

**DEPARTMENT OF STATE****22 CFR Parts 120, 121, and 123**

RIN 1400-AD19

[Public Notice 8165 ]

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

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 IV (launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs, and mines) 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>. In addition, several ITAR sections addressing the Missile Technology Control Regime (MTCR) Annex are revised to provide a new method of identifying articles common to the MTCR Annex and the USML. And, the ITAR section describing shipments between U.S. possessions is clarified to only encompass those shipments that do not transit a foreign country.

**DATES:** The Department of State will accept comments on this proposed rule until March 18, 2013.

**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 IV."

- *Internet:* At *www.regulations.gov*, search for this notice by using this rule's RIN (1400-AD19).

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.pmdtdc.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, U.S. Department of State, telephone (202) 663-2792, or email *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, USML Category IV.

**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.

All references to the USML in this rule are to the list of defense articles that are controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations (*see* 27 CFR part 447). Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

**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 (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 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 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. 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 IV and Other ITAR Sections

This proposed rule revises USML Category IV (launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs, and mines).

Paragraph (a) is revised to remove demolition blocks and blasting caps, and to add subparagraphs (1) through (11) to more clearly describe the articles controlled in (a). ITAR § 121.11, which further describes demolition blocks and blasting caps, is removed and placed in reserve.

Paragraphs (b) and (d) are revised to more specifically enumerate the articles controlled therein.

Military explosive excavating devices, currently enumerated in paragraph (e), are to be transferred to the jurisdiction of the Department of Commerce under Export Control Classification Number (ECCN) 0A604.c. The articles currently enumerated in paragraph (f), ablative materials, will remain under ITAR control but are to be moved to USML Category XIII(d).

Paragraph (h) is revised by removing its broad catch-all wording and adding subparagraphs (1) through (31) to specifically enumerate the articles controlled in that paragraph.

ITAR § 121.5, which provides clarification of paragraph (c), is removed. Articles currently therein are identified in a note to paragraph (c) or are enumerated in paragraph (h).

ITAR § 121.16, which lists articles on the Missile Technology Control Regime (MTCR) Annex also enumerated on the USML, including in USML Category IV, is removed and placed in reserve.

Articles common to the MTCR Annex and the USML are to be identified on the USML with the parenthetical "(MT)" at the end of each section containing such articles. ITAR §§ 120.29, 121.1(c), and 121.2 are also revised accordingly.

Finally, ITAR § 123.12 is revised to add clarifying language regarding the shipment of defense articles between U.S. possessions. For a shipment of defense articles between U.S. possessions not to require an export license, the shipment must be direct, without transiting a foreign country. A temporary export license is required for shipments that do transit a foreign country.

### 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. Three proposed definitions have been published to date. For the purpose of evaluation of this proposed rule, reviewers should use the definition provided by the Department of State in the June 19, 2012, proposed rule (77 FR 36428).

### 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 4 (WA-ML4). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for USML Category IV contained in this notice and for CCL ECCN 0A604 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 items. The public is asked to provide specific examples of launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs, and mines whose jurisdiction would be in doubt based on this revision.

In addition, the Department welcomes comments on the proposed revision of §§ 121.16 and 123.12.

### 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 sections 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 proposed rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

#### *Unfunded Mandates Reform Act of 1995*

This proposed 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.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed rulemaking 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 rulemaking 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 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 proposed rulemaking.

#### *Executive Orders 12866 and 13563*

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, distributed impacts, and equity).

These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These rules have been designated “significant regulatory actions,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB).

#### *Executive Order 12988*

The Department of State has reviewed this proposed 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 proposed rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this proposed rulemaking.

#### *Paperwork Reduction Act*

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: (1) Statement of Registration, DS–2032, OMB No. 1405–0002; (2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP–5, OMB No. 1405–0003; (3) Application/License for Temporary Import of Unclassified Defense Articles, DSP–61, OMB No. 1405–0013; (4) Nontransfer and Use Certificate, DSP–83, OMB No. 1405–0021; (5) Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data, DSP–85, OMB No. 1405–0022; (6) Application/License for Temporary Export of Unclassified Defense Articles, DSP–73, OMB No. 1405–0023; (7) Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services, OMB No. 1405–0025; (8) Authority to Export Defense Articles and Services Sold Under the Foreign Military Sales

