains on the USML. If an article was found not to satisfy either criterion, but is nonetheless a type of article that is "specially designed" for military applications, then, generally, it is identified in one of the new "600 series" ECCNs proposed by this rule.

All references to the USML in this rule are to the list of defense articles that are controlled for purposes of export, temporary import, or brokering pursuant to the ITAR, and not to the list of defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. Pursuant to section 38(a)(1) of the AECA, all defense articles controlled for export or import, or that are subject to brokering controls, are part of the "USML" under the AECA. For the sake of clarity, references to the USMIL are to the list of defense articles controlled by ATF for purposes of permanent import. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL, for purposes of export controls, does not affect the list of defense articles that are controlled on the USMIL under the AECA for purposes of permanent import or brokering controls.

On January 18, 2011, the President issued Executive Order 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. The revisions proposed in this rule are part of Commerce's retrospective regulatory review plan under Executive Order 13563. Commerce's full plan, completed in August 2011, can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

Changes Proposed by This Rule to Controls on Certain Dissemination, Detection and Protection "Equipment" and Related Items Currently Controlled Under USML Category XIV

This proposed rule would create five new "600 series" ECCNs in CCL Category 1 (ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607) that would clarify the EAR controls that apply to certain dissemination, detection and protection "equipment" and related items the President determines no longer warrant control under USML Category XIV. Terms such as "part," "component" "accessories," "attachments," and "specially designed" are applied in the same manner in this rule as those terms are defined in Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a "Specially Designed" Decision Tool and a CCL Order of Review Decision Tool are available on the BIS

Web site at: *http://www.bis.doc.gov/index.php/decision-tree-tools.*

New ECCN 1A607: Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities.

In proposed ECCN 1A607, paragraphs .a through .d, paragraph .i, and paragraphs .l through .w would be reserved. Paragraph .e of ECCN 1A607 would control "equipment" "specially designed" for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a. Paragraph .f of ECCN 1A607 would control protection "equipment" "specially designed" for military use and for defense against either materials controlled by USML Category XIV(a) or (b) or any of the riot control agents in new ECCN 1C607.a. Paragraph .g of ECCN 1A607 would control decontamination "equipment" not controlled by USML Category XIV(f) that is "specially designed" for military use and for the decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b). Paragraph .h would control "equipment" not controlled by USML Category XIV(f) that is "specially designed" for military use and for the detection or identification of either materials specified by USML Category XIV(a) or (b) or riot control agents controlled by proposed new ECCN 1C607.a. Paragraph .j would control "equipment" "specially designed" to: (i) Interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a "600 series" ECCN; and (ii) collect and process samples of articles controlled in USML Category XIV(a) or (b). Paragraph .k would control medical countermeasures that are "specially designed" for military use (including pre- and post- treatments, antidotes, and medical diagnostics) and "specially designed" to counter chemical agents controlled by USML Category XIV(a). Paragraph .x would control "parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled under ECCN 1A607.e, .f, .g, .or .j or a defense article controlled in USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

New ECCN 1B607: Military test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV.

In proposed ECCN 1B607, paragraph .a would control "equipment," not including incinerators, that is "specially designed" for the destruction of chemical agents controlled by USML Category XIV(a). Paragraph .b of ECCN 1B607 would control test facilities and "equipment" that are "specially designed" for military certification, qualification, or testing of commodities controlled by new ECCN 1A607.e, .f, .g, or .j or by USML Category XIV(f), except for XIV(f)(1). Paragraph .c would control tooling and "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled under new ECCN 1A607.e, .f, .g, or .j or USML Category XIV(f). Paragraphs .d through .w would be reserved. Paragraph .x would control "parts," "components," "accessories," and "attachments," not enumerated or otherwise described elsewhere in the USML, that are "specially designed" for a commodity controlled by ECCN 1B607.b or .c or for a defense article controlled by USML Category XIV(f).

New ECCN 1C607: Tear gases, riot control agents and materials for the detection and decontamination of chemical warfare agents.

Proposed ECCN 1C607.a would control specified tear gases and riot control agents. Paragraph .b of ECCN 1C607 would control "biopolymers" not controlled by USML Category XIV(g) that are "specially designed" or processed for the detection or identification of chemical warfare (CW) agents specified by USML Category XIV(a) and the cultures of specific cells used to produce them. Paragraph .c would control specified "biocatalysts" and biological systems that are not controlled by USML Category XIV(g) and are "specially designed" for the decontamination or degradation of CW agents specified by USML Category XIV(a). Paragraph .d would control chemical mixtures not controlled by USML Category XIV(f) that are "specially designed" for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

New ECCN 1D607: "Software" "specially designed" for the "development," "production," operation, or maintenance of items controlled by 1A607, 1B607 or 1C607.

Proposed ECCN 1D607.a would control "software" "specially designed" for the "development," "production," operation, or maintenance of items controlled by ECCN 1A607, 1B607 or 1C607. Paragraph .b of ECCN 1D607 would be reserved.

New ECCN 1E607: "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607.

Proposed ECCN 1E607.a would control "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607. Paragraph .b of ECCN 1E607 would be reserved.

Changes Proposed by This Rule to Controls on Certain Tooling, Production "Equipment," Test and Evaluation "Equipment" and Test Models Currently Controlled Under USML Category XVIII

This rule proposes to create three new "600 series" ECCNs in CCL Category 6 (ECCNs 6B619, 6D619 and 6E619) that would clarify the EAR controls that apply to certain tooling, production "equipment," test and evaluation "equipment," test models and related articles for Directed Energy Weapons (DEWs) that the President determines no longer warrant control under USML Category XVIII. Terms such as "part," "component" "accessories," "attachments," and "specially designed" are applied in the same manner in this rule as those terms are defined in Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a "Specially Designed" Decision Tool and a CCL Order of Review Decision Tool are available on the BIS Web site at: *http://www.bis.doc.gov/index.php/decision-tree-tools.*

New ECCN 6B619: Test, inspection and production "equipment," and related commodities, "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII.

Proposed ECCN 6B619.a would control tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test "equipment" not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML that are "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII. The commodities that would be controlled under proposed ECCN 6B619.a are used to produce directed energy weapons (including

non-lethal directed energy weapons, such as active denial systems) and are similar to commodities that are in operation in a number of other countries, some of which are not allies of the United States or members of multinational export control regimes. Research and development is currently underway to determine the possible uses of such commodities (*e.g.*, to protect the Earth from asteroids, or for perimeter security and crowd control). Possession of such commodities does not confer a significant military advantage on the United States and, therefore, the inclusion of such commodities on the CCL would be appropriate.

Paragraphs .b through .w of ECCN 6B619 would be reserved. Paragraph .x would control "parts," "components," "accessories," and "attachments" "specially designed" for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

New ECCN 6D619: "Software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by 6B619.

Proposed ECCN 6D619 would control "software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by ECCN 6B619. Inclusion of this "software" on the CCL would be appropriate, because it would be limited to "software" "specially designed" for ECCN 6B619 commodities and would not include any "software" for items specifically enumerated or otherwise described on the USML.

New ECCN 6E619: "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6B619 or "software" controlled by 6D619.

Proposed ECCN 6E619 would control "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 6B619, or "software" controlled by 6D619. Inclusion of this "technology" on the CCL would be appropriate, because it would be limited to "technology" "required" for ECCN 6B619 commodities and would not include any "technology" for items specifically enumerated or otherwise described on the USML.

Applicable Controls for the New "600 Series" ECCNs Proposed by This Rule.

Pursuant to the framework established in the April 16 (initial implementation) rule, detection and protection "equipment" and related commodities classified under ECCN 1A607; related test, inspection and production "equipment" classified under ECCN 1B607; tear gases, riot control agents and related commodities classified under ECCN 1C607 (except for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14, all of which are specifically excluded from WAML Category 7 by Note 1 thereto); related "software" classified under ECCN 1D607 (except "software" for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14); and related "technology" classified under ECCN 1E607 (except "technology" for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14 and 1D607 "software" therefor) would be subject to the licensing policies that apply to items controlled for national security (NS) reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. The same level of NS controls and licensing policies also would apply to the items that would be controlled under the three new ECCNs (*i.e.*, test, inspection, and production "equipment" classified under ECCN 6B619; related "software" classified under ECCN 6D619; and related "technology" classified under ECCN 6E619) that this rule proposes to add to Category 6 of the CCL. In addition, all of the items that would be controlled under the new ECCNs proposed by this rule would be subject to the regional stability (RS) licensing policies set forth in § 742.6(a)(1), *i.e.*, RS Column 1, as well as antiterrorism (AT Column 1) and United Nations (UN) controls.

Also, in accordance with §§ 742.4(b)(1) and 742.6(b)(1) of the EAR, exports and reexports of "600 series" items controlled for NS or RS reasons will be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR, if destined to a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. All items controlled for NS or RS reasons, as set forth in this proposed rule, would be subject to this licensing policy.

Effects of This Proposed Rule

BIS believes that the principal effect of this rule, when considered in the context of similar proposed rules being published as part of the ECR, will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the USML. This greater flexibility would be in the form of: application of the EAR's *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions "Servicing and Replacement of Parts and Equipment" (RPL) and "Strategic Trade Authorization" (STA); elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail below.

De minimis

The April 16 (initial implementation) rule imposed certain unique *de minimis* requirements on items controlled under the new "600 series" ECCNs. Section 734.3 of the EAR provides, *inter alia,* that, under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a "*de minimis*" percentage of controlled U.S. origin content. Under Section 734.4 of the EAR, as amended by the April 16 (initial implementation) rule, there is no eligibility for *de minimis* treatment for a foreign-made item that incorporates U.S.-origin "600 series" items when the foreign-made item is destined for a country that is subject to a U.S. arms embargo, *i.e.*, a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. Items controlled under the new "600 series" ECCNs proposed in this rule would be eligible for *de minimis* treatment under the EAR, provided that the foreign-made items into which they are incorporated are not destined for a country listed in Country Group D:5. In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (*i.e.*, USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors).

Use of License Exceptions

The April 16 (initial implementation) rule imposed certain restrictions on the use of license exceptions for items controlled under "600 series" ECCNs on

the CCL. The general restrictions that apply to the use of license exceptions for such items are described in § 740.2(a)(13) of the EAR. The EAR provisions that describe the requirements specific to individual license exceptions contain additional restrictions on the use of license exceptions for such items.

