

Commerce Dept. Proposes Changes to Military Electronics Export Controls

Written by Mike Buetow

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WASHINGTON -- The US Department of Commerce today issued its [latest proposed changes](#) concerning controls on exports of military electronic equipment.

The proposed rule describes how certain articles President Obama determines no longer warrant control under the United States Munitions List (USML) would be controlled on the Commerce Control List (CCL). Those articles and the USML categories under which they are currently controlled include military electronics (Category XI), which would now be controlled by new Export Control Classification Numbers (ECCNs) 3A611, 3B611, 3D611, and 3E611.

Proposed new ECCNs 3A611, 3B611, 3D611, and 3E611 would control military electronics and related test, inspection, and production equipment and software and technology currently controlled by USML Category XI that the President determines no longer warrant control on the USML. To the extent that they are not enumerated on the proposed revisions to Category XI, these proposed new ECCNs would also control computers, telecommunications equipment, radar “specially designed” for military use, parts, components, accessories, and attachments “specially designed” therefor, and related software and technology. Among the electronics specified are printed circuit boards that are certified to be a “trusted device” from a defense microelectronics activity (DMEA) accredited supplier.

Comments to the proposed rule are due Jan. 28 and may be submitted to www.regulations.gov (identification number BIS-2012-0045) or by email to publiccomments@bis.doc.gov (include RIN 0694-AF64 in the subject line).

The changes described in the proposed rule and the State Department’s proposed amendment to Category XI of the USML are based on a review of Category XI by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category XI that are either inherently military and otherwise warrant control on the USML, or if it is of a type common to non-military electronic equipment applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the US, and that are almost exclusively available from the US. If an article satisfied one or both of those criteria, the article remained on the USML. If an article did not satisfy either criterion but was nonetheless a type of article that is, as a result of differences in form and fit, “specially designed” for military applications or for the intelligence applications described in proposed ECCN 3A611.b, it was identified in the new ECCNs proposed in this

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notice.

Pursuant to the Arms Export Control Act, the President is obligated to review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML.

BIS recognizes that because electronics frequently are installed in some other commodity, they are particularly susceptible to ambiguous classification or classification under multiple entries on the CCL. For example, a given electronic device might also be viewed as a part for an aircraft, radar, computer, laser, or some other article. How the device is viewed might affect the classification on the CCL, which could, in turn affect license requirements or licensing policy.

BIS’s intent is that the new ECCNs in this proposed rule would not increase the number of destinations to which a license is required, alter the policy under which license application are reviewed or create any apparent instances of an item that is subject to the EAR being covered by more than one ECCN. Parties who believe that they can identify instances where the effect of the proposed rule would be contrary to this intent are encouraged to point out those instances in a public comment on this proposed rule.

One of the goals of the reform effort is to ensure that items that are currently EAR controlled are not unintentionally made ITAR or “600 series” controlled, through the creation of more positive lists.