



August 26, 2015

C. Edward Peartree
Director, Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
U.S. Department of State
Washington, D.C. 20037

Dear Mr. Peartree,

The Aerospace Industries Association and our member companies applaud the recently published revisions to Category XVIII of the United States Munitions List (USML). We appreciate the opportunity to provide comments on the proposed rule, and offer the following comments:

Controls on Equipment and General Purpose Items

Under the proposed rule, some individual items may be controlled under multiple paragraphs within XVIII. Like most USML categories, category XVIII includes a catch-all paragraph (XVIII(e)) for components, parts, accessories, attachments, and associated systems or *equipment* specially designed for any of the articles identified in the category. However, both paragraph XVIII (a) and (b) include both systems as well as *equipment* within the enumerated controls. The definition of “equipment” is very broad and includes “*combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a function of, as, or for an end-item or system.*” As a result, it is unclear whether certain equipment that “performs a function” would be controlled in paragraph (e) and/or (a).

For example, the tracking system for a Directed Energy Weapons (DEW) is likely captured in paragraph (a) as a system or piece of equipment that performs a function. That same tracking system could be caught in paragraph (e) as a component specially designed for the articles in paragraphs (a). Similarly, a DEW countermeasure system that disrupts the DEW tracker could be controlled by both paragraphs (b) and (e).

In some cases, parts and components for DEW systems (<1 kW) are less significant items that may not warrant control on the USML at all. For example, “Specially Designed” brackets, containers, and electronic equipment racks do not warrant control as sensitive items on the USML. Less-lethal DEW systems can consist of commercial items derived from commercial systems with minimum modifications. Sufficient controls exist within the EAR and CCL to control the commercial item without alteration. Paragraphs (a) and (b) are enumerated so the “Specially Designed” definition will not apply. Therefore, if you incorporate a commercial part into the system, and it has a function (e.g., power supply) then the part could be re-categorized as a XVIII(a) piece of SME equipment based on its end use.

Accordingly, we recommend removing the term “equipment” from paragraphs (a) and (b) and enumerate DEW equipment the Department wishes to control in paragraph (e) with specific control criteria.

In addition, we recommend adding an ECCN (ECCN 6A619) to the Commerce Control List and reserve the ECCN for less significant parts and components identified in Commodity Jurisdiction actions, General Correspondence, or other guidance removing such components from the USML.

USML Category Overlap

USML Category XVIII(b) does not define the meaning of “detect or identify” in this subparagraph. Without additional specificity, the control could overlap for example with controls for cameras in Category XIII, military electronic equipment in Category XI, or laser target designators, optical/electro-optical equipment or other sensors in Category XII. Similarly, “provide defense against” in subparagraph (b) is not defined. Armor, concealment/deception equipment are controlled in Category XIII(e), XIII(g), and XIII(j) and electronic countermeasures in Category XI. Accordingly, it is unclear what systems and equipment is intended for control.

In addition, XVIII(e) is overly broad. Hardware enumerated elsewhere in the USML, such as category XII cryocoolers and gimbals, may be captured by paragraph (e). Enumerated controls take precedence over Specially Designed catch all controls, but some items may fall into several category catch-all controls.

For both terms (i.e., “detect, identify” and “provide defense against”) we recommend the Department provide a specific definition/examples for exporters to determine which category controls the items or provide a note to assist the exporter in understanding how to choose the correct USML category.

In addition, we recommend the Department review DEW systems to enumerate parts, components, accessories, attachments which warrant control under this category as opposed to other USMLs.

Classified Items

The proposed rule does not provide an enumerated SME category for classified parts and components in USML XVIII. Given the inclusion of equipment in XVIII(a) and (b), those parts may fall under these categories if they perform a function or under XVII(a) for articles not otherwise enumerated on the USML. An exporter could mistakenly choose to categorize classified parts and components as USML XVIII(e), which is the non-SME catch-all for parts, components, accessories and attachments under XVIII(a) and (b). Given the broad set of options, reasonable exporters could arrive at different answers in how to categorize classified items.

We recommend expanding XVIII(e) to include the same paragraph used in the majority of other categories:

“(#) Any equipment, material, tooling, hardware or test equipment that:

- (i) Is classified;*
- (ii) Is manufactured using classified production data; or*
- (iii) Is being developed using classified information.*

Note to paragraph (e)(#): “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.”

Thank you for considering our comments, and we look forward to continuing to work with U.S. Government on the Export Control Reform initiative.

Best Regards,

A handwritten signature in black ink, appearing to read "Remy Nathan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Remy Nathan
Vice President – International Affairs
Aerospace Industries Association