For example, this rule proposes limited License Exception STA availability for the new "600 series" ECCNs contained herein. None of the items that would be controlled under these proposed ECCNs would be eligible for the STA "controls of lesser sensitivity" described in § 740.20(c)(2) of the EAR. Instead, STA eligibility for all such items would be limited to the destinations listed in § 740.20(c)(1) of the EAR (*i.e.,* Country Group A:5 destinations indicated in Supplement No. 1 to part 740 of the EAR). In addition, such items must be for: (1) ultimate end-use by a person of a type specified in § 740.20(b)(3)(ii) of the EAR (*i.e.,* the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government); or (2) the "development," "production," operation installation, maintenance, repair, overhaul, or refurbishing of an item, in one of the countries listed in Country Group A:5 or the United States, that will ultimately be used by any such government agencies, the United States Government, or by a person in the United States. The use of License Exception STA also may be authorized, under certain circumstances described in § 740.20(b)(3)(ii)(C), where the U.S. Government has otherwise authorized the ultimate end-use under a license.

None of the items that would be controlled under the new "600 series" ECCNs proposed by this rule would be treated as "end items" for purposes of License Exception STA and, therefore, such items would not be subject to the License Exception STA eligibility request requirements in § 740.20(g) of the EAR.

Items controlled under proposed new ECCN 1B607 or 6B619 also would be eligible for License Exception LVS (limited value shipments) up to a value of $1,500, TMP (temporary exports), and RPL (servicing and replacement parts). License Exceptions TMP and RPL also would be available for items controlled under new ECCN 1A607.

BIS believes that the restrictions that would apply to the use of license exceptions for the items in the proposed new "600 series" ECCNs would represent an overall reduction from the level of restrictions that currently apply to such items on the USML. This would be particularly true with respect to exports of such items to NATO members and multiple-regime member countries.

Alignment With the Wassenaar Arrangement Munitions List

Since the beginning of ECR, the Administration has stated that the reforms will be consistent with the United States' obligations to the multilateral export control regimes. Accordingly, the Administration will, in this proposed rule, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. In this rule, proposed ECCNs 1A607 and 1C607 would implement, to the extent possible, the controls in WAML Category 7; proposed ECCNs 1B607 and 6B619 would implement, to the extent possible, the controls in WAML Category 18 for production "equipment;" proposed ECCNs 1D607 and 6D619 would implement, to the extent possible, the controls in WAML Category 21 for "software;" and proposed ECCNs 1E607 and 6E619 would implement, to the extent possible, the controls in WAML Category 22 for "technology."

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before August 17, 2015. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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, distribute 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 been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect the following approved collections: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications; License Exceptions and Exclusions (0694–0137); recordkeeping (0694–0096); export clearance (0694–0122); and the Automated Export System (0607–0152).

As stated in the proposed rule published on July 15, 2011 (76 FR 41958) (the "July 15 proposed rule"), BIS initially estimated that the combined effect of all rules to be published, adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative, would increase the number of license applications to be submitted to BIS by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that would come under BIS jurisdiction and whether those items would be eligible for export under license exception. As of June 21, 2012, BIS revised its estimate to reflect an increase in license applications of 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17

minutes each) under control number 0694–0088. BIS continues to believe that its revised estimate is accurate. Notwithstanding this increase in license applications under the EAR, the net burden that U.S. export controls impose on U.S. exporters is expected to go down, as described below, as a result of the transfer of less sensitive military items to the jurisdiction of the Department of Commerce, under the EAR, and the application of the license exceptions and other provisions in the EAR that are described in this proposed rule.

As proposed by this rule, certain dissemination, detection and protection "equipment" and related articles currently controlled under USML Category XIV in the ITAR and certain tooling, production "equipment," test and evaluation "equipment," test models and related articles currently controlled under USML Category XVIII of the ITAR would become subject to the licensing jurisdiction of the Department of Commerce under the EAR and its CCL, and also would be eligible for certain license exceptions, including License Exception STA. For example, items controlled under proposed ECCN 1A607, 1B607, 1C607, 1D607, 1E607, 6B619, 6D619, or 6E619 would become eligible under certain provisions of License Exception STA and would not need a determination of eligibility as described in § 740.20(g) of the EAR. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published, adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative, would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden hours under the EAR would be more than offset by a reduction in the burden hours associated with currently approved collections related to the ITAR. With few exceptions, most exports of the dissemination, detection and protection "equipment" and related articles and the tooling, production "equipment," test and evaluation "equipment," test models and related articles that this rule proposes to add to the CCL currently require State Department authorization, even when destined to NATO member states and other close allies. In addition, the exports of "technology" necessary to produce such items in the inventories of the United States and its NATO and other close allies currently require State Department authorization. Under the EAR, as proposed by this rule, such "technology" would become eligible for export to NATO member states and other close allies under License Exception STA, unless otherwise specifically excluded.

The anticipated reduction in burden hours would particularly impact exporters of "parts" and "components" that would no longer be subject to the ITAR, because, with few exceptions, the ITAR currently exempt from license requirements only exports to Canada. Most exports of such "parts" and "components," even when destined to NATO and other close allies, currently require State Department authorization. Under the EAR, as proposed by this rule, a small number of low-level "parts" and "components" would not require a license to most destinations, while most other "parts" and "components" identified under the proposed new "600 series" ECCNs would be eligible for export to NATO and other close allies under License Exception STA.

Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item that is being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the requirements of the EAR. However, the Administration believes that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship, rather than applying repeatedly for licenses with every purchase order, to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced, compared to the current license requirement under the ITAR. In particular, license applications for exports of "technology" controlled by ECCN 1E607 or 6E619 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled "technology," *i.e.*, Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. Accordingly, pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities. The rationale for this certification is as follows.

Number of Small Entities

Although BIS does not collect data on the size of entities that apply for, and are issued, export licenses and is, therefore, unable to estimate the exact number of small entities—as defined by the Small Business Administration's regulations implementing the RFA—BIS acknowledges that some small entities may be affected by this proposed rule.

Economic Impact

The amendments set forth in this rule are proposed as part of the Administration's ECR initiative, which seeks to revise the USML to be a positive control list—one that does not use generic, catch-all control text to describe items subject to the ITAR—and to move some items that the President has determined no longer warrant control under the ITAR to control under the EAR and its CCL. Such items, along with certain military items currently identified on the CCL (most of which are identified on the WAML), will be controlled under new "600 series" ECCNs on the CCL. In addition, certain other items currently on the CCL will move from existing ECCNs to the new "600 series" ECCNs.

This rule addresses certain dissemination, detection and protection "equipment" and related articles currently enumerated or otherwise described in USML Category XIV (Toxicological Agents, Including

Chemical Agents, Biological Agents, and Associated Equipment) and certain tooling, production "equipment," test and evaluation "equipment," test models and related articles currently enumerated or otherwise described in USML Category XVIII (Directed Energy Weapons). Most toxicological agents (*i.e.*, chemical and biological agents) and associated equipment and all Directed Energy Weapons (DEWs) systems "specially designed" or modified for military applications, "equipment" "specially designed" or modified to detect, identify or defend against such systems, and "specially designed" "parts," "components," "accessories" and "attachments" for such systems or "equipment" would remain on the USML. However, many other "parts" and "components" would become subject to the EAR (as items described in ECCN 1A607.x, 1B607.x, or 6B619.x), unless specifically enumerated or otherwise described on the USML. Many of these "parts" and "components" are more likely, than the USML articles described above, to be produced by small businesses. In addition, officials of the Department of State have informed BIS that license applications for such "parts" and "components" represent a high percentage of the license applications for USML articles reviewed by that department. Changing the jurisdictional status of certain Category XIV and Category XVIII items would reduce the burden on small entities (and other entities as well) through: (i) elimination of some license requirements; (ii) greater availability of license exceptions; (iii) simpler license application procedures; and (iv) reduced or eliminated registration fees.

Moreover, "parts" and "components" that are controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR, for those items that would no longer be controlled under the ITAR, may reduce the disincentive for foreign manufacturers to purchase U.S.-origin "parts" and "components," a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Many exports and reexports of the Category XIV or Category XVIII articles that would be added to the CCL by this rule (particularly, the "parts" and "components" that would be controlled under new ECCN 1A607.x, 1B607.x, or 6B619.x) would become eligible for license exceptions that apply to exports to U.S. Government agencies, exports of "parts" and "components" for use as replacement parts, temporary exports and limited value exports (for ECCN 1B607 and 6B619 items, only), as well as License Exception STA, thereby reducing the number of licenses that exporters of these items would need. License exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would create a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process for obtaining a license would be simpler and less costly under the EAR. When a USML Category XIV or Category XVIII article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the licensing procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way to determine whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval, and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally four years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule proposes to transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,250 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increase to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. Conversely, there are no registration or application processing fees for applications to export items listed on the CCL. Once the Category XIV or Category XVIII items that are the subject to this rulemaking are removed from the USML and added to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirement would be eliminated.

Conclusion

BIS expects that the changes to the EAR proposed in this rule will have a positive effect on all affected entities, including small entities. While BIS acknowledges that this rule may have some cost impacts on small (and other) entities, those costs are more than offset by the benefits to the entities from the licensing procedures under the EAR, which are much less costly and less time consuming than the procedures under the ITAR. As noted above, any new burdens proposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts

and components, all of which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. Accordingly, the Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if implemented, would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is proposed to be amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1A607 between ECCNs 1A290 and 1A613 to read as follows:

Supplement No. 1 to Part 774—the Commerce Control List

* * * * *

1A607 Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1A607.

List of Items Controlled

Related Controls: (1) Vaccines identified in ECCN 1C991 are not controlled by this ECCN. (2) See 22 CFR 121.1 (USML), Category XIV(h), for vaccines that are subject to the ITAR. (3) Protection and detection "equipment" and related items identified in ECCN 1A004, 1A995, or 2B351 are not controlled by this ECCN. (4) See 22 CFR 121.1 (USML), Category XIV(f), for dissemination, detection and protection "equipment" that is subject to the ITAR. (5) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. through d. [Reserved]

e. "Equipment" "specially designed" for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a.

f. Protection "equipment" (including air conditioning units and protective clothing):

f.1. Not controlled by USML Category XIV(f); *and*

f.2. "Specially designed" for military use and for defense against:

f.2.1. Materials specified by USML Category XIV (a) or (b); *or*

f.2.2. Riot control agents controlled in 1C607.a.

g. Decontamination "equipment":

g.1. Not controlled by USML Category XIV(f); *and*

g.2. "Specially designed" for military use and for decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b).

h. "Equipment":

h.1. Not controlled by USML Category XIV(f); *and*

h.2. "Specially designed" for military use and for the detection or identification of:

h.2.1. Materials specified by USML Category XIV(a) or (b); *or*

h.2.2. Riot control agents controlled by ECCN 1C607.a.

i. [Reserved]

j. "Equipment" "specially designed" to:

j.1. Interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a "600 series" ECCN; *and*

j.2. Collect and process samples of articles controlled in USML Category XIV(a) or (b).

k. Medical countermeasures that are "specially designed" for military use (including pre- and post-treatments, antidotes, and medical diagnostics) and "specially designed" to counter chemical agents controlled by the USML Category XIV(a).

