Dated: November 28, 2011.
Ellen O. Tauscher,
Under Secretary, Arms Control and International Security, Department of State.
[FR Doc. 2011–30977 Filed 12–5–11; 8:45 am]
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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 7702]

RIN 1400–AC77

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

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President’s Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category VII (ground vehicles) of the U.S. Munitions List (USML) to describe more precisely the military ground vehicles warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until January 20, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

• Email: DDTCResponseTeam@state.gov with the subject line, “ITAR Amendments—Category VII.”

• Internet: At www.regulations.gov, search for this notice by using this rule’s RIN (1400–AC77).

Comments received after that date will be considered if feasible, but consideration cannot be assured. We will make all comments (including any personally identifying information or information for which a claim of confidentiality is asserted in those comments or their transmittal emails) 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 ADDITIONAL INFORMATION CONTACT:
Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792, or email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, USML Category VII.

SUPPLEMENTARY INFORMATION: On December 10, 2010, the Department published as a proposed rule a revised Category VII that included tiering (75 FR 76930). As discussed below, the tiering of the categories has been postponed. In this regard, this revision differs from the earlier one. Because the differences between the two proposed versions of Category VII are considerable, the Department will not provide an assessment of public comments received from the first proposed rule, but welcomes comments on this proposed rule from all parties. If you submitted comments in response to the December 2010 rulemaking, please re-submit your comments, if they are still appropriate.

Background

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 in 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.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration’s plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (see “Commerce Control List: Revising Descriptions of Items and Foreign Availability,” 75 FR 76664 (Dec. 9, 2010) and “Revision to the United States Munitions List,” 75 FR 76935 (Dec. 10, 2010)). The notices also called for the establishment of a “bright line” between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration’s ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with our allies, enhancing our defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and re-export of more significant items to destinations, end uses, and end users of greater concern than our NATO and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning them on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters’ internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Revision of Category VII

This proposed rule revises USML Category VII, Ground Vehicles, to establish a clear “bright line” between the USML and the CCL for the control of military ground vehicles. The proposed revision narrows the types of ground vehicle controlled on the USML to only those that warrant control under the stringent requirements of the Arms Export Control Act. Changes include the removal of most unarmed and unarmed military vehicles, trucks, trailers, and trains (unless “specially designed” as firing platforms for weapons) from the USML. Armored vehicles (either unarmed or with inoperable weapons) manufactured
before 1956. Also, this revision removes
gas turbine engines designed for ground
vehicles from inclusion in this category.
Gas turbine engines for articles
controlled in this category will likely be
included in proposed Category XIX,
which will be the subject of a separate
notice.
This proposed rule also would
remove from reserved status § 121.4
and define therein “ground vehicles”
for purposes of the revised USML Category VII.

The most significant aspect of this
more positive, but not yet tiered,
proposed USML category is that it does
not contain controls on all generic parts,
components, accessories, and
attachments that are specifically
designed or modified for a defense
article, regardless of their significance to
maintaining a military advantage for the
United States. Rather, it contains a
positive list of specific types of parts,
components, accessories, and
attachments that continue to warrant
control on the USML. All other parts,
components, accessories, and
attachments will become subject to the
new 600 series controls in Category 0 of
the CCL that we anticipate will be
published separately by the Department
of Commerce. The Administration has
also proposed revisions to the
jurisdictional status of certain militarily
less significant end items that do not
warrant USML control, but the primary
impact of this proposed rule will be
with respect to current USML controls
on parts, components, accessories, and
attachments that no longer warrant
USML control.