(FMS) Program, DSP–94, OMB No. 1405–0051; (9) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP–6, –62, –74, –119, OMB No. 1405–0092; (10) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP–5, OMB No. 1405–0093; (11) Maintenance of Records by Registrants, OMB No. 1405–0111; (12) Annual Brokering Report, DS–4142, OMB No. 1405–0141; (13) Brokering Prior Approval (License), DS–4143, OMB No. 1405–0142; (14) Projected Sale of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act, DS–4048, OMB No. 1405–0156; (15) Export Declaration of Defense Technical Data or Services, DS–4071, OMB No. 1405–0157; (16) Request for Commodity Jurisdiction Determination, DS–4076, OMB No. 1405–0163; (17) Request to Change End-User, End-Use, and/or Destination of Hardware, DS–6004, OMB No. 1405–0173; (18) Request for Advisory Opinion, DS–6001, OMB No. 1405–0174; (19) Voluntary Disclosure, OMB No. 1405–0179; and (20) Technology Security/Clearance Plans, Screening Records, and Non-Disclosure Agreements Pursuant to 22 CFR 126.18, OMB No. 1405–0195. The Department of State believes there will be minimal changes to these collections. The Department of State believes the combined effect of all rules to be published moving commodities from the USML to the EAR as part of the Administration’s Export Control Reform would decrease the number of license applications by approximately 30,000 annually. The Department of State is looking for comments on the potential reduction in burden.

#### **List of Subjects in Parts 120, 121, and 123**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 121, and 123 are proposed to be amended as follows:

#### **PART 120—PURPOSE AND DEFINITIONS**

■ 1. The authority citation for part 120 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266.

■ 2. Section 120.29 is revised to read as follows:

#### **§ 120.29 Missile Technology Control Regime.**

(a) For purposes of this subchapter, *Missile Technology Control Regime (MTCR)* means the policy statement between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(b) The term *MTCR Annex* means the MTCR Guidelines and the Equipment, Software and Technology Annex of the MTCR, and any amendments thereto.

(c) MTCR Annex items enumerated on the U.S. Munitions List shall be annotated by the parenthetical “(MT)” at the end of each applicable paragraph.

#### **PART 121—THE UNITED STATES MUNITIONS LIST**

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

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

■ 4. Section 121.1 is amended by revising paragraph (c) and U.S. Munitions List Category IV, as follows:

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

\* \* \* \* \*

(c) *Missile Technology Control Regime (MTCR) Annex.* The parenthetical “(MT)” indicates those defense articles that are on the MTCR Annex. See § 120.29 of this subchapter.

\* \* \* \* \*

#### **Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines**

\* (a) Rockets, space launch vehicles (SLVs), missiles, bombs, torpedoes, depth charges, mines, and grenades, as follows:

(1) Rockets, SLVs, and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km (MT);

(2) Rockets, SLVs, and missiles capable of delivering less than a 500 kg payload to a range of at least 300 km (MT);

(3) Man-portable air defense systems (MANPADS);

(4) Anti-tank missiles and rockets;

(5) Rockets, SLVs, and missiles not meeting the criteria of paragraphs (a)(1) through (a)(4) of this category;

(6) Bombs;

(7) Torpedoes;

(8) Depth charges;

(9) Anti-personnel, anti-vehicle, or anti-armor land mines (e.g., area denial devices);

(10) Anti-helicopter mines;

(11) Naval mines; or

(12) Fragmentation and high explosive hand grenades.

**Note 1 to paragraph (a):** “Range” is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

**Note 2 to paragraph (a):** “Payload” is the total mass that can be carried or delivered by the specified rocket, SLV, or missile that is not used to maintain flight.

**Note 3 to paragraph (a):** This paragraph does not control model and high power rockets (as defined in National Fire Protection Association Code 1122) and kits thereof made of paper, wood, fiberglass, or plastic containing no substantial metal parts and designed to be flown with hobby rocket motors that are certified for consumer use. Such rockets must not contain active controls (e.g., RF or GPS).

**Note 4 to paragraph (a):** “Mine” means a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle.

\* (b) Launchers for rockets, SLVs, and missiles, as follows:

(1) Fixed launch sites and mobile launcher mechanisms for any system enumerated in paragraphs (a)(1) and (a)(2) of this category (e.g., launch tables, TOW missile, MANPADS) (MT); or

(2) Fixed launch sites and mobile launcher mechanisms for any system enumerated in paragraphs (a)(3) through (a)(5) of this category (e.g., launch tables, TOW missile, MANPADS).

**Note 1 to paragraph (b):** Launcher mechanisms for use on aircraft are controlled in Category VIII(h).

**Note 2 to paragraph (b):** Launcher mechanisms which have been integrated onto a vessel, ground vehicle, or aircraft are controlled in USML Categories VI, VII, and VIII, respectively.