Note: Examples of "equipment" controlled by this entry are barrier and non-barrier creams and filled autoinjectors (*e.g.,* combopens where one injector contains 2–PAM and the other atropine) if "specially designed" to counter such agents.

l. through w. [Reserved]

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled by ECCN 1A607.e, .f, .g, or .j or for a defense article controlled by USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1B607 between ECCNs 1B234 and 1B608 to read as follows:

1B607 Military test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1B607.

List of Items Controlled

Related Controls: (1) See ECCN 2B350 for controls on certain incinerators. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. "Equipment" "specially designed" for the destruction of the chemical agents controlled by USML Category XIV(a).

Note to 1B607.a: ECCN 1B607.a includes controls over facilities "specially designed" for destruction operations. This paragraph .a does not control incinerators and "specially designed" handling facilities or "specially designed" waste supply systems therefor.

b. Test facilities and "equipment" "specially designed" for military certification, qualification, or testing of commodities controlled by ECCN 1A607.e, .f, .g, or .j or by USML Category XIV(f), except for XIV(f)(1).

c. Tooling and "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by ECCN 1A607.e, .f .g, or .j or USML Category XIV(f).

d. through w. [RESERVED]

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled by ECCN 1B607.b or .c, or for a defense article controlled by USML Category XIV(f), and that are not enumerated or otherwise described elsewhere in the USML.

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1C607 between ECCNs 1C395 and 1C608 to read as follows:

1C607 Tear Gases, Riot Control Agents and materials for the detection and decontamination of chemical warfare agents (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry, except 1C607.a.10, .a.11, .a.12, and .a.14.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1C607.

List of Items Controlled

Related Controls: (1) See ECCN 1A984 for controls on other riot control agents. (2) See 22 CFR 121.1 (USML), Category XIV(b), for modified biological agents and biologically derived substances that are subject to the ITAR. (3) See 22 CFR 121.1 (USML), Category XIV(g), for ITAR controls on antibodies, recombinant protective antigens, polynucleotides, biopolymers or biocatalysts (including the expression vectors, viruses, plasmids, or cultures of specific cells used to produce them) that are "specially designed" for use with articles controlled under USML Category XIV(f). (4) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. Tear gases and riot control agents including:

a.1. CA (Bromobenzyl cyanide) (CAS 5798–79–8);

a.2. CS (o–Chlorobenzylidenemalononitrile or o–Chlorobenzalmalononitrile) (CAS 2698–41–1);

a.3. CN (Phenylacyl chloride or w–Chloroacetophenone) (CAS 532–27–4);

a.4. CR (Dibenz–(b,f)–1,4–oxazephine) (CAS 257–07–8);

a.5. Adamsite (Diphenylamine chloroarsine or DM) (CAS 578–94–9);

a.6. N-Nonanoylmorpholine, (MPA) (CAS 5299–64–9);

a.7. Dibromodimethyl ether (CAS 4497–29–4);

a.8. Dichlorodimethyl ether (ClCi) (CAS 542–88–1);

a.9. Ethyldibromoarsine (CAS 683–43–2);

a.10. Bromo acetone (CAS 598–31–2);

a.11. Bromo methylethylketone (CAS 816–40–0);

a.12. Iodo acetone (CAS 3019–04–3);

a.13. Phenylcarbylamine chloride (CAS 622–44–6);

a.14. Ethyl iodoacetate (CAS 623–48–3);

Note to 1C607.a: *ECCN 1C607.a. does not control formulations containing 1% or less CN or CS or individually packaged tear gases or riot control agents for personal self-defense purposes that are controlled by ECCN 1A984, or to active constituent chemicals, and combinations thereof, identified and packaged for food production or medical purposes.*

b. "Biopolymers," not controlled by USML Category XIV(g) "specially designed" or processed for the detection or identification of chemical warfare agents specified by USML Category XIV(a), and the cultures of specific cells used to produce them.

c. "Biocatalysts," and biological systems therefor, not controlled by USML Category XIV(g) "specially designed" for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV (a), as follows:

c.1. "Biocatalysts" "specially designed" for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV(a) resulting from directed laboratory selection or genetic manipulation of biological systems;

c.2. Biological systems containing the genetic information specific to the production of "biocatalysts" specified by 1C607.c.1, as follows:

c.2.a. "Expression vectors;"

c.2.b. Viruses; *or*

c.2.c. Cultures of cells.

Note to 1C607.b and .c: *The cultures of cells and biological systems are exclusive and these sub-items do not apply to cells or biological systems for civil purposes, such as agricultural, pharmaceutical, medical, veterinary, environmental, waste management, or in the food industry.*

d. Chemical mixtures not controlled by USML Category XIV(f) "specially designed" for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1D607 between ECCNs 1D390 and 1D608 to read as follows:

1D607 "Software" "specially designed" for the "development," "production," operation, or maintenance of items controlled by 1A607, 1B607 or 1C607 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry, except "software" for 1C607.a.10, .a.11, .a.12, and .a.14.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1D607.

List of Items Controlled

Related Controls: (1) "Software" directly related to articles enumerated or otherwise described in USML Category XIV is subject to the ITAR (see 22 CFR 121.1, Category XIV(m)). "Software" controlled by USML Category XIV(m) includes "software" directly related to any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of US-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. "Software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 1A607, 1B607, or 1C607.

b. [RESERVED]

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins," add a new ECCN 1E607 between ECCNs 1E355 and 1E608 to read as follows:

1E607 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry, except "technology" for 1C607.a.10, .a.11, .a.12, and .a.14 and for 1D607 "software" therefor.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1E607.

List of Items Controlled

Related Controls: Technical data directly related to defense articles enumerated or otherwise described in USML Category XIV are subject to the ITAR (see 22 CFR 121.1, Category XIV(m)). Technical data controlled by USML Category XIV(m) include technical data directly related to any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract.
Related Definitions: N/A
Items:

a. "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607 or 1D607.

Note to 1E607.a: *ECCN 1E607.a includes "technology" "required" exclusively for the incorporation of "biocatalysts" controlled by ECCN 1C607.c.1 into military carrier substances or military material.*

b. [RESERVED]

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers," add a new ECCN 6B619 between ECCNs 6B108 and 6B995 to read as follows:

6B619 Test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII (see List of Items Controlled)

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

License Exceptions

LVS: $1,500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6B619.

List of Items Controlled

Related Controls: "Parts, "components," "accessories," "attachments," and associated systems or "equipment" "specially designed" for defense articles enumerated or otherwise described in paragraphs (a) or (b) of USML Category XVIII are subject to the ITAR (see 22 CFR 121.1, Category XVIII(e)).
Related Definitions: N/A
Items:

a. Tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test "equipment" not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML that are "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII.

b. through w. [Reserved]

x. "Parts," "components," "accessories," and "attachments" "specially designed" for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers," add a new ECCN 6D619 between ECCNs 6D201 and 6D991 to read as follows:

6D619 "Software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by 6B619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

License Exceptions

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6D619.

List of Items Controlled

Related Controls: "Software" directly related to articles enumerated or otherwise described in USML Category XVIII is subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).

Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers," add a new ECCN 6E619 between ECCNs 6E202 and 6E990 to read as follows:

6E619 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6B619 or "software" controlled by 6D619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

License Exceptions

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6E619.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category XVIII are subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

Dated: June 9, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–14474 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 121

RIN 1400–AD03

[Public Notice: 9166]

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories XIV and XVIII

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 Categories XIV (toxicological agents, including chemical agents, biological agents, and associated equipment) and XVIII (directed energy weapons) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011. The Department of State's full plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

DATES: The Department of State will accept comments on this proposed rule until August 17, 2015.

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

- *Email:* *DDTCPublicComments@state.gov* with the subject line, "ITAR Amendment—Categories XIV and XVIII."
- *Internet:* At *www.regulations.gov,* search for this proposed rule by using this rule's RIN (1400–AD03).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not wish to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* 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. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCPublicComments@state.gov.* ATTN: ITAR Amendment—USML Categories XIV and XVIII.

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 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, which includes the Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Revision of Category XIV

This proposed rule revises USML Category XIV, covering toxicological agents, including chemical agents, biological agents, and associated equipment. The revisions are proposed in order to advance the national security objectives of greater interoperability with U.S. allies, enhancing the defense industrial base, and permitting the U.S. government to focus its resources on transactions of greater concern. Additionally, the revisions are intended to more accurately describe the articles within the subject categories, in order to establish a "bright line" between the USML and the CCL for the control of these articles.

This proposed rule implements changes consistent with the requirements of Executive Order 13546 on Optimizing the Security of Biological Select Agents and Toxins in the United States, which includes direction to address variations in, and limited coordination of, individual executive departments' and agencies' oversight that add to the cost and complexity of compliance. It also directs a risk-based tiering of the biological select agent list. As a result, the proposed control language in paragraph (b) adopts the "Tier 1" pathogens and toxins established in the Department of Health and Human Services and the United States Department of Agriculture select agent regulations (42 CFR part 73 and 9 CFR 121) for those pathogens and toxins that meet specific capabilities listed in paragraph (b). The Tier 1 pathogens and toxins that do not meet these capabilities remain controlled in Export Control Classification Number (ECCN) 1C351 or 1C352 on the CCL.

Additionally, this rule, in concert with the analogous proposed rule published by the Department of

June 28, 2015

To: DDTCPublicComments@state.gov
publiccomments@bis.doc.gov

From: William A. Root, waroot23@gmail.com

Subject: ITAR Amendment - Categories XIV and XVIII
Toxicological Agents and Directed Energy Weapons RIN 0694-AF52

The June 17, 2015 Department of State proposed rule requests public comments on eight questions:

(1) Would the State and Commerce proposed rules control all of Wassenaar Arrangement (WA) commitments embodied in Wassenaar Munitions List items ML 7 and ML 19?

