License Exceptions

**CIV:** N/A.

**TSR:** N/A.

**STA:** Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any “software” in 1D613.

Related Controls: Technical data directly related to articles controlled by USML Category X is subject to the control of USML paragraph X(e) of the ITAR. See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

**Related Definitions:** N/A.

**Items:**

- “Software” (other than “software” controlled in paragraph .y of this entry) specially designed for the “development,” “production,” operation or maintenance of commodities controlled by ECCNs 1A613 (except 1A613.y) or 1B613 (except 1B613.y).
- “Software” (other than “software” controlled in paragraph .y of this entry) specially designed for the “development,” “production,” operation or maintenance of commodities controlled by ECCNs 1A613 (except 1A613.y) or 1B613 (except 1B613.y).
- “Software” controlled by ECCNs 1A613 (except 1A613.y) or 1B613 (except 1B613.y).

License Requirements

**Reason for Control:** NS, RS, AT

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<tr>
<th>Control(s)</th>
<th>Country chart</th>
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<td>NS applies to entire entry except 1D613.y.</td>
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License Exceptions

**CIV:** N/A.

**TSR:** N/A.

**STA:** Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any “software” in 1D613.

List of Items Controlled

**Unit:** $ value.

Related Controls: “Software” directly related to articles controlled by USML Category X is subject to the control of USML paragraph X(e) of the ITAR. See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

**Related Definitions:** N/A.

**Items:**

- “Technology” (other than “technology” controlled by paragraph .y of this entry) required for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or “software” controlled by ECCNs 1A613 (except 1A613.y), 1B613 (except 1B613.y), or 1D613 (except 1D613.y).

License Requirements

**Reason for Control:** NS, RS, AT

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</table>

License Exceptions

**CIV:** N/A.

**TSR:** N/A.

**STA:** Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any “technology” in 1E613.

List of Items Controlled

**Unit:** $ value.

**DEPARTMENT OF STATE**

22 CFR Part 121

[Public Notice 7915]

RIN 1400–AD16

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

**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 X...
(personal protective equipment and shelters) of the U.S. Munitions List (USML) to describe more precisely the materials warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until July 23, 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 Amendment—Category X.”
- **Internet:** At www.regulations.gov, search for this notice by using this rule’s RIN (1400–AD16).

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 desire 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: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, USML Category X.

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.

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 Definitions of Items and Foreign Availability,” 75 FR 76664 (December 9, 2010) and “Revisions to the United States Munitions List,” 75 FR 76935 (December 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 about 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 U.S. allies, enhancing the defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and reexport of more significant items to destinations, end-uses, and end-users of greater concern than NATO allies 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 it 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. This would 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 X

This proposed rule revises USML Category X, covering personal protective equipment and shelters, to advance the national security objectives set forth above and to more accurately describe the articles within the category, in order to establish a “bright line” between the USML and the CCL for the control of these articles.

Body armor enumerated in paragraph (a)(1) would be that which meets or exceeds NIJ Standard-0101.06 Type IV. Type III body armor would be controlled on the CCL in proposed ECCN 1A613.

Anti-gravity suits, pressure suits, and atmosphere diving suits, currently controlled in paragraphs (a)(3), (a)(4), and (a)(5), respectively, would become subject to the EAR.

Paragraph (a)(7) would control certain protective goggles, spectacles, and visors with an optical density of 3 or greater.

Permanent and transportable shelters, currently controlled in paragraph (b), as well as equipment for the production of articles covered in this category (current paragraph (c)), would be controlled on the CCL in ECCNs 1A613 and 1B613, respectively.

Paragraph (d), which controls parts and components, is limited in scope to include only ceramic or composite body armor plates, laser protective lenses for the articles enumerated in (a)(7), and classified hardware. As with the revision of other categories, the USML will not control all generic, non-specific parts, components, accessories, and attachments that are in any way specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. These items would become subject to the new 600 series controls in Category 1 of the CCL, to be published separately by the Department of Commerce.

Finally, paragraph (f), which currently provides interpretations of Category X, is removed and placed in reserve.

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 proposed definitions have been
published 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 obligation 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, and 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. In the interim, and for the purpose
of evaluation of this proposed rule,
reviewers should use the definition
provided in the December 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 13
(WA–ML13). To that end, the public is
asked to identify any potential lack of
coverage brought about by the proposed
rules for Category X contained in this
notice and the new Category 1 ECCNs
published separately by the Department
of Commerce when reviewed together.

(2) The key goal of this rulemaking is
to establish a “bright line” between the
USML and the CCL for the control of
these materials. The public is asked to
provide specific examples of materials
and miscellaneous articles whose
jurisdiction would be in doubt based on
this revision.

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 (APA). 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 accepted comments
for 60 days.