**Note 3 to paragraph (b):** This paragraph does not control parts and accessories (e.g., igniters, launch stands) “specially designed”

for consumer use with model and high power rockets (as defined in National Fire Protection Association Code 1122) and kits thereof made of paper, wood, fiberglass, or plastic containing no substantial metal parts and designed to be flown with hobby rocket motors that are certified for consumer use.

(c) Apparatus and devices “specially designed” for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles enumerated in paragraphs (a) and (b) of this category (MT for those systems enumerated in paragraphs (a)(1), (a)(2), and (b)(1) of this category).

**Note to paragraph (c):** This paragraph includes specialized handling equipment (transporters, cranes, and lifts) “specially designed” to handle articles enumerated in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites. The equipment in this paragraph also includes “specially designed” robots, robot controllers, and robot end-effectors, and liquid propellant tanks “specially designed” for the storage or handling of the propellants controlled in USML Category V, CCL ECCNs 1C011, 1C111, and 1C608, or other liquid propellants used in the systems enumerated in paragraphs (a)(1), (a)(2), or (a)(5) of this category.

\* (d) Rocket, SLV and missile power plants, as follows:

(1) Except as enumerated in paragraphs (d)(2) or (d)(3) of this category, individual rocket stages for the articles enumerated in paragraphs (a)(1), (a)(2), or (a)(5) of this category (MT for those stages usable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(2) Solid propellant rocket motors, hybrid or gel rocket motors, or liquid propellant rocket engines having a total impulse capacity equal to or greater than  $1.1 \times 10^6$  N-s (MT);

(3) Solid propellant rocket motors, hybrid or gel rocket motors, or liquid propellant rocket engines having a total impulse capacity equal to or greater than  $8.41 \times 10^5$  N-s, but less than  $1.1 \times 10^6$  N-s (MT);

(4) Combined cycle, pulsejet, ramjet, or scramjet engines (MT);

(5) Air-breathing engines that operate above Mach 4 not enumerated in paragraph (d)(4) of this category;

(6) Pressure gain combustion-based propulsion systems not enumerated in paragraphs (d)(4) and (d)(5) of this category; or

(7) Rocket, SLV, and missile engines and motors, not otherwise enumerated in paragraphs (d)(1) through (d)(6) of this category, USML Category XIX, or CCL ECCN 9A619.

**Note to paragraph (d):** This paragraph does not control model and high power rocket motors, containing no more than 5 pounds of

propellant, that are certified for U.S. consumer use as described in National Fire Protection Association Code 1125.

(e) [Reserved]

(f) [Reserved]

\* (g) Non-nuclear warheads for rockets, bombs, and missiles (e.g., explosive, kinetic, EMP, thermobaric, shape charge, and fuel air explosive (FAE)).

(h) Systems, subsystems, parts, components, accessories, attachments, or associated equipment, as follows:

(1) Flight control and guidance systems (including “guidance sets”) “specially designed” for articles enumerated in paragraph (a) of this category (MT for those articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

**Note to paragraph (h)(1):** A “guidance set” integrates the process of measuring and computing a vehicle’s position and velocity (i.e., navigation) with that of computing and sending commands to the vehicle’s flight control systems to correct the trajectory.

(2) Seeker systems “specially designed” for articles enumerated in paragraph (a) of this category (e.g., radiofrequency, infrared) (MT for articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

(3) Kinetic kill vehicles and “specially designed” parts and components therefor;

(4) Missile or rocket thrust vector control systems (MT for those thrust vector control systems usable in articles enumerated in paragraph (a)(1) of this category);

(5) MANPADS grip stocks and “specially designed” parts and components therefor;

(6) Rocket or missile nozzles and nozzle throats, and “specially designed” parts and components therefor (MT for those nozzles and nozzle throats usable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(7) Nose tips, nose fairings, or aerospike, and “specially designed” parts and components therefor (MT for those articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

(8) Re-entry vehicle or warhead heat shields (MT for those re-entry vehicles and heat shields usable in systems enumerated in paragraph (a)(1) of this category);

(9) Missile and rocket safing, arming, fuzing, and firing (SAFF) components (to include target detection and proximity sensing devices) and “specially designed” parts therefor (MT for those safing, arming, fuzing, and firing (SAFF) components usable in systems enumerated in paragraph (a)(1) of this category);

(10) Self-destruct systems “specially designed” for articles enumerated in paragraph (a) of this category (MT for those articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

(11) Separation mechanisms, staging mechanisms, and interstages useable for articles enumerated in paragraph (a) of this category and “specially designed” parts and components therefor (MT for those separation mechanisms, staging mechanisms, and interstages useable in systems enumerated in paragraph (a)(1) of this category);