Definition for Specially Designed

Although one of the goals of the
export control reform initiative is to
describe USML controls without using
design intent criteria, a few of the
controls in the proposed revision
nonetheless use the term “specially designed.” It is, therefore, necessary for
the Department to define the term. Two
definitions have been proposed to date.
The Department first provided a draft
definition for “specially designed” in
the December 2010 ANPRM (75 FR
76935) and noted the term would be
used minimally in the USML, and then
only to remain consistent with the
Wassenaar Arrangement or other
multilateral regime obligations, or when
no other reasonable option exists to
describe the control without using the
term. The draft definition provided at
that time is as follows: "For the
purposes of this Subchapter, the term
“specially designed” means that the
end-item, equipment, accessory,
attachment, system, component, or part
(see ITAR § 121.8) has properties that (i)
Distinguish it for certain predetermined
purposes, (ii) are directly related to the
functioning of a defense article, and (iii)
are used exclusively or predominantly
in or with a defense article identified on
the USML.”

The Department of Commerce
subsequently published on July 15,
2011, for public comment the
Administration’s proposed definition of
“specially designed” that would be
common to the CCL and the USML. The
public provided more than 40
comments on that proposed definition
on or before the September 13 deadline
for comments. The Departments of State,
Commerce, and Defense are now
reviewing those comments and related
issues, but based on a preliminary
evaluation of the comments and other
considerations, the Departments of State
and Commerce plan to publish for
public comment another proposed rule
on a definition of “specially designed”
that would be common to the USML
and the CCL. For the purpose of
evaluation of this proposed rule,
reviewers should use the definition
provided in the December 2010
ANPRM.

Request for Comments

As the U.S. Government works
through the proposed revisions to the
USML, some solutions have been
adopted that were determined to be the
best of available options. With the
thought that multiple perspectives
would be beneficial to the USML
revision process, the Department
welcomes the assistance of users of the
lists and requests input on the
following:
(1) A key goal of this rulemaking is to
ensure the USML and the CCL together
control all the items that meet
Wassenaar Arrangement commitments
embodied in Munitions List Category 6
(ML 6). To that end, the public is asked
to identify any potential lack of
coverage brought about by the proposed
rules for Category VII contained in this
FRN and the new Category 0 ECCNs
published separately by the Department
of Commerce, when reviewed together.
(2) This amendment removes from the
USML unarmed but armored military
vehicles manufactured prior to 1956.
The rationale is to discontinue
controlling on the USML vehicles of
almost no military significance.
Armored military vehicles
manufactured after 1955 would be
maintained on the USML. We ask the
public to provide input on the efficacy of
splitting jurisdiction for these vehicles
between the USML and the CCL.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the
opinion that controlling the import and
export of defense articles and services is
a foreign affairs function of the United
States Government and that rules
implementing this function are exempt
from § 553 (Rulemaking) and § 554
(Adjudications) of the Administrative
Procedure Act. Although the
Department is of the opinion that this
rule is exempt from the rulemaking
provisions of the APA, the Department
is publishing this rule with a 45-day
provision for public comment and
without prejudice to its determination
that controlling the import and export of
defense services is a foreign affairs
function. As noted above, and also
without prejudice to the Department
position that this rulemaking is not
subject to the APA, the Department
previously published a related Advance
Notice of Proposed Rulemaking (RIN
1400–AC78) and a related Notice of
Proposed Rulemaking (RIN 1400–AC77),
and accepted comments for 60 days in
response to both notices.

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act of 1995

This proposed amendment does not
involve a mandate that will result in the
expenditure by State, local, and tribal
governments, in the aggregate, or by the
private sector, of $100 million or more
in any year and it will not significantly
or uniquely affect small governments.
Therefore, no actions were deemed
necessary under the provisions of the
Unfunded Mandates Reform Act of
1995.

Small Business Regulatory Enforcement
Fairness Act of 1996

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

Executive Orders 12372 and 13132

This proposed amendment will not
have substantial direct effects on the
States, on the relationship between the
national government and the States, or
on the distribution of power and
responsibilities among the various
levels of government. Therefore, in
accordance with Executive Order 13132,
it is determined that this proposed
amendment does not have sufficient
federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866
The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988
The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175
The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Executive Order 13175 does not apply to this rulemaking.