Regulatory Flexibility Act

Since the Department is of the
opinion that this rule is exempt from the
rulemaking provisions of 5 U.S.C. 553,
it does not require analysis under the
Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This 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
does have reviewed the proposed rule
to ensure its consistency with the
regulatory philosophy and principles set
forth in the Executive Order.

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.

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 preemp tribal law.
Accordingly, Executive Order 13175
does not apply to this rulemaking.

Paperwork Reduction Act

This proposed amendment does not
impose any new reporting or
recordkeeping requirements subject to
the Paperwork Reduction Act, 44 U.S.C.
Chapter 35.
List of Subjects in 22 CFR Part 121
Arms and munitions, Exports.
Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

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


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

§ 121.1 General. The United States Munitions List.
* * * * *
Category X—Personal Protective Equipment and Shelters
(a) Personal protective equipment, as follows:
(1) Body armor providing a protection level equal to or greater than NIJ Type IV.

Note to (a)(1): See National Institute of Justice Classification, NIJ Standard-0101.06.

Note 2 to (a)(1): For body armor providing a level of protection of Type I, Type II, Type II A, Type IIIA, or Type III, see ECCNs 1A005 and 1A613.

(2) Personal protective clothing, equipment, or face paints “specially designed” to protect against or reduce detection by radar, IR, or other sensors at wavelengths greater than 900 nanometers.

Note to (a)(2): See Category XIII(j) for controls on related materials.

(3) [Reserved]
(4) [Reserved]
(5) Integrated helmets, not specified in Category VIII (h)(15) or Category XII, incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions.

(6) Helmets and helmet shells providing a protection level equal to or greater than NIJ Type IV.

(7) Goggles, spectacles, or visors, employing other than common broadband absorptive dyes and UV inhibitors as a means of protection (e.g., narrow band filters/dyes or broadband limiters/coatings with high visible transparency), with optical density greater than 3 that protect against:
(i) Visible (in-band) wavelengths;
(ii) Thermal flashes associated with nuclear detonations; or
(iii) Near infrared or ultraviolet (out-of-band) wavelengths.

Note 1 to (a)(7): See Category XIII(j) for controls on related materials.

Note 2 to (a)(7): See Category XII for sensor protection equipment.

(b) Developmental personal protective equipment and shelters and “specially designed” parts, components, accessories, and attachments therefor, developed under a contract with the U.S. Department of Defense.

Note to (a)(8): Developmental personal protective equipment and shelters, and “specially designed” parts, components, accessories, and attachments therefor, determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter) are not controlled by this paragraph.

(1) Ceramic or composite plates that provide protection equal to or greater than NIJ Type IV.

(2) Lenses for the goggles, spectacles, and visors controlled in paragraph (a)(7) of this category.

(3) Any component, part, accessory, attachment, equipment, or system that:
(i) Is classified;
(ii) Contains classified software;
(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.

(e) 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 (d) of this category.

(f) [Reserved]
* * * * *

Rose E. Gottemoeller,
Acting Under Secretary, Arms Control and International Security, Department of State.

BILLING CODE 4710–25–P

NATIONAL MEDIATION BOARD

29 CFR Parts 1206

[Docket No. C–7034]

RIN 3140–ZA01

Representation Procedures and Rulemaking Authority; Correction

AGENCY: National Mediation Board.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the text of a proposed rule published in the Federal Register on May 15, 2012. The proposed rule changes the National Mediation Board’s (NMB or Board) existing rules for run-off elections to incorporate statutory language added to the Railway Labor Act (RLA) by the Federal Aviation Administration Modernization and Reform Act of 2012.

DATES: Comment date: The NMB will extend the comment period by accepting written comments that are received on or before August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, infoline@nmb.gov.

SUPPLEMENTARY INFORMATION: The National Mediation Board is correcting its proposed rule published in the Federal Register on May 15, 2012 at 77 FR 28536. This document makes a correction to clarify that Rule 1206.1 only applies in elections where 3 or more options receive valid votes.

Correction

In FR Doc. No. 2012–11770, on page 28537, in the right column, the text for § 1206.1 is correctly revised to read as follows:

§ 1206.1 Run-off elections.
(a) In an election among any craft or class where three or more options (including the option for no representation) receive valid votes, if no option receives a majority of the legal votes cast, or in the event of a tie vote, the Board shall authorize a run-off election.

(b) In the event a run-off election is authorized by the Board, the names of the two options which received the highest number of votes cast in the first election shall be placed on the run-off ballot, and no blank line on which voters may write in the name of any organization or individual will be provided on the run-off ballot.

(c) Employees who were eligible to vote at the conclusion of the first election shall be eligible to vote in the run-off election except:
(1) Those employees whose employment relationship has terminated; and
(2) Those employees who are no longer employed in the craft or class.