(12) Post-boost vehicles (PBV) (MT);

(13) engine or motor mounts “specially designed” for articles enumerated in paragraphs (a) and (b) of this category (MT for those articles enumerated in paragraphs (a)(1), (a)(2), and (b)(1) of this category);

(14) Combustion chambers “specially designed” for articles enumerated in paragraphs (a) and (d) of this category and “specially designed” parts and components therefor (MT for those articles enumerated in paragraphs (a)(1), (a)(2), (b)(1), and (d)(1) through (d)(5) of this category);

(15) Injectors “specially designed” for articles controlled in this category (MT for those injectors “specially designed” which are usable in systems enumerated in paragraph (a)(1) of this category);

(16) Solid rocket motor or liquid engine igniters;

(17) Re-entry vehicles and “specially designed” parts and components therefor not elsewhere specified in this category (MT);

**Note to paragraph (h)(17):** This paragraph does not control spacecraft. For controls on spacecraft, *see* USML Category XV or CCL ECCN 9A515.

(18) “Specially designed” parts and components for articles controlled in paragraph (g) not elsewhere specified in this category;

(19) Penetration aids and “specially designed” parts and components therefor (*e.g.*, physical or electronic countermeasure suites, re-entry vehicle replicas or decoys, or submunitions);

(20) Rocket motor cases and “specially designed” parts and components therefor (*e.g.*, flanges, flange seals, end domes) (MT for those rocket motor cases useable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category and for “specially designed” parts and components for hybrid rocket motors enumerated in paragraphs (d)(2) and (d)(3) of this category);

(21) Solid rocket motor liners and rocket motor insulation (MT for those solid rocket motor liners useable in systems enumerated in paragraph (a)(1)

of this category or “specially designed” for systems enumerated in paragraph (a)(2) of this category; and rocket motor insulation useable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(22) Radomes, sensor windows, and antenna windows “specially designed” for articles enumerated in paragraph (a) of this category (MT for those radomes useable in systems enumerated in paragraph (a)(1) of this category and for any radomes, sensor windows, or antenna windows manufactured as composite structures or laminates “specially designed” for use in the systems and components enumerated in paragraphs (a)(1), (a)(2), (d)(1), (h)(8), (h)(9), (h)(17), or (h)(25) of this category);

(23) Payload fairings;

(24) Rocket and missile launch canisters (MT for those rocket and missile launch canisters designed or modified for systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(25) Fuzes “specially designed” for articles enumerated in paragraph (a) of this category (*e.g.*, proximity, contact, electronic, dispenser proximity, airburst, variable time delay, or multi-option) (MT for those fuzes useable in systems enumerated in paragraph (a)(1) of this category);

(26) Rocket and missile liquid propellant tanks (MT for those rocket and missile liquid propellant tanks useable in systems enumerated in paragraph (a)(1) of this category);

(27) Rocket and missile altimeters “specially designed” for use in articles enumerated in paragraph (a)(1) of this category (MT);

(28) Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment “specially designed” for use in the rockets or missiles enumerated in paragraph (a)(1) of this category (MT for these systems which have been designed or modified for those enumerated in paragraph (a)(1) of this category); or

\* (29) Any part, component, accessory, attachment, equipment, or system that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software; or

(iii) 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 or intergovernmental organization.

(i) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category and classified technical data directly to items controlled in CCL ECCN 0x604 and defense services using the classified technical data. (*See* § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

■ 5. Section 121.2 is revised to read as follows:

#### § 121.2 Interpretations of the U.S. Munitions List.

The following interpretations explain and amplify the terms used in § 121.1 of this subchapter. These interpretations have the same force as if they were a part of the U.S. Munitions List category to which they refer.

■ 6. Section 121.5 is removed and reserved, as follows:

#### § 121.5 [Reserved]

■ 7. Section 121.11 is removed and reserved, as follows:

#### § 121.11 [Reserved]

■ 8. Section 121.16 is removed and reserved, as follows:

#### § 121.16 [Reserved]

### PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 9. The authority citation for part 123 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

■ 10. Section 123.12 is revised to read as follows:

#### § 123.12 Shipments between U.S. possessions.

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions provided the shipment does not transit a foreign country (*see* § 123.13 of this subchapter). A license is required, however, for the export of defense articles from these areas to foreign countries.

Dated: January 22, 2013.

**Rose E. Gottemoeller,**

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[FR Doc. 2013–01901 Filed 1–30–13; 8:45 am]

BILLING CODE 4710–25–P