



March 25, 2016

C. Edward Peartree  
Director, Office of Defense Trade Policy  
Department of Defense Trade Controls  
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12<sup>th</sup> Floor, SA-1  
Washington, D.C. 20522

**Subject: Comments on Proposed ITAR Amendments to Category VIII of the USML**

Dear Mr. Peartree,

The Aerospace Industries Association (AIA) and our member companies appreciate the opportunity to comment on the Department of State's proposed amendments to Category VIII (aircraft and related articles) of the U.S. Munitions List (USML). Institutionalizing regular review of USML categories will allow the U.S. Government to keep pace with technological development and innovation. AIA has long supported this critical element of the Export Control Reform initiative, and we are encouraged the Administration shares this priority. Having reviewed the proposed amendments to Category VIII, AIA would like to highlight the below issues for further consideration.

**Category VIII (h)(2)**

One example where the proposed rule inadvertently controls items in normal commercial is rotorcraft gearboxes. Category VIII(h)(2) of the proposed rule will likely capture a number of U.S. and non-U.S. civil rotorcraft gearboxes that are able to operate for 30 minutes with loss of lubrication without an emergency or auxiliary lubrication system. The civil rotorcraft market has pursued gearbox improvements in this area for many years to address safety of operation (i.e., designed to fly to the nearest safe landing area.) Currently, many civil aircraft manufacturers are advertising civil aircraft with gearboxes capable of meeting or exceeding a 30 minute run-dry scenario. For example, some U.S. commercial helicopters in the offshore oil transport configuration are sized to carry 19 passengers plus crew with an unrefueled range of 400NM under these conditions (e.g., Sikorsky model S-92A.) Capturing these commercial gearboxes under the USML is not the intent of the Export Control Reform Initiative and greatly complicates the commercial sale, operation, and servicing of these aircraft.

**Recommendation:**

*(2) Rotorcraft gearboxes with internal pitch line velocities exceeding 20,000 feet per minute and qualified to military requirements (i.e. MIL-HDBK-516-C or equivalent) and able to operate 30*

*minutes with loss of lubrication without an emergency or auxiliary lubrication system, and specially designed parts and components therefor;*

*Note to (h) (2):*

*Loss of lubrication means a situation where oil/ lubrication is mostly or completely lost from a transmission/gearbox such that only a residual coating remains due to the lubrication system failure and is qualified to military requirements only. Loss of lubrication certified to FAA/EASA (or other civil aviation authority) is not subject to this control.*

Justification:

Although run-dry capability is prevalent in the civil market, the performance requirements for military rotorcraft gearboxes differ significantly from the civil requirements. The proposed regulatory revisions would tailor USML control criteria to those gearboxes that are qualified to published U.S. military gearbox standards – effectively ensuring that only rotorcraft gearboxes specially designed for military applications are captured on the USML.

**Category VIII(h)(18)**

The addition of specially designed parts and components to VIII(h)(18) will result in items moving from the Commerce Department “600 series” back to the ITAR. For example, “Specially designed parts and components” for “Drive systems and flight control systems specially designed to function after impact of a 7.62mm or larger projectile” are not currently controlled on the ITAR, but are captured under ECCN 9A610.x of the Commerce Control List (CCL). Although the proposed rule notes that, “Paragraph (h)(18) is modified to control specially designed parts and components of the subject systems,” it provides no justification for this determination.

Prior to 2013, parts and components of drive and flight control systems were classified under USML Category VIII(h). Several foreign suppliers produced these parts and components for U.S. rotorcraft manufacturers pursuant to ITAR agreements. When these items transitioned to the CCL as part of the initial implementation of ECR in October 2013, these ITAR agreements were no longer required, and U.S. companies obtained BIS licenses (for the export of technology relating to these items as well as the export of the items themselves) or modified ITAR agreements. For example, approximately 60-70 percent of the Sikorsky H-60 Drive/Flight Control System is currently controlled on the 600-series. Under the proposed rule, approximately 20-25% of those 600-series items would revert back to ITAR control under VIII(h)(18).

We concur that the review of USML categories provides a valuable opportunity to ensure that the controls are “clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the reform effort,” as stated in the proposed rule. This “refresh process” also provides an opportunity to correct inadvertent omissions in previous rules and harmonize controls. However, when multiple changes in jurisdiction may result in less clarity and have a significant impact on U.S. industry operations and compliance efforts, AIA recommends a cautious and minimal approach to such “corrections.”