Executive Order 13563
The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

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

List of Subjects in 22 CFR Part 121
Arms and munitions, Exports
Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

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


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

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

Category VII—Ground Vehicles

*(a) Armored combat ground vehicles (see § 121.4 of this subchapter) as follows:
(1) tanks; or
(2) infantry fighting vehicles.
*(b) Ground vehicles (not enumerated in paragraph (a) of this category) and trailers that are armed or are “specially designed” to serve as a firing or launch platform (see § 121.4 of this subchapter).
*(c) Ground vehicles and trailers equipped with any mission systems controlled under this subchapter (see § 121.4 of this subchapter).

(d) [Reserved]
*(e) Armored support ground vehicles (see § 121.4 of this subchapter).
*(f) [Reserved—for articles formerly controlled under this paragraph see Category XIX and ECCN 0A606.]&
(g) Ground vehicle components, parts, accessories, attachments, and associated equipment as follows:
(1) armored hulls, armored turrets, and turret rings;
(2) active protection systems (i.e., defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vehicle) and parts and components “specially designed” therefor;
(3) composite armor parts and components “specially designed” therefor;
(4) spaced armor components and parts, including slat armor components and parts “specially designed” therefor;
(5) reactive armor parts and components;
(6) electromagnetic armor parts and components, including pulsed power parts and components “specially designed” therefor;
(7) built-in test equipment (BITE) to evaluate the condition of weapons or other mission systems for vehicles identified in this category. This does not include BITE that provides diagnostics solely for a subsystem or component for the basic operation of the vehicle.
(8) gun mount, stabilization, turret drive, and automatic elevating systems, and parts and components “specially designed” therefor;
(9) self-launching bridge components rated class 60 or above for deployment by vehicles enumerated in this category;
(10) suspension components as follows:
(i) rotary shock absorbers “specially designed” for the vehicles weighing more than 30 tons in this category; or
(ii) torsion bars “specially designed” for the vehicles weighing more than 50 tons in this category;
(11) kits “specially designed” to convert a vehicle enumerated in this category into either an unmanned or a driver-optional vehicle. For a kit to be controlled by this paragraph, it must, at a minimum, include equipment for:
(i) remote or autonomous steering;
(ii) acceleration and braking; and
(iii) a control system;
(12) fire control computers, mission computers, vehicle management computers, integrated core processors, stores management systems, armaments control processors, vehicle-weapon interface units and computers;
(13) test or calibration equipment for the mission systems of the vehicles controlled in this category, except those enumerated elsewhere; or
*(14) any component, part, accessory, attachment, equipment, or system that:
(i) is classified;
(ii) contains classified software; or
(iii) is manufactured using classified production data; or
(iv) is being developed using classified information.

Classified” means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

Note: Parts, components, accessories, and attachments “specially designed” for vehicles enumerated in this category but not listed in Category VII(g) are subject to the EAR under ECCN 0A606.

(h) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (g) of this category (see § 125.4 of this subchapter for exemptions).
* * * * *

3. Section 121.4 is added to read as follows:

121.4 Ground vehicles.

(a) In Category VII, “Ground Vehicles” means developmental, production, or inventory ground vehicles, whether manned or unmanned, that:
(1) are armed or are “specially designed” to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (e.g., firing lasers, launching rockets, firing missiles, firing mortars, firing artillery rounds, or firing other ammunition greater than .50 caliber);
(2) are armored support vehicles capable of off-road or amphibious use “specially designed” to transport or deploy personnel or materiel, or to move with other vehicles over land in
close support of combat vehicles or troops (e.g., personnel carriers, resupply vehicles, combat engineer vehicles, recovery vehicles, reconnaissance vehicles, bridge launching vehicles, ambulances, and command and control vehicles); or

(3) incorporate any “mission systems” controlled under this subchapter.