State and Commerce proposed rules do not control the following from WA ML 7 and 19:

- WA ML 7.a Biological agents or radio active materials "adapted for use in war" to produce casualties in humans or animals, degrade equipment, or damage crops or the environment.
- WA ML 19.f "Laser" systems specially designed to cause permanent blindness to unenhanced vision, *i.e.*, to the naked eye or to the eye with corrective eyesight devices.

In addition, State and Commerce rules, both existing and proposed, do not control the following from related commitments embodied in Australia Group List items chemical manufacturing 6.b and biological equipment 8.b:

- 6.b Valves with closure element designed to be interchangeable
  (This subset of AG 6.a is omitted from ECCN 2B350.g)
- 8.b Nose-only exposure apparatus utilizing directed aerosol flow and having capacity for exposure of 12 or more rodents, or 2 or more animals other than rodents; and closed animal restraint tubes designed for use with such apparatus

(2) Would the State and Commerce proposed rules expand coverage beyond the Wassenaar Munitions and Dual-Use Lists?

State proposed rules expand coverage not only beyond the Wassenaar Munitions and Dual-Use Lists but also beyond the Australia Group (AG) and Chemical Weapons Convention (CWC) lists, as follows (no Commerce proposed items involve such expansion):

- XIV.a.3.iii.D Other nitrogen mustards
- XIV.a.5 Other CW agents
- XIV.g Antibodies
- XIV.h.1-3 Specific vaccines
- XIV.n Developmental countermeasures
- XVIII.f Developmental directed energy weapons

State and Commerce proposed rules continue the following existing unilateral controls beyond WA, AG, and CWC coverage:

XIV.a.3.iv,v	DA
XIV.a.4.ii, iii	DZ
XIV.h.4	Vaccines against XIV(b) biological agents

AG Note (1) An agent/pathogen is covered by this list except when it is in the form of a vaccine. (This contrasts with proposed XIV.h.1-4 vaccines.)

XIV.i	Modeling or simulation
1A607.j	Process samples
1A607.k	Medical countermeasures
1B607.a	Destruction of chemical agents
1C607.a.7-14	Riot control agents
1C351.a.50	Teschen disease
1C351.b.3	Tick-borne encephalitis
1C353.a.2, b.2...	coding ...
1C354.a.6	Raythayibactor toxicus
1C354.b.12	Pharma glycinicola

The above are clear examples of unilateral U.S. controls. The attached cross-references from multilateral items to U.S. items and from U.S. items to multilateral items include the following other examples of similarities which are not identical, *i.e.*, partially unilateral:

Multilateral WA ML					United States		
7	18	19	21	22	XIV	XVIII	ECCNs
e					f.1		1A607.e, x; 1B607.x
f.1					f.4		1A607.f
f.3							1C607.d
g							1A607.x; 1B607.x
x		x					all
	18						1B607.b, c; 6B619.a, x
		heading				e	
		a,b,c				a	
			21		m	g	1D607; 6D619
				22	m	g	1E607; 6E619

EAA Section 5(c)(6) prohibits unilateral National Security controls absent a finding of no foreign availability or active negotiations to achieve multilateral export controls. Designation of "600 series" ECCNs as controlled for Regional Stability reasons is an evasion of EAA 5(c)(6) Congressional intent. "Regional" Stability Column 1 all countries except Canada is a contradiction in terms. AG, CWC, and USML controls are not technically EAA National Security controls. However, their purpose is national security. Putting aside such legal nuances, multilateral controls are more effective than unilateral controls.

(3) Is there a sufficiently "bright line" between the USML and the CCL? Are there examples of doubtful jurisdiction based on this revision? Is the line sufficiently clear between

biological items proposed under USML XIV(b) and those proposed under the CCL?

The State proposals for new biological items in XIV(b) increase jurisdictional doubts with respect to existing items on the CCL. There are no new Commerce proposals which would have that effect. However, there are existing CCL controls for which Commerce jurisdiction is made doubtful by State USML proposals.

The existing XIV(b) definition of biological agents controlled on the USML uses language ("adapted for use in war" to produce human casualties, degrade equipment, and damage crops) which is not found on the CCL. Even though this language is in Wassenaar ML 7.a, State proposes to delete it from the USML and to substitute the following language, which is substantially the same as the following language now in the CCL:

State proposed XIV(b)

(b) Biological agents and biologically derived substances and genetic elements thereof as follows:
(1) Genetically modified biological agents:
(i) Having non-naturally occurring genetic modifications which result in an increase in any of the following:
(A) Persistence in a field environment (*e.g.*, ...); or
(B) The ability to defeat or overcome standard detection methods, ... or response to standard medical countermeasures; and
(ii) Being any microorganisms/toxins or their non-naturally occurring genetic elements as listed below: (A-L).
(XIV(b)(1)(ii)(A-L) are identical to 1C351.a.13, 14, 30, 43, 52 and 1C351.c.1, 6, 7, 8, 14, 22.)
(2) Biological agent or biologically derived substances as controlled in ECCNs 1C351, 1C353, or 1C354 (1C352 deleted because it was transferred to 1C351 on 06/16/2015):
(i) Physically modified, formulated, or produced as any of the following: (A-D); and
(ii) Meeting the criteria of paragraph (b)(2)(i) of this category in a manner that results in an increase in any of the following (A-C).

vs.

Existing Commerce 1C353

a Genetic elements that contain nucleic acid sequences
a.1 associated with the pathogenicity of microorganisms controlled by 1C351.a to .c or 1C354;
a.2 coding for any of the "toxins" controlled by 1C351.d or "sub-units of toxins" thereof.
b. Genetically modified organisms that contain nucleic acid sequences:
b.1 associated with the pathogenicity of microorganisms controlled by 1C351.a to .c or 1C354;
a.2 coding for any of the "toxins" controlled by 1C351.d or "sub-units of toxins" thereof.
Technical Note 1. "Genetic elements" include ...
3. "Nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c or 1C354" means ...
a. ... hazard to human, animal or plant health; or

b. ... cause serious harm to human, animal or plant health.

4. "Genetically modified organisms" include organisms in which the genetic material (nucleic acid sequences) has been altered in a way that does not occur naturally ...

Some of the broad State and Commerce language is the same, *e.g*., "genetic elements" and "genetically modified organisms." Commerce defines these terms. In the absence of State definitions, State will logically use the Commerce definitions. The biological agents in proposed USML XIVof concern to State are all listed on the CCL. Even where the language used by the two agencies differs, the substance seems to be the same. It is difficult to imagine a more doubtful agency jurisdiction.

Proposed new XIV.a.5 chemical warfare agents not enumerated in XIV.a.1-4 refers to Commerce-controlled agents which become State-controlled if "adapted for use in war." The Note which defines "adapted for use in war" is not a "bright line," because it omits numerical specifications for the stated purity, shelf life, and resistance to ultraviolet radiation parameters.

Proposed XIV.m controls technical data and defense services "directly related" to the other portions of XIV. The lack of a "bright line" for other portions is exacerbated for technical data and defense services because of the lack of a definition for "directly related."

(4) What items or associated technical data in revised USML Categories XIV and XVIII are in normal commercial use?

All the proposed XIV,b biological agents and associated technical data have been on the Commerce dual civil and military use list for decades. Moreover, the only identified chemical warfare agents and associated technical data in proposed new XIV.a.5 have also been on the CCL dual-use list for decades.

(5) Is "non-naturally occurring" sufficient to distinguish military or intelligence purposes from commercial or civilian purposes?

No. Technical Note 4 to 1C353 uses "does not occur naturally" in the definition of "genetically modified organisms" as used in that ECCN.

(6) Does Category XIV.b, f, g, or m inadvertently control medical countermeasures which would be in the interest of public health or medical preparedness?

XIV does control medical countermeasures which would be in the interest of public health or medical preparedness. This is not inadvertent. The following indicates that this is intentional:

XIV.b.1.i.B controls "the ability to defeat or overcome ... response to standard medical countermeasures." XIV.f, g, and m control related equipment, antibodies, and technical data.

A medical countermeasure against harmful biological agents controlled by XIV.b "would be in the interest of public health or medical preparedness." A "response" to prevent the effectiveness

of such a countermeasure would NOT "be in the interest of public health or medical preparedness." The "ability to defeat or overcome" such a "response" "would be in the interest of public health or medical preparedness." Therefore, controlling the export of such an ability would NOT "be in the interest of public health or medical preparedness."

The purpose of XIV.b.1.i.B appears to be to further the effectiveness of biological warfare rather than to "be in the interest of public health or medical preparedness." A double negative is positive; but a triple negative is still negative, unless the first negative (*i.e.*, the "response") is a warfare positive rather than a public health negative.

(7) Would the proposed rule prevent or hinder the ability to develop or utilize vaccines for public health or veterinary benefit?

Yes. The process described in Supplementary Information on page 34573, bottom of left column and top of right column, is apparently intended to justify a negative response to this question. It does not accomplish that objective. The scope of XIV.h controls of vaccines is limited by funded exclusively by DOD and specially designed for protecting against controlled biological agents which must meet specified criteria. Even so, there must be vaccines which meet those conditions. If not, the control would be meaningless. Therefore, the proposed rule may not prevent, but it would at least hinder, the ability to develop or utilize vaccines for public health or veterinary benefit.

The purpose of XIV.h appears to be to further the effectiveness of biological warfare rather than to further development or utilization of vaccines for public health or veterinary benefit.

The United States is out of step with its allies in controlling vaccine exports. The AG explicitly exempts vaccines from control.

(8) Does XIV.f.2 (for detection, identification, warning, or monitoring) unintentionally control civilian and public health equipment by virtue of Defense funding?

The XIV.f.2 wording relevant to funding is "developed under a Department of Defense contract or other funding authorization" in f.2 and ""specified by a Department of Defense contract or other funding authorization" in f.2.ii. Such wording literally covers another funding authorization from any source, not just from the Department of Defense. However, question (8) assumes that the intent is that the other funding authorization is from DOD. Unlike XIV.h, XIV.f.2 omits "exclusively" funded by DOD. This was apparently intentional. Question (8) refers to "detection equipment that may not warrant ITAR control, but contains items that are fully or partially Defense funded."

