

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 12223]

RIN 1400-AF27

International Traffic in Arms Regulations: Revision to U.S. Munitions List Category XI—High-Energy Storage Capacitors

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) published an interim final rule on April 27, 2023, effective May 21, 2023, amending the International Traffic in Arms Regulations (ITAR) to remove from U.S. Munitions List (USML) Category XI certain high-energy storage capacitors and to clearly identify the high-energy storage capacitors that remain in USML Category XI. After reviewing the comments received in response to that interim final rule, the Department is now further amending USML Category XI to remove additional high-energy storage capacitors and to more clearly identify those that remain in USML Category XI.

DATES: *Effective date:* April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rasmussen, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2217; email DDTCCustomerService@state.gov
SUBJECT: ITAR Amendment—High-Energy Storage Capacitors (RIN 1400-AF27)

SUPPLEMENTARY INFORMATION: The Department of State's Directorate of Defense Trade Controls (DDTC) administers the ITAR (22 CFR parts 120 through 130) to regulate the export, reexport, retransfer, and temporary import of, and brokering activities related to certain items and services. The articles and information subject to the jurisdiction of the Department of State under the ITAR (*i.e.*, "defense articles") are identified on the USML at ITAR section 121.1. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other department or agency of the U.S. Government are subject to the Export Administration Regulations (EAR, 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774). The EAR is administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. This rule does not modify the list of defense articles and defense services controlled for purposes of permanent import by the

Attorney General, as enumerated on the U.S. Munitions Import List at 27 CFR part 447.

The Department seeks to control on the USML those articles and services that provide a critical military or intelligence advantage, or, in the case of weapons, have an inherently military function. The Department undertakes these revisions pursuant to the discretionary statutory authority afforded the President in section 38(a)(1) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(a)(1)) and delegated to the Secretary of State in Executive Order 13637, to control the export and temporary import of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States, and to designate those items which constitute the USML. The Department, informed by comments received from the public and consultations with its interagency partners, determined the articles removed from the USML by this rule no longer warrant control under the ITAR.

On April 27, 2023, the Department published an interim final rule at 88 FR 25488, with an effective date of May 21, 2023 (the interim final rule), to remove from USML Category XI certain high-energy storage capacitors that it assessed have broad commercial application, are available internationally, and do not provide a critical military or intelligence advantage. Specifically, the interim final rule added a voltage criterion to paragraph (c)(5) of USML Category XI, limiting that paragraph to capacitors "capable of operating at greater than one hundred twenty-five volts (125 V)."

In the interim final rule, the Department requested comments from the interested community, focusing on certain questions about the new voltage criterion. The Department now responds to those comments and further amends the ITAR, and more specifically the USML, through this final rule.

Voltage Rating and "Capable of Operating"

The Department received four comments from the public, all of which recommended that the Department define the voltage criterion according to "voltage rating" or "rated voltage," rather than "capable of operating." One commenter asserted that "voltage rating" is the industry standard term and noted that the use of "voltage rating" would provide consistency with the way that capacitor voltages are specified on the CCL under Export Control Classification Numbers (ECCNs) 3A001.e.2 and 3A201.a. Two other commenters asserted that "rated

voltage" is the industry standard term, and one cited the Electronic Components Industry Association (ECIA) definition of "rated voltage" as "the voltage at which an electrical component can operate for extended periods without loss of its basic properties." Another commenter recommended "voltage rating" but also suggested the term "steady state voltage rating." The Department affirms that the voltage criterion should not be conflated with transient, or surge, voltage ratings.

All commenters opposed the use of the phrase "capable of operating" to specify the voltage threshold, asserting that "capable of operating" is unclear because it does not reflect terminology widely used in the electronics industry and most capacitors are "capable of operating" for a limited time in conditions for which they were not designed, although they may incur damage in doing so. One commenter further asserted that it is inherently unclear whether a voltage criterion defined in terms of "capable of operating" would vary based upon a customer's circuit design margins and the application into which the capacitor is integrated. In contrast, industry practitioners already understand that "rated voltage" and "voltage rating" apply to the capacitor itself, and do not depend on end use. The Department affirms its intent is to regulate such capacitors based on their performance capability, regardless of limitations imposed by the circuit in which they are currently installed.