“Mission systems” are defined as “systems” (see §121.8(g) of this subchapter) that are defense articles that perform specific military functions, such as by providing military communication, target designation, surveillance, target detection, or sensor capabilities.

Note: “Armored” ground vehicles, for purposes of paragraph (a) of this section, (i) are ground vehicles that have integrated, fully armored hulls or cabs, or (ii) are ground vehicles on which add-on armor has been installed to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better. “Armored” vehicles do not include those that are merely capable of being equipped with add-on armor.

(b) Ground Vehicles “specially designed” for military applications that are not identified in (a) of this section are subject to the EAR under ECCN 0A606, including any unarmed ground vehicles, regardless of origin or designation, manufactured prior to 1956 and unmodified since 1955. Modifications made to incorporate safety features required by law, are cosmetic (e.g. different paint, repositioning of bolt holes), or that add parts or components otherwise available prior to 1956 are considered “unmodified” for the purposes of this subparagraph. ECCN 0A606 also includes unarmed vehicles derived from otherwise EAR99 civilian vehicles that have been modified or otherwise fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better and that do not have reactive or electromagnetic armor.

Dated: 28 November 2011.

Ellen O. Tauscher,
Under Secretary, Arms Control and International Security, Department of State.

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DEPARTMENT OF STATE
22 CFR Part 171
[Public Notice 7710]

Privacy Act; Notice of Proposed Rulemaking: State-78, Risk Analysis and Management Records

SUMMARY: Notice is hereby given that the Department of State proposes to amend its Privacy Act regulation exempting portions of a newly created system of records from certain provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a). Certain portions of the Risk Analysis and Management (RAM) Records, State-78, system of records contain criminal investigation records, investigatory material for law enforcement purposes, confidential source information and are proposed to be exempted under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

DATES: Comments on this system of records must be submitted by January 17, 2012.

ADDRESSES: Any persons interested in commenting on the proposed exemptions of the new system of records may do so by writing to the Director, Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

FOR FURTHER INFORMATION CONTACT: Director, Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

SUPPLEMENTARY INFORMATION: A notice of proposal to create a new system of records (Public Notice XXXX) is published elsewhere in the Federal Register. The proposed system, Risk Analysis and Management (RAM) Records, State-78, will support the vetting of directors, officers, or other employees of organizations who apply for Department of State contracts, grants, cooperative agreements, or other funding. The information collected from these organizations and individuals is specifically used to conduct screening to ensure that Department funds are not used to provide support to entities or individuals deemed to be a risk to U.S. national security interests. The records may contain criminal investigation records, investigatory material for law enforcement purposes, and confidential source information.

The Department of State proposes to amend 22 CFR part 171 to exempt portions of the Risk Analysis and Management Records system of records from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G), (H), and (I), (e)(5) and (8), (f), (g), and (h) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), pursuant to 5 U.S.C. 552 a (j)(2) and from subsections (c)(3)(d), (e)(1), (e)(4)(G), (H), and (I), and (I) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

Dated: November 16, 2011.

Keith D. Miller,
Director, Office of Operations, Bureau of Administration, U.S. Department of State.

List of Subjects in 22 CFR Part 171:
Privacy.

Title 22, part 171 covering certain records in State-78 is proposed to be amended as follows:

PART 171—[AMENDED]

1. The authority citation for part 171 continues to read as follows:


2. Section § 171.36 is amended by adding the following exemptions to paragraphs (a)(2), (b)(1), (b)(2), and (b)(5) to read as follows:

§ 171.36 Exemptions [Amended]

(a) * * *

(2) * * *

Risk Analysis and Management Records, STATE–78.

(b) * * *

(1) * * *

Risk Analysis and Management Records, STATE–78.

(2) * * *

Risk Analysis and Management Records, STATE–78.

(5) * * *

Risk Analysis and Management Records, STATE–78.

[FR Doc. 2011–31267 Filed 12–5–11; 8:45 am]

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