The purpose of question (8) seems to be to seek technical parameters and limits as a substitute for control based on DOD funding. Existing XIV.f.2 has neither a reference to DOD funding nor technical parameters and limits. It is limited only by "specifically designed or modified for military operations and compatibility with military equipment." This is very close to WA 7.g

"specially designed or modified for military use" and to proposed 1A607.h:

> Equipment not controlled by USML Category XIV(f) and specially designed for military use and for the detection or identification of materials specified by USML Category XIV(a) or (b)

A party to a DOD contract or other DOD funding authorization must comply with the terms of that contract or authorization, whether or not it is included in the USML. If question (8) does not elicit technical parameters and limits from the public or from USG reconsideration, then equipment for detection and identification of XIV.a and .b would be controlled only under 1A607.h.

It is unclear why question (8) is limited to XIV.f.2. The following controls are also based on DOD funding: f.1, g.1, h, i, and n. There is no need for export controls on items separately controlled by a DOD contract or other DOD funding authorization.

Cross-references from WA ML 7 and 19 to proposed USML XIV and XVIII and ECCNs

7.a Biological agents or radioactive materials, "adapted for use in war" ...
(Neither State nor Commerce controls WA 7.a.)
7.b.1.a,b,c = XIV.a.1.i,ii,iii
7.b.2.a.1-9, b.1-3, c.1-3 = XIV.a.3.i, ii, and iii.A_C; but XIV.a.3.iii.D is new and not WA
7,b,3.a BZ = XIV.a.4.i; but a.4.ii,iii are not WA, although they are now on USML
7.b.4.a LNF = XIV.e.2
7.b.4.b agent orange = XIV.e.1

7.c.1-4 = XIV.c.1-4

7.d.1-6 = 1C607.a.1-6; but a.7-14 are not WA; although they are now USML XIV.d.6-13

7.e.1 for .a or .b and 7.e.2 for .c = XIV.f.1.i
7.e.1 for .d = 1A607.e for 1C607.a.1-6; but for a.7-14 not WA; although now USML XIV.f.1

7.f.1 = XIV.f.4 + 1A607.f
7.f.2 = 1A607.g

7.g = XIV.f.2 + 1A607.h

7.h = XIV.g + 1C607.b

7.i = 1C607.c

19.a,b,c = XVIII.a
19.d = XVIII.b

19.e = 6B619.a
19.f Laser equipment causing blindness
(Neither State nor Commerce controls WA 19.f.)

Cross-references from Australia Group and CWC to USML XIV and ECCNs

Chemical precursors

1C350.d lists all 24 Australia Group-controlled precursors which are not CWC-controlled. CWC-controlled items on Schedules 1, 2, and 3 are on U.S. control lists (and WA ML 7) as follows:

CWC	U. S.	WML
1: 1-3	XIV.a.1	7.b.1
1: 4-6	XIV.a.3	7.b.2
1. 7,8	1C351.d.11, 12	
1: 9-12	XIV.c.1-4	7.c
2: 1	XIV.a.2	
2: 2	1C355.a.1.a	
2: 3	XIV.a.4.i	7.b.3
2: 4	XIV.c.5; 1C355.a.2.a*	
2: 5	1C355.a.2.b	
2: 6	1C355.a.2.c; 1C350.b.5	
2: 7	1C350.b.1	
2: 8	1C350.b.2	
2: 9	1C350.b.19	
2: 10	1C355.a.2.d; 1C350b.8, 10, 12	
2: 11	1C355.a.2.e; 1C350.b.6, 9	
2: 12	1C355.a.2.f; 1C350.b.7	
2: 13	1C350.b.20	
2: 14	1C350.b.18	
3: 1	1C355.b.1.a	7 Note 1.d**
3: 2	1C355.b.1.b	7 Note 1.a**
3: 3	1C355.b.1.c	7 Note 1.b**
3: 4	1C355.b.1.d	7 Note 1.p**
3: 5	1C350.c.3	
3: 6	1C350.c.5	
3: 7	1C350.c.4	
3: 8	1C350.c.11	
3: 9	1C350.c.10	
3.10	1C350.c.2	
3.11	1C350.c.1	
3.12	1C350.c.5	
3.13	1C350.c.6	
3.14	1C350.c.8	

3.15	1C355.b.2.a; 1C350.c.12
3.16	1C355.b.2.b
3.17	1C350.c.9

* The following 10 sub-items of 1C350.b are portions of CWC Schedule 2 item 4: 1C350.b.1, 3, 4, 11, 13, 14, 21, 22, 23, and 24. Even this is not a complete list of the CWC 2: 4 family of chemicals. Dow Chemical prepared a much longer, but inherently still incomplete, list.

** Wassenaar ML 7 Note 1 lists 15 chemicals to which WA ML 7.b and 7.d do not apply. But these four are, nevertheless, controlled by CWC Schedule 3. Existing USML XIV Note 3 lists 9 of the 15 (including these 4) plus 3 not on the WA ML 7 Note 1 list as not included in XIV(a) and (d). The State proposed XIV omits existing Note 3.

Human and Animal Pathogens and Toxins

Viruses

AG	1C351.a	1C351.b	XIV.b.1.ii
1-8	1-8		
9-16 typo error, repeats 1-8			
17	20		
18-21	9-12		
22, 23	13, 14		E, F
24-27	15-18		
28-37	21-30		
38	31		H
39-48	32-41		
49		1	
50	42		
51	43		L
52-54	44-46		
55		2	
56-58	47-49		
59	19		
	50 Teschen disease		
60	20		
61	51		
		3 Tick-borne encephalitis (Siberian subtype}	
62	52		I, J
63-66	53-56		

Bacteria

AG	1C351.c	XIV.b.1.ii

1	1	A
2-5	2-5	
6-8	6-8	C, D, B
9-13	9-13	
14	14	G
15-21	15-21	
22	22	K

Toxins

AG	1C351.d	CWC
1-10	1-10	
11, 12	11, 12	1: 8, 1: 7
13-19	13-19	

Fungi

AG	1C351.e
1, 2	1, 2

Plant Pathogens

Bacteria

AG	1C354
1-5	a.1-5
	a.6 Raythayibactor toxicus

Fungi

1-11	b.1-11
	b.12 Pharma glycinicola

Viruses

1-2	c.1,2

Genetic elements and genetically-modified organisms

AG	1C353
1	a.1
	a.2 ... coding ...
2.	b.1
	b.2 ... coding

Chemical manufacturing

AG I	US
1	2B350.a, b
2-5	2B350.c-f
6.a	2B350.g

6.b	Valves subset of 6.a with closure element designed to be interchangeable (omitted from 2B350.g)
7-9	2B350.h-j

Toxic gas monitoring

AG	
II.a, b; IV	2B351.a, b; 2D351

Technology "directly associated" with CW agents, precursors, or equipment

AG III	1E001, 1E350, 1E351, 1E355, 2E001, 2E002, 2E301

Biological equipment

AG I	2B352
1-7	a-g
8.a	h
8.b	Nose-only exposure apparatus utilizing directed aerosol flow and having capacity for exposure of 12 or more rodents, or 2 or more animals other than rodents; and closed animal restraint tubes designed for use with such apparatus
9	i

Technology "directly associated" with biological agents or equipment

AG II	1E001, 1E351, 2E001, 2E002, 2E301

Cross-references from USML XIV and XVIII and ECCNs to Multilateral and Unilateral Controls

XIV	Multilateral			Unilateral	
	WA 7	CWC	AG	Now	Proposed
a.1	b.1	1:1-3			
a.2		2:1			
a.3.i,ii,iii.A-C	b.2	1:4-6			
a.3.iii.D					Other nitrogen mustards
a.3.iv,v			x DA		
a.4.i		2:3			
a.4.ii, iii				x DZ	
a.5					Other CW agents
b.1.i			x		
b.1.ii			x		
b.2			x		
c.1-4	c.1-4	1:9-12			
c.5		2:4			
e.1, 2	b.4				
f	e				
g	h, i				x except part of WA 7.h, i
h.1-3					x special vaccines

	h.4				x	other vaccines
	i				x	modeling or simulation
	m	x	x	x	x	x
	n					x developmental countermeasures
	x	x	x	x	x	x
XVIII		WA 19				
	a	a, b, c				
	b	d				
	e	heading				
	f					x developmental
CCL		WA 7				
	1A607.e	e				
	1A607.f	f.1				
	1A607.g	f.2				
	1A607.h	g				
	1A607.j				x	process samples
	1A607.k				x	medical countermeasures
	1A607.x	e, g			x	
	1B607.a				x	destruction of chemical agents
	1B607.b	18				
	1B607.c	18				
	1B607.x	e, g			x	
	1C607.a.1-6	d				
	1C607.a.7-14				x	riot control agents
	1C607.b	h				
	1C607.c	i				
	1C607.d	f.3				
	1D607.a	21			x	
	1E607.a	22			x	
	1C350		x	x		
	1C351.a.1-49			x		
	1C351.a.50				x	Teschen disease
	1C351.a.51-56		x			
	1C351.b.1, 2			x		
	1C351.b.3				x	Tick-borne encephalitis
	1C351.c, d, e			x		
	1C353.a.1, b.1		x			

1C353.a.2, b.2		x ... coding ...	
1C354.a.1-5		x	
1C354.a.6			x Raythayibactor toxicus
1C354.b.1-11		x	
1C354.b.12			x Pharma glycinicola
1C354. c.1, 2		x	
1C355	x		
6B619.a, x	18		
6D619	21		
6E619	22		

PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

August 13, 2015

Richard P. Duncan
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
Room 2099B, 14th Street and Pennsylvania Ave. NW
Washington, D.C. 20230

Subject: Regulatory Change: RIN 0694-AF52

Dear Mr. Duncan,

PPG Industries Inc. (PPG) appreciates the opportunity to comment on the proposed changes to the United States Munition List (USML) and the Commerce Control List (CCL) under Federal Register notices 80 FR 34572 and 80 FR 34562 as they relate to Chemical Agent Resistant Coatings (CARC). CARC provides protection against chemical and biological agents as well as high corrosion resistance. CARC is available globally and is being used extensively by the commercial airline industry in Europe. For example, CARC (without IR absorbing properties) is used on the landing gear due to its superior corrosion resistance property.

Presently, the United States controls CARC under Category XIV(f)(5) of the USML: *"Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows: (5) Collective protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category."*

Based on the Federal Register notices published in June 2015, PPG understands that, in the future, some CARC would be controlled under Category XIV(f)(7) of the USML and some under the newly created Export Control Classification Number (ECCN) 1A607.f of the CCL.