The Department accepts these comments and will implement the term "rated voltage" to specify the voltage criterion in place of the phrase "capable of operating," which does not have a broadly accepted definition. The Department notes that rated voltage is commonly provided in manufacturers' product literature worldwide, thereby giving persons other than the manufacturer valuable information in assessing the capabilities of the capacitors. Furthermore, one commenter asserted that the maximum voltage a capacitor can withstand is not generally assessed during product development, which focuses upon the recommended operating conditions and the limit provided in the specification. Thus, a criterion specified in terms of "capable of operating" may require manufacturers to expend resources to perform testing that they would not otherwise conduct.

Accordingly, the Department has decided to specify the voltage criterion in paragraph (c)(5)(i) of USML Category XI in terms of "rated voltage."

Definition of Rated Voltage

The interim final rule also asked whether a sufficient definition of “voltage rating” would be “the value, based on the capacitor’s design, testing, and evaluation, that describes the maximum amount of continuous voltage that will not damage the capacitor.” All commenters assessed that this definition was accurate, with one recommending adding an operating duration, temperature, and maximum failure rate to ensure consistency across manufacturers and to prevent manufacturers from, for example, increasing the temperature to claim a lower rated voltage.

One commenter suggested including a note clarifying that rated voltage does not include short-term transient or surge operating conditions. Another commenter assessed that adding a temperature criterion “would complicate the verbiage” of paragraph (c)(5), but it suggested that if a temperature criterion is added, the Department should use the term “rated temperature,” where rated temperature is “the maximum temperature at which a capacitor can be used without voltage derating (or degradation).” Another commenter simply explained that manufacturers rate their capacitors at different temperatures according to the intended end use application.

The interim final rule additionally asked whether a criterion such as “will not reduce the capacitor’s full energy life below 10,000 discharges” would address the fact that each charge and discharge cycle likely inflicts some damage on a capacitor. Commenters did not support this suggestion, finding the criterion itself or the suggested discharge threshold irrelevant to their capacitors.

Based on this feedback, the Department is amending the Note to paragraph (c)(5) of Category XI to define “rated voltage” as “the value, based on the capacitor’s design, testing, and evaluation, that describes the maximum amount of continuous voltage that will not damage the capacitor.” The Department also adds a sentence clarifying that rated voltage does not include short-term transient or surge operating conditions. Furthermore, the Department clarifies that “rated voltage” shall be assessed for this criterion at an operating temperature of 85 degrees Celsius (°C) or less. This clarification is intended to ensure consistency across manufacturers in evaluating the threshold. Since capacitor voltage ratings lower as temperatures rise, voltage ratings below 500 V at temperatures at or below 85 °C may be

utilized to assess the voltage criterion, as may voltage ratings above 500 V at temperatures above 85 °C; however, voltage ratings below 500 V at temperatures above 85 °C must be temperature corrected to 85 °C or lower to assess the voltage criterion.

Voltage Threshold

One commenter reported that wet tantalum capacitors with a rated voltage of 150 V are being developed for use in commercial applications. The commenter also asserted that some medical applications, such as defibrillators, use wet tantalum capacitors with a voltage rating at or above 250 V.

The Department determined it is appropriate to raise the voltage threshold in excess of a rated voltage of 500 V. The Department assesses that continuing to use the greater than 125 V threshold from the interim final rule would result in unnecessary controls on capacitors utilized in commercial applications that are comparable to those available internationally without multilateral export control restrictions. Moreover, the Department recognizes that the rated voltage of such capacitors is likely to increase over time. Most significantly, during its review, the Department did not identify any capacitors with a rated voltage of 500 V or less that continue to provide a critical military or intelligence advantage such that they continue to warrant control on the USML.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the United States. However, the Department elected to solicit comments on an interim final rule and has responded to those comments in this final rule without prejudice to its determination that controlling the export and temporary import of defense articles and services is a military or foreign affairs function.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Department assesses that this rule is not a major rule under the criteria of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Orders 12866 (as amended by Executive Order 14094) and 13563 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, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been deemed a “significant regulatory action” under Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

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

Executive Order 13175

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

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For the reasons stated in the preamble, the Department of State amends Title 22, Chapter I, Subchapter M, part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

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

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. In § 121.1, under Category XI, revise paragraph (c)(5) as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XI—Military Electronics