In the case of specially designed parts and components under (h)(18), U.S. companies will need to implement a second comprehensive analysis of all military drive & flight control systems to determine whether attendant parts and components will move from the 600 series back to the ITAR, modify numerous “mixed” ITAR agreements, and in some cases, replace current BIS licenses with ITAR authorizations. Moreover, some exporters may have shipped these items NLR to Canada and potentially under license exceptions. Under the proposed rule, exporters would be required to conduct outreach to customers (and potentially customers to their end users) and notify them that the exported items are now subject to the ITAR. Absent a grandfathering provision, this will be a difficult, time-consuming, and costly task with little national security benefit.

Recommendation:

*(h)(18) Drive systems and flight control systems specially designed to function after impact of a 7.62mm or larger projectile, ~~and specially designed parts and components therefor;~~*

Justification:

The return of specially designed parts and components for drive systems and flight control systems to the ITAR is unnecessary. The systems will remain controlled on the ITAR, and the control of the P&C in the 600 Series ensures sufficient USG licensing oversight – and is very much in keeping with the intent of the ECR initiative to move parts and components off the USML. If the USG proceeds with this change, at a minimum, AIA recommends a 24 month transition period, which has been used for similar ECR rule changes, to prevent any disruption in international business activities. In addition, the Departments should consider a grandfathering provision for all affected items exported prior to the effective date of the final rule. This would allow U.S. companies to avoid the need to unwind completed transactions with foreign customers located in allied and partner nations.

**Category VIII (h)(27)**

Paragraph (h)(27) refers to variable speed gearboxes. AIA believes the intent of the proposed paragraph is to control gearboxes that have variable gear ratios, whereby the output shaft speed (rpm) of the gearbox may vary, while the input shaft speed (rpm) remains constant. As written, the Department’s proposed language would control any constant ratio gearbox used on an aircraft, including commercial aircraft, because every gearbox enables propeller or rotor speeds to be varied<sup>1</sup>. We believe it is important to clarify this point.

To address this concern, AIA recommends a change to paragraph (h)(27) as follows (changes in **RED**):

“Variable speed-**ratio** gearboxes capable of varying output speed by 50% or greater and providing power to rotors, proprotors, propellers, propfans, or liftfans; and specially designed parts and components therefor.”

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<sup>1</sup> Reasons for speed variation include take-off, landing, flight conditions and pilot inputs.

### **Category VIII (h)(30)**

In the original export reform changes related to aircraft and related articles, effective October 15, 2013, test models, rigs, jigs and other test equipment listed in (h)(30) (i), (ii), and (iv) were not described in Category VIII. If such equipment were specially designed for an aircraft described in (h)(1), the equipment, if not released pursuant to a 'specially designed' release paragraph, would have been classified under the appropriate CCL entry under the EAR, such as 9B610. Placing this equipment on the USML at this time will result in significant expense to Industry with questionable regulatory benefit.

- Industry has already gone through the process of reclassifying items under the October 15, 2013 ECR changes. This change would require the same items to be reclassified for the second time in 3 years.
- Some equipment described under this new paragraph may have already been exported under the EAR.
- If this change is enacted, it will be necessary for the Department to create new transition provisions to accommodate the issues that arise from moving items from the CCL to the USML, including timing and existing licenses.
- This change will likely cause further confusion to Non-US suppliers and customers.
- These changes will also likely lead foreign Governments with jurisdiction over components for this equipment manufactured in their countries to follow suit and classify the components under a military classification. With a military classification, licensing requirements from those Governments will increase, as will related requirements for end-use and end-user certifications (including from the US Government in order for Industry to supply any such equipment containing foreign content to the USG).
- USG insight into the export and use of these types of equipment will exist without making this change. The aircraft for which the equipment is specially designed will still be subject to control under the ITAR, and the equipment itself will be subject to the licensing authority of the Department of Commerce. If there is USG concern about visibility into any such equipment exported pursuant to the EAR STA exception, the Department of Commerce could restrict the use of STA for any such equipment specially designed for (h)(1) aircraft.

To address these concerns, AIA recommends deleting these paragraphs.

Best Regards,

Remy Nathan  
Vice President, International Affairs  
Aerospace Industries Association