It further appears that only CARC qualified to three military specifications would be covered by the USML: **(f) Equipment or items, as follows: (7) Chemical Agent Resistant Coatings that have been qualified to military specifications (MIL-DTL-64159, MIL-C-46168, or MIL-C-53039),* while all other CARC coatings would be controlled under ECCN 1A607: *Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled). f. Protection "equipment" (including air conditioning units and protective clothing): f.1. Not controlled by USML Category XIV(f); and f.2. "Specially designed" for military use and for defense against: f.2.1. Materials specified by USML Category XIV (a) or (b); or f.2.2. Riot control agents controlled in 1C607.a.*

PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

Based on this understanding, PPG submits that this proposed rule should be reconsidered altogether and, if not, at least clarified.

- **Reason for Reconsideration:**

PPG manufactures and sells coatings and sealants worldwide to various industries, including the aerospace industry. Currently, PPG does not manufacture any CARC in the United States, but does in some European countries. As PPG has a global export compliance program, PPG has become aware of the classification and treatment of CARC under the export laws in the other countries where PPG operates. More specifically, PPG has received ratings from the U.K. and the French governments regarding CARC and has been informed that, in these countries, CARC is not listed as subject to control (*See* Exhibit A).

This disparity in classification puts American companies at a competitive disadvantage as multi-national companies would rather purchase non-controlled materials for their projects. It has also been cause for some confusion particularly among these multinationals as the non-controlled product they buy in Europe becomes controlled when shipped to or through the United States. Consequently, this classification inconsistency heightens the risk for unintentional violations.

Therefore, PPG strongly recommends that the United States aligns its export control classification of CARC with that of its allies.

- **Reasons for Clarification:**

If CARC must remain export controlled in the United States, then it would be best if all CARC continued to be under the control of one agency as the current proposal of splitting the jurisdiction of CARC to both the ITAR and the EAR will only complicate the jurisdiction and classification process.

More specifically, the proposed language does not address under which agency a product being developed to meet the properties in CARC should be controlled until it is tested and qualified appropriately. Would the product be classified under ECCN 1A607 during the development phase and then move to Category XIV(f)(7) after qualification?

Additionally, PPG would like to suggest that the proposed rules be revised to add clarity to the control requirements.

- **DDTC Notice:**
  - The world "qualifies" in the proposed USML definition [**(f) Equipment or items, as follows: (7) Chemical Agent Resistant Coatings that have been qualified to military specifications (MIL–DTL–64159, MIL–C–46168, or MIL–C–53039)*] should be clarified as this language would appear to exclude any CARC paint which would generally "meet the requirements" of one of these specifications but has not been "qualified" by testing and placed on the Qualified Product List (QPL).

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Qualification testing for CARC can only be done by a limited amount of testing sites due to the sensitivity of the chemical and biological agents. Therefore, when manufacturers need to modify a previously qualified CARC paint for color or gloss, they do not always re-test the new paint. Based on the proposed definition, the manufacturer may not consider the new paint as "qualified" in the strict sense of the word and therefore might not think of controlling it under Category XIV(f)(7) of the USML.

- The current proposal seems to be limited to three specifications: MIL-DTL-64159, MIL-C-46168 and MIL-C-53039 (which, by the way, is not the correct reference for that specification, it should be "MIL-**DTL**-53039"). It would therefore appear that paints that would be qualified to other specifications, such as the relatively new military specification for Powder CARC (MIL-PRF-32348) or any non U.S.-specifications, would not be subject to the ITAR but fall under the EAR. If this was not DDTC's intent, the rule should be clarified in order to better define which CARC paints fall under the USML.

- USML Category XIV(f)(5) is currently denoted as Significant Military Equipment ("SME"), however DDTC published guidance on September 14, 2009 which specifically states that CARC is not to be considered SME. It would be much clearer if DDTC would note this exception in its updated regulation. (*See* Exhibit B)

- On July 12, 2010, PPG was informed that the CARC properties of a coating having both CARC and Infra-Red properties determine the export controls applicable to the product. Therefore, such a product would be classified under USML XIV(f)(5) as opposed to XIII(j)(2). PPG suggests that this informal guidance be stated in the regulation for clarity and completeness.

- Finally, on May 13, 2014, DDTC also advised PPG, under case GC0887-14, that items controlled on the CCL do not become subject to the ITAR simply because they are painted with CARC. As this question is frequently asked of PPG by part manufacturers, it would be helpful if DDTC could add a statement into the USML re-affirming the above advice. (*See* Exhibit C)

➢ **BIS notice:**

PPG understands that all CARC that are not qualified to the three specifications identified in the USML would now be controlled for export under ECCN 1A607. This ECCN covers:
"Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled).

PPG Industries, Inc.
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Pittsburgh, PA 15272

f. Protection "equipment" (including air conditioning units and protective clothing):
f.1. Not controlled by USML Category XIV(f); and
f.2. "Specially designed" for military use and for defense against:
f.2.1. Materials specified by USML Category XIV (a) or (b); or
f.2.2. Riot control agents controlled in 1C607.a.

- As this definition only mentions the term "equipment" and does not specifically mention the term "Chemical Agent Resistant Coatings," it is not intuitive to industry that a paint would be included into this definition. It is even more confusing for the companies which are familiar with the EU military list as the definition under ML 7.f (see below) is similar to the definition of ECCN 1A607 but does not control CARC.

  f. Protective and decontamination equipment, specially designed or modified for military use, components and chemical mixtures, as follows:

  1. Equipment designed or modified for defence against materials specified by ML7.a., ML7.b. or ML7.d., and specially designed components therefor;

  Therefore, PPG suggests that the ECCN definition be updated to either include the term CARC or the word "material" which is more likely to be thought as encompassing coatings.

Again, PPG thanks both DDTC and BIS for this opportunity to comment on these proposed rules and welcomes any questions that may arise from these comments.

Please feel free to contact Mary Lynn Smith, Military Supervisor, at 412-434-2332 or at mlsmith@ppg.com if you have any questions or concerns.

Sincerely,

P. Raymond

Patricia Doublet-Raymond
Manager, Export Compliance

EXHIBIT A

Our Ref: ERE2010/001348
Your Ref: ECRR001-150410
SPIRE Doc Ref:475400

BIS | Department for Business Innovation & Skills

Mr Carson
PPG INDUSTRIES (UK) LIMITED
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STOWMARKET
SUFFOLK
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Date: 24th May 2010

Export Control Organisation

1 Victoria Street
London
SW1H 0ET

Tel +44 (0)20 7215 4594
Enquiries +44 (0)20 7215 5000
Minicom +44 (0)20 7215 6740

www.bis.gov.uk
eco.spire@bis.gsi.gov.uk

Dear Mr Carson,

Thank you for your enquiry of 16th April 2010 for the export of goods, software and/or technology to France.

Goods, software and/or technology that we assess do not require an export licence from this Department are denoted by 'NLR' in the attached Schedule. This is because they are not listed as subject to control in any of the current legislation administered by the Export Control Organisation (ECO).

Other export controls may apply however. Please see website links found in the attached Supplementary Guidance.

Exporters are encouraged to consult the current export control legislation, to familiarise themselves with export controls and make their own evaluation of the need for export licences. These publications may be purchased from The Stationery Office (TSO) (0870 242 2345) or viewed online at The Office of Public Sector Information (OPSI) Internet site: http://opsi.gov.uk/legislation.

This assessment has been made taking into account the information given in your enquiry dated 16th April 2010 and attachments.

Yours sincerely

Validity unknown

Digitally signed by Licensing Casework Group
Date: 2010.05.24 09:09:08 BST
Reason: On behalf of the Secretary of State
Location: Department for Business, Innovation and Skills

Mr Peter Jessup
Export Control Organisation

Schedule of Goods Assessed

The following is our assessment of the goods enquired about.

#	Description	Control Entry	Relevant Legislation
1	8300 Series, High Solids Polyurethane Gloss Finish *Part No:* 8300******E	NLR	
2	8311 Series, High Solids Polyurethane Matt Finish *Part No:* 8311******E	NLR	

EXHIBIT B

9/14/09

DSP-83 Requirements for Licensing of Chemical Agent Resistant Coatings (CARC) Paint – Category XIV(f)(5)

Effective immediately, the Directorate of Defense Trade Controls no longer requires a DSP-83 to accompany licenses for the permanent export of CARC Paint under USML Category XIV(f)(5). Although USML Category XIV(f) is designated as Significant Military Equipment (SME) in its entirety, the Department has determined CARC paint does not possess "substantial military utility or capability" (see 22 CFR 120.7(a)). This determination **does not** apply to other items in USML Category XIV(f).

When submitting a DSP-5 via D-Trade, the selection of any SME category in block 11 automatically identifies the item as SME and makes the DSP-83 a mandatory document. Follow these procedures to submit your license without the DSP-83:

- Enter "XIV(f)" in Block 11.
- When asked if a DSP-83 is attached – answer "NO"
- When further asked "If SME, and a DSP-83 is not attached, state why." – answer **"DDTC Web Notice 9/14/09 ref: DSP-83 for CARC."**
- Please **do not** attach a copy of this web notice to each license submission

Any questions or concerns should be directed to Tony Dearth, Chief of Space and Missile Technology Division, deartham@state.gov.

EXHIBIT C

United States Department of State

Bureau of Political-Military Affairs
Directorate of Defense Trade Controls

Washington, D.C. 20520-0112
MAY 1 3 2014

In Reply Refer to
DTC Case GC 0887-14 (RE-ISSUE)

Ms. Mary Lynn Smith
ITAR Supervisor
PPG Industries Inc.
One PPG Place
Pittsburgh, PA 15272

YOUR LETTER DATED: March 24, 2014
SUBJECT: Classification of "600 Series" Parts and Components Enhanced with Chemical Agent Resistant Coatings (CARC)

Dear Ms. Smith:

The Department of State has reviewed your request for a determination on the requirements, or lack thereof, for validated licenses involving "600" series parts and components that have been painted with CARC. The Directorate of Defense Trade Controls has determined that CARC coating on an item, in and of itself, does not provide a military capability warranting United States Munitions List control. Hence items that are controlled on the Commerce Control List, to include vehicles and equipment, do not become subject to the International Traffic in Arms Regulations simply due to the application of CARC paint. This finding is based on numerous Commodity Jurisdiction precedents spanning ten years.

Should you require further assistance on this matter, please contact Rick Koelling, (202) 663-2828 or KoellingRW@state.gov.

Sincerely,

C. Edward Peartree
Director
Office of Defense Trade Controls Policy

AMERICAN SOCIETY FOR MICROBIOLOGY

Public and Scientific Affairs Board

August 17, 2015

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce, Room 2099B
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Re: RIN 0694–AF52

The American Society for Microbiology (ASM) commends the ongoing efforts by the US Department of State and US Department of Commerce to update and further clarify federal control regulations for Category XIV materials (Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment) included on the United States Munitions List and the Commerce Control List. These regulations have a significant influence on the microbial sciences and on public health.