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(c) * * *

(5) High-energy storage capacitors that:

(i) Have a rated voltage of greater than five hundred volts (500 V);

(ii) Have a repetition rate greater than or equal to six (6) discharges per minute;

(iii) Have a full energy life greater than or equal to 10,000 discharges at greater than 0.2 Amps per Joule peak current; and

(iv) Have any of the following:

(A) Volumetric energy density greater than or equal to 1.5 J/cc; or

(B) Mass energy density greater than or equal to 1.3 kJ/kg;

Note to paragraph (c)(5): *Volumetric energy density* is Energy per unit Volume. *Mass energy density* is Energy per unit Mass, sometimes referred to as *Gravimetric energy density* or *Specific energy*. *Energy* ($E = \frac{1}{2}CV^2$, where C is Capacitance and V is the rated voltage) in these calculations must not be confused with useful energy or extractable energy. *Rated voltage* is the value, based on the capacitor's design, testing, and evaluation, that describes the maximum amount of continuous voltage, at an operating temperature less than or equal to 85 degrees Celsius (85 °C), that will not damage the capacitor. *Rated voltage* does not

include short-term transient or surge operating conditions.

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Bonnie D. Jenkins,
Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2024–06199 Filed 3–22–24; 8:45 am]

BILLING CODE 4710–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[WT Docket No. 19–348; DA 24–233; FRS 209028]

Facilitating Shared Use in the 3100–3550 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireless Telecommunication Bureau and the Office of Engineering and Technology (WTB/OET) make a non-substantive, editorial revision to the Table of Frequency Allocations in the Commission's Rules (Table 22), which identifies coordinates for Department of Defense Cooperative Planning Areas (CPAs) and Periodic Use Areas (PUAs), deleting as redundant, the Norfolk, Virginia Cooperative Planning Area (Norfolk CPA) from the list of CPAs and PUA's in Table 22.

DATES: Effective March 25, 2024.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Reed, Wireless Telecommunications Bureau, Mobility Division, (202) 418–0531 or *Thomas.reed@fcc.gov*. For information regarding the PRA information collection requirements, contact Cathy Williams, Office of Managing Director, at 202–418–2918 or *cathy.williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau and the Office of Engineering and Technology's Order in WT Docket No. 19–348, DA 24–233, adopted and released March 11, 2024. The full text of the Order, including all Appendices, is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/DA-24-233A1.pdf>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental

Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Synopsis

Introduction

In this Order, WTB/OET make a non-substantive, editorial revision to § 2.106(c)(431), Table 22. Consistent with the recommendation of the Department of Defense (DoD), WTB/OET revise § 2.106(c)(431), Table 22, of the Commission's rules to delete the Norfolk CPA from the list of CPAs and PUAs in Table 22 as redundant because the Norfolk CPA is entirely encompassed within the larger Newport News, Virginia CPA/PUA. As part of this change, and consistent with DoD's request, WTB/OET also rename the Newport News CPA/PUA as the "Newport News-Norfolk CPA/PUA."

Background

Historically, the 3.45 GHz band (3450–3550 MHz) was a predominantly Federal band, with limited non-Federal use, and DoD in particular operated a number of defense radar systems in the band. In 2020, the Commission adopted the 3.45 GHz R&O and FNPRM, in which it removed secondary, non-Federal allocations from the band and sought comment on restructuring the band to permit coordinated Federal and non-Federal use. In 2021, the Commission adopted the 3.45 GHz Second R&O, which created a new 3.45 GHz Service, including a cooperative sharing regime. Under this sharing regime, non-Federal systems have unencumbered, full-power use of the entire band across the contiguous United States except for limited locations and circumstances—in effect, within CPAs and PUAs, where current incumbent Federal systems remain in the band and non-Federal systems are not entitled to protection from Federal operations.

Commercial operations are not precluded in CPAs and PUAs, but prior coordination between Federal incumbents and commercial operations is required. Consistent with DoD's recommendation, the Commission defined CPAs as "geographic locations in which non-Federal operations shall coordinate with Federal systems in the band to deploy non-Federal operations in a manner that shall not cause harmful interference to Federal systems operating in the band." In CPAs, operators of non-Federal stations may be required to modify their operations to protect Federal operations against harmful interference and may not claim interference protection from Federal systems. For each CPA, the Commission