The departments' recent proposed rule changes for the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) represent important steps in balancing national security against Category XIV threats with robust scientific research on such agents and relevant information exchange among researchers. The amended regulations, published in the Federal Register, include:

- Revisions to Definitions in the Export Administration Regulations [RIN 0694-AG32], Department of Commerce
- International Traffic in Arms: Revisions to Definitions of Defense Services, Technical Data, and Public Domain; Definition of Product of Fundamental Research; Electronic Transmission and Storage of Technical Data; and Related Definitions [RIN 1400-AD70], Department of State
- Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons) [RIN 0694-AF52], Commerce
- Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories XIV and XVIII [RIN 1400-AD03], State

The ASM is concerned that the proposed definition of fundamental research, as stated in RIN 1400-AD70, fails to adequately encompass the full scope of activities and outcomes of such research. We agree with other stakeholders who have questioned specifics of the new definition, such as the omission of software as part of technical data derived from fundamental research, or certain restrictions tied to proprietary information review by

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research sponsors. The too narrow definition has significant impacts on both the research community and the export of US technology.

The ASM supports the proposed rule revisions that would allow the transfer of certain Category XIV materials from ITAR's export control jurisdiction to the Commerce Department's EAR jurisdiction [RIN 0694-AF52; RIN 1400-AD03]. Other changes include needed clarifications on materials developed under Department of Defense funding. The stated intent of the revisions also includes clarification of which agents are controlled by the respective jurisdictions. Category XIV contains multiple microorganisms and toxins utilized in basic and applied research, important to both ensuring national security and improving public health. The ASM has consistently argued that any guidelines relevant to this research must be clearly understood and regularly reviewed for possible revision. The ASM believes that due to the rapidly changing scientific advances and epidemiology of many of the microorganisms listed in Category XIV, a review of the list now seems warranted.

We appreciate this opportunity to comment on the proposed changes.

Controls on Military Protection Equipment in New 600 Series Category 1A607.f.

The proposed language for paragraph 1A607.f. reads,

"f. Protection "equipment" . . .

f.1. Not controlled by USML Category XIV(f); *and*

f.2. "Specially designed" for military use and for defense against:

f.2.1. Materials specified by USML Category XIV (a) or (b); *or*

f.2.2. Riot control agents controlled in 1C607.a."

Does this mean that filter cartridges containing the developmental sorbents funded by DoD in Category XIV (n) would be controlled under 1A607.f., or would they be controlled under USML XIV (f) or (n)?

Regarding filter cartridges that meet the requirements of specification PRF-EA-2251 for the M61 filter cartridge but do not contain ASZM-TEDA carbon: Do these cartridges fall under USML category XIV (f) or (n), or are they controlled under 1A607.f.?

Comment on 1A607.a.

The tear gas and riot control agents currently listed in USML Category XIV (d) have been dropped from the proposed language for Category XIV (d) and they do not reappear as they should in the proposed language for 1A607.a.

Meridian Medical Technologies™, Inc.
6350 Stevens Forest Road
Suite 301
Columbia, Maryland 21046

August 17, 2015

Regulatory Policy Division
Bureau of Industry and Security
Room 2099B
U.S. Department of Commerce
14th Street and Pennsylvania Ave NW
Washington, DC 20230

RE: Request for Comments Regarding the Addition to the Commerce Control List of Items Determined to No Longer Warrant Control Under United States Munition List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)

RIN: 0694-AF52

To the Attention of: publiccomments@bis.doc.gov

Dear Sir or Madam,

Meridian Medical Technologies, Inc. (Meridian) thanks you for the opportunity to provide comments on the recent proposed addition to the Export Administration Regulations (EAR) of items determined to no longer warrant control under United States Munitions List (USML) Category XIV or Category XVIII.

Our comments relate to the availability of License Exception GOV in the EAR, specifically GOV §740.11(d), for 600 Series items.

Use of License Exception GOV §740.11(d) for 600 Series items

Meridian manufactures and exports medical countermeasure products currently classified under Category XIV(h) of the USML. Pursuant to the June 17, 2015 BIS proposed rule, these products will be classified under the Commerce Control List (CCL) as 1A607.k and the associated Technology as 1E607.a. These medical countermeasures are the preferred choice of the Organization for the Prohibition of Chemical Weapons (OPCW), which includes Meridian products in the medical kits carried by OPCW Health and Safety Specialists for mission support. As currently written, Section 740.2(a)(13)(v) limits the

use of License Exception GOV (§740.11) for 600 Series items to subsections §740.11(b) or §740.11.(c). Excluded from this is §740.11(d), which authorizes the use of License Exception GOV for exports related to International Inspections under the Chemical Weapons Convention. Availability of §740.11(d) for 1A607.k and 1E607.a items would allow Meridian to swiftly respond to orders from OPCW for medical countermeasure products.

Proposed Change to the EAR (in bold):

Meridian hereby requests that §740.2(a)(13)(v) be modified as follows:

"(v) License Exception GOV (§740.11(b) or (c) of the EAR, **or §740.11(d) for any item controlled under ECCNs 1A607.k and 1E607.a**)".

Further Information on OPCW's Use of Meridian's Medical Countermeasures:

OPCW's Health and Safety Specialists carry a wide variety of pharmaceuticals and medical equipment to provide medical services to their staff on missions to Member States. The units, consigned to OPCW in the Hague, are intended for use by OPCW staff only and remain in the custody of the OPCW at all times, while on missions to Member States and elsewhere. The OPCW, in cooperation with a supervising pharmacist maintains a strict control regime over such pharmaceuticals.

Therefore, we hereby request that §740.2(a)(13)(v) be modified as noted above.

***

We believe the suggested modification will allow all exporters of such medical countermeasure products be more responsive to the needs of the Organization for the Prohibition of Chemical Weapons, and to provide critical medical treatment options for their personnel.

Thank you for considering our comments.

Respectfully,

Amy Weber

Amy Weber
Manager, Trade Controls
Amy.weber@meridianmt.com
443-259-7856

NORTHROP GRUMMAN

Northrop Grumman Corporation
Corporate Office

Global Trade Management
2980 Fairview Park Drive
Falls Church, VA 22042

August 17, 2015

Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
Room 2099B
14th Street and Pennsylvania Ave, NW
Washington, D.C. 20230

ATTN:
Bureau of Industry and Security

SUBJECT: RIN 0694-AF52

To whom it may concern

Northrop Grumman Corporation (NGC) wishes to thank the Department for the opportunity to submit comments in review of RIN 0694-AF52 (Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)). In response, NGC provides the following recommendations:

ECCN 1A607:

As noted in, and to be consistent with NGC's comments to the Department of State, recommend the protective items currently listed in Category XIV(f)(4) be moved to the CCL under 1A607. This proposed ECCN provides more than adequate levels of control and such classification would better enable exports to our allies as well as support individuals deploying in support of USG Operations.

BAG Exception: NGC also recommends adding special provisional language to § 740.14 BAGGAGE (similar to that of § 740.14 (h) Special provisions: personal protective equipment classified under ECCN 1A613.c or .d) to allow for the use of this exception for items controlled by 1A607.

Should clarification or subsequent technical discussions be necessary, please contact either Steve Headley at james.headley@ngc.com, (703 280-4806), or myself at thomas.p.donovan@ngc.com (703-280-4045).

Sincerely,

Thomas P. Donovan
Director, Export Management
Global Trade Management

As of: 8/19/15 3:13 PM

Received: June 26, 2015

Status: Pending_Post

Tracking No. 1jz-8jn2-9x1e

Comments Due: August 17, 2015

Submission Type: Web

Docket: BIS-2015-0023

Commerce Control List: Addition of Items Determined to No Longer Warrant Control under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)

Comment On: BIS-2015-0023-0001

Commerce Control List: Items Determined to No Longer Warrant Control under United States Munitions List Category XIV or Category XVIII

Document: BIS-2015-0023-DRAFT-0001

Comment on FR Doc # 2015-14474

Submitter Information

Name: Ryan Jakobe

General Comment

I completely oppose this proposal.

With the new proposal published on June 3, the State Department claims to be "clarifying" the rules concerning "technical data" posted online or otherwise "released" into the "public domain." To the contrary, however, the proposal would institute a massive new prior restraint on free speech.

Gunsmiths, manufacturers, reloaders, and do-it-yourselfers could all find themselves muzzled under the rule and unable to distribute or obtain the information they rely on to conduct these activities.

SCOTT SAFETY
A Tyco Business

4320 Goldmine Road | Monroe, NC 28110 | USA

August 17, 2015

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20235

Re: BIS-2015-0023 (RIN 0694-AF52)

Dear Sirs/Madams:

I am writing on behalf of Scott Technologies Inc. (a/k/a Scott Safety) a premier manufacturer of innovative respiratory and personal protective equipment and safety devices for firefighters, industrial workers, police squads, militaries, homeland security forces, and rescue teams around the world. With five global manufacturing locations, Scott products protect thousands of individuals each day from environmental hazards including smoke, toxic fumes, combustible gasses, falling objects and contaminants. For decades, the companies of Scott Safety have been adapting, bringing new products to market, moving into new industries and expanding into new regions.

Scott Safety is specifically interested in contributing to the export reform effort in order to ensure that the resulting regulations do not have an adverse impact on the industries we serve. As a result, Scott Safety is providing the following comments in response to the U.S. Departments of State and Commerce's request for public comment on the proposed revision of U.S. Munitions List Category XIV – Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment. Specifically Cat XIV(f) relating to equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment.

Scott Safety recommends that DDTC / BIS move forward in aligning USML Cat XIV(f) under the new proposed ECCN 1A607: Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents) and related commodities. Alignment under the new ECCN will allow for better accessibility for the sales and marketing of current products originally designed for military use, but now being used daily in the commercial arena. In addition, aligning 1B607 to cover test, inspection, and production equipment and related commodities "specially designed" for the development or development, production, repair, overhaul, or refurbishing of items classified under ECCN 1A607 or 1C607 or USML

Re: BIS-2015-0023 (RIN 0694-AF52)

Category XIV would allow for easier maintenance of service, warranty and repairs of products classified under 1A607. ECCN 1E607 will allow for easier collaboration between facilities in the United States and those located in A:5 countries on new product development, as well as the service, warranty and repair of such items.

Moving these items to a different export control regime, will significantly change exporters' compliance obligations, as these items will have different licensing vehicles and export control requirements. The products manufactured by Scott are for the protection of individuals against contaminants such as tear gas, riot control and CBRN (chemical/biological/radiological/nuclear) agents.

Thank you for the opportunity to provide this comment.

Sincerely,

Deborah Allen

Deborah Allen
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August 17, 2015

Sent via email to: publiccomments@bis.doc.gov

Timothy Mooney
Regulatory Policy Division
Bureau of Industry and Security
US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Comments on Proposed Export Control Classification Number 1A607, RIN 0694-AF52

Dear Mr. Mooney:

Smiths Detection ("Detection"), a division of Smiths Group plc, appreciates the opportunity to comment on the proposed changes to the Commerce Control List ("CCL") of the Export Administration Regulations ("EAR"), as described in the Commerce Department, Bureau of Industry and Security's ("BIS") proposed rule published in the *Federal Register* on June 17, 2015 (80 *Fed. Reg.* 34562 (June 17, 2015)) (the "Proposed Rule"). The Proposed Rule proposed additions to the CCL to accommodate items slated for removal from Categories XIV and XVIII of the U.S. Munitions List ("USML") of the International Traffic in Arms Regulations ("ITAR") as part of the Administration's Export Control Reform initiative. Detection supports the goals of Export Control Reform, especially of establishing a "bright line" between the two current control lists to determine on which list an item is controlled. The development of "positive lists" to describe controlled items, using objective criteria, and the elimination, to the extent possible, of broad, open-ended, subjective, generic, or design intent-based criteria from the USML and the CCL will support the overall goals of export reform.

Please accept our comments below on the Proposed Rule. Our comments address only the proposed transition of items currently classified under USML Category XIV.

USML Category XIV in its current form controls toxicological agents, including chemical agents, biological agents, and associated equipment, including, in paragraph (f)(2), equipment and its components, parts, accessories, and attachments, specifically

designed or modified for military operations, for the detection, identification, warning or monitoring of the chemical and biological agents listed in paragraphs (a) and (b). Examples of Detection items that are controlled under paragraph (f) (2) now are: Joint Program Chemical Agent Detectors which are worn and / or hand-carried by military personnel; stationary Biological Agent Detectors which were developed for the U.S. Army and are still in use by several foreign governments military organizations.

We read the Proposed Rule (in coordination with the State Department's proposed rule revising USML Category XIV) as transferring to BIS jurisdiction over all currently existing ITAR-controlled detection equipment specially designed for military use for the detection of agents listed in the proposed USML Category XIV (a) or (b), unless the detection equipment is classified or relates to classified information (classified items will remain covered in proposed Category XIV (f) (8)). All currently existing, non-classified, military detection equipment will be classified under the proposed Export Control Classification Number ("ECCN") 1A607.h, which will cover "'equipment' not controlled by USML Category XIV (f), and 'specially designed' for military use and for the detection or identification of materials specified by USML Category XIV(a) or (b). . . ." The only non-classified military detection equipment that will remain controlled on the USML should the State Department proposed revisions to Category XIV become final would be military detection equipment developed under Department of Defense ("DoD") contract or other funding authorization, which will be covered under proposed Category XIV(f)(2). However, Note 3 to the proposed Category XIV(f)(2) indicates that (f)(2) will only be applicable to contracts dated one year after the date of publication of the final rule, or later. Thus, when Category XIV becomes final, paragraph (f)(2) will be empty and will cover nothing for at least one year. That is, it seems that the only non-classified military detection equipment that will be included on the USML will be non-classified detection equipment that is developed under DoD funding in the future, and all non-classified detection equipment existing now, even if developed with DoD funding, would move to 1A607.

Because determining jurisdiction based on the date of DoD funding is a relatively novel approach to commodity jurisdiction, and because there was no discussion of this issue in either the preamble to the Proposed Rule, or the State Department's companion rule, we ask for BIS's affirmative confirmation that our understanding is correct. As we understand that BIS can only address the content of its own proposed rules, we ask that BIS confirm our understanding that the proposed 1A607.h will cover all currently existing, non-classified military detection equipment, and all future, non-classified military detection equipment developed under contract or other funding authorization, DoD or otherwise, up to 364 days after publication of the State Department final rule revising Category XIV.

The proposed 1A607.x, if it becomes final in its proposed form, will cover "'parts,' 'components,' 'accessories' and 'attachments' that are 'specially designed' for a commodity controlled by ECCN 1A607.e, .f, .g. or .j or for a defense article controlled by

USML Category XIV(f)" and not enumerated or otherwise described elsewhere on the USML. We note the omission of 1A607.h from the list of sections in paragraph .x for which parts, components, etc., are controlled. We are reading this as a proposed decontrol for all specially designed parts and components for all non-classified military detection equipment currently in existence (and thus excluded from the proposed Category XIV(f)(2) as explained above), unless such parts, components, etc., are covered elsewhere on the CCL. Again, because this would be a significant change from the current controls and was not specifically addressed in the preamble to the Proposed Rule, Detection asks for BIS's affirmative confirmation that this reading is correct. Detection reads the proposed 1A607.x as covering only those parts and components, etc., specially designed for military detection equipment developed in the future, under DoD contract or funding authorization dated one year or later after the State Department final rule revising Category XIV, or for military detection equipment that is classified and thus covered under proposed Category XIV(f)(8).

Omission of a reference to 1A607.h in the proposed 1A607.x is somewhat surprising in light of the inclusion in 1A607.x of a reference to 1A607.j. The proposed 1A607.j covers "equipment specially designed to interface with a detector ... controlled by the USML or a 600 Series ECCN, *and* collect and process samples of articles controlled in USML Cat. XIV(a) or (b)." Thus, the proposed 1A607.x would capture specially designed parts and components for equipment specially designed to interface with 1A607.h detectors, but it would not capture specially designed parts and components of the 1A607.h detectors themselves. Detection would welcome BIS's explanation of the policy rationale underlying the apparent decontrol of specially designed parts, components, etc., of all currently existing non-classified military detection equipment, in light of the retention of controls for specially designed parts, components, etc., of equipment designed to interface with such detection equipment. Detection submits that the specially designed parts, components, etc., of 1A607.j equipment designed to interface with 1A607.h detection equipment merit decontrol just as much as the specially designed parts, components, etc., of the 1A607.h detection equipment.

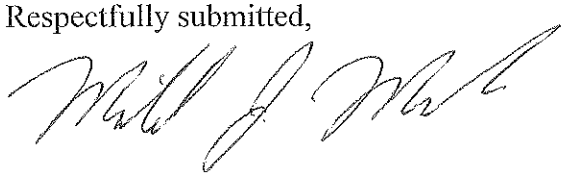
The control of military detection "equipment" in 1A607.h could, itself, also include control over certain components, etc., thereof. The definition of "equipment" provides that equipment "is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a function of, as, or for an end item or system," but that "[e]quipment that does not meet the definition of an end-item is a part, component, accessory, attachment, firmware, or software." However, we note that, as "equipment" must first be a "combination" of parts, components, etc., "equipment" could never be just a single "part," because the definition of "part" makes clear that a part is a "single, unassembled element," and so could not be a "combination." Still, the definition of "equipment" is sufficiently broad to cover certain components, etc., otherwise meeting the definition. If the word "equipment" as used in 1A607.h is intended to cover components, etc., of detection equipment, in lieu of the same being controlled under 1A607.x, then it would be inconsistent with the treatment of 1A607.j

"equipment," the specially designed parts, components, etc., of which are expressly covered under 1A607.x. Such an interpretation could thus lead to confusion. If that was the intention, we submit that BIS should instead cover specially designed parts, components, etc., of 1A607.h items by reference to 1A607.h in 1A607.x, or else explicitly explain its intended interpretation of "equipment" in a note to 1A607.h, or at the very least, in the preamble to the final rule establishing 1A607. However, we think the better interpretation would be that the Proposed Rule would decontrol specially designed parts, components, etc., of existing non-classified military detection equipment, unless covered elsewhere on the CCL.

We would welcome BIS's elaboration in the final rule on the scope of 1A607.h and .x and whether our interpretation of the proposed language is consistent with BIS's interpretation, and with the control policy decisions underlying the Proposed Rule. Due to the degree of change between the proposed controls over military detection equipment and its specially designed parts, components, etc., and the novel way in which ITAR jurisdiction is proposed to be retained over certain non-classified military detection equipment developed in the future, we think discussion of the same in the preamble to the final rule or in notes to 1A607 is appropriate, and would help avoid confusion by members of the trade community.

Once again, we appreciate the opportunity to comment on the Proposed Rule and we applaud the Administration for moving forward with this important initiative. If you have any questions or would like additional information, please do not hesitate to contact Paula Ireton, Trade Compliance Officer for Detection, at (410) 612-2501 or paula.ireton@smithsdetection.com.

Respectfully submitted,



Michael J. Mendelson
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August 17, 2015

Mr. C. Edward Peartree, Director
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Directorate of Defense Trade Controls
Department of State
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Washington, DC 20522–0112

Ms. Hillary Hess, Director
Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security
Department of Commerce
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Subject: ITAR Amendment—Categories XIV and XVIII; RIN 1400-AD03 & 0694-AF52

Reference: Federal Register/ Vol. 80, No. 116/ Wednesday, June 17, 2015/ Proposed Rule: International Traffic in Arms ("ITAR") (Revisions of U.S. Munitions List Categories XIV and XVIII)
Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)

Dear Mr. Peartree, Ms. Hess,

The Boeing Company ("Boeing") appreciates the opportunity to provide comments on the proposed *ITAR: Revisions of U.S. Munitions List Categories XIV and XVIII* and *CCL: Addition of Items Determined to No Longer Warrant Control Under USML Category XIV or Category XVIII*, published June 3rd 2015.

We have reviewed the proposed changes to U. S. Munitions List ("USML") Category XVIII – Directed Energy Weapons and the related items for movement from the USML to the export control jurisdiction of the Commerce Control List ("CCL"). Overall, these changes appear appropriate and clear. Movement of tooling, production equipment, test & evaluation equipment, test models and related articles of commodities related to USML Category XVIII reflects the objectives of Export Control Reform and we appreciate the interagency effort to affect this change.

Thank you for the opportunity to provide comments. Please do not hesitate to contact me if you have any questions or need additional information. I can be reached at 703-465-3505 or via email at christopher.e.haave@boeing.com.

Sincerely,

Christopher Haave
Director, Global Trade Controls