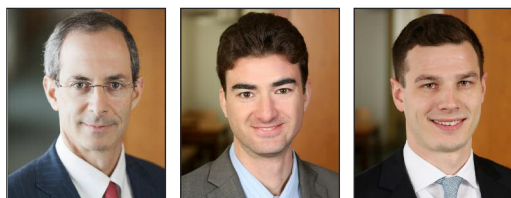


Departments of State and Commerce issue proposed revisions to rules on the export of firearms and ammunition



A change in jurisdictional control over the export of many firearms, ammunition, and related parts and technology from State to Commerce will likely bring both benefits and challenges for business, write David A. Ring, Jared Clark and Matt Cvercko.

On 24 May 2018, the departments of State and Commerce jointly unveiled long-anticipated proposals to streamline the nation's export laws as part of the US government's ongoing Export Control Reform ('ECR') initiative. The proposed rules, published in the Federal Register at 83 FR 24198 (State) and 83 FR 24166 (Commerce), would shift jurisdictional control and licensing authority over the export of many firearms, ammunition, and related parts and technology from the Department of State to the Department of Commerce.

Specifically, the changes would affect defence articles currently enumerated on the State Department's United States Munitions List ('USML') Category I (Firearms, Close Assault Weapons and Combat Shotguns), Category II (Guns and Armament), and Category III (Ammunition and Ordnance). The articles removed from the USML would be listed on the Commerce Department's Commerce Control List ('CCL') and subject to the Commerce Department's Export Administration Regulations ('EAR'), rather than the State Department's International Traffic in Arms Regulations ('ITAR').

The proposed reforms, while intended to reduce regulatory burdens on US businesses dealing in firearms and related commodities, also raise new considerations and challenges for US exporters and their domestic and foreign supply chain partners.

Product reclassification

The departments of State and Commerce proposed the revisions to USML Categories I-III for the purpose of establishing a brighter line between defence articles and items common to

civilian use. If the proposed rules are adopted, US businesses exporting products affected by the changes will need to initiate top-to-bottom reclassification procedures to ensure that they are in compliance with the new regulations. As with all export

jurisdiction and classification determinations, US exporters must follow the USML and CCL 'orders of review' to reclassify their products as necessary.

The table below summarises some of the most significant classification changes under the proposed rules.

Items transitioning to the CCL	Items remaining on the USML
Non-automatic and semi-automatic firearms (other than shotguns) with a caliber of less than or equal to .50 inches; and non-automatic and non-semi-automatic rifles, carbines, revolvers, and pistols with a caliber greater than .50 inches but not greater than .72 inches	Fully automatic firearms; firearms firing caseless ammunition; fully automatic shotguns; firearms specially designed to integrate fire control, automatic tracking, or automatic firing systems; and parts and components specially designed to convert a semi-automatic firearm to a fully automatic firearm
Antique guns and armament (manufactured between 1890 and 1919); BB guns; pellet rifles; paint ball guns; and air rifles	Guns and armament with a caliber greater than .50 inches, including howitzers, artillery, cannons, mortars, recoilless rifles, grenade launchers, and developmental guns funded by the Department of Defense
Detachable magazines with a capacity of greater than 16 rounds but less than 50 rounds specially designed for the firearms described above	Magazines for firearms with a caliber of .50 inches or greater with a capacity of greater than 50 rounds
Riflescopes without night vision or infrared capabilities	Riflescopes with night vision or infrared capabilities
Flash suppressors	Silencers, mufflers, and sound suppressors
Barrels, receivers (frames), bolts, bolt carriers, triggers, hammers, pistol grips, and sears specially designed for the firearms described above	Barrels, receivers (frames), bolts, bolt carriers, slides, and sears specially designed for articles remaining listed on the USML
Flame throwers with an effective range of less than 20 meters	Flame throwers with a minimum effective range of 20 meters
Ammunition for small arms (generally those with a caliber of less than or equal to .50 inches) and ammunition for firearms not specifically listed in USML Category III	Ammunition: (a) for the firearms described above; (b) with little or no civil use, or that is inherently military, such as ammunition preassembled into links or belts, caseless ammunition, projectiles with a hardened tip or core, and explosive projectiles; and (c) specifically listed USML in Category III
Technology required for the development, production, operation, installation, maintenance, repair, or overhaul of the items described above	Technical data and defense services directly related to the articles described above

Brokering

The Department of State imposes registration, reporting, and export licensing obligations on companies and individuals who engage in certain 'brokering activities' related to defence articles or services listed on the USML, as does the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives ('ATF') with regard to items listed on the United States Munitions Import List ('USMIL'). Under the ITAR, such 'brokering activities' generally include any action taken on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of defence articles or services controlled by the USML and/or USMIL.

The proposed regulatory reforms include 'conforming changes' to the ITAR's brokering provisions, clarifying that certain defence articles would transition from the USML to the CCL but still remain listed on the USMIL – and thus continue to be subject to the ITAR's brokering requirements. However, in another conforming change, the proposed rules explicitly carve-out from the ITAR's list of activities triggering brokering requirements those activities that facilitate the export, reexport, or transfer of an item subject to the EAR that has been approved pursuant to a licence or licence exception under the EAR, or a licence or other approval under the ITAR.¹ This carve-out may provide relief to companies engaged in brokering activities related to the export or transfer of items that transition from the USML to CCL but remain on the USMIL; however, companies engaging in brokering activities related to the manufacture or permanent import of such items would still be subject to brokering requirements.

If the proposed rules are adopted, US businesses dealing in items transitioning from the USML to the CCL will need to examine the nature of their activities in relation to such items to determine whether they remain

subject to the ITAR's brokering requirements or whether their activities are covered by the carve-out discussed above. It is critical that businesses make the correct determination, as violations of

The proposed reforms, while intended to reduce regulatory burdens on US businesses dealing in firearms and related commodities, also raise new considerations and challenges for US exporters and their domestic and foreign supply chain partners.

brokering regulations can result in civil and criminal fines, denial of export privileges, and even imprisonment.

Firearms training and 'Defense Services'

The State Department requires authorisation under the ITAR to provide 'defense services', which are defined to include training or instructing foreign persons in the use or operation of defence articles. In contrast, as the proposed rules state, '[t]he EAR does not include a concept of "defense services," and the "technology" related controls are more narrowly focused and apply in limited contexts as compared to the ITAR.'

Therefore, under the proposed rules, US persons providing training or instruction to foreign persons in the use or operation of firearms that would transition from the USML to the CCL would no longer need to obtain authorisation to provide such training, assuming that the training is not military-based or otherwise caught under the ITAR's definition of defense services.

Export clearance and record-keeping requirements for transitioning firearms

Under the proposed rules, exporters of firearms transitioning from the USML to CCL would be required to follow an export clearance procedure, including filing electronic export information

('EEI') in the Automated Export System ('AES'). The export clearance requirements would apply to exports of all such firearms, including temporary exports, regardless of value or destination. To assist US law enforcement officials in verifying that such exports are authorised and conform to the export clearance procedure, the proposed rules would increase the amount of information required in AES filing for these items to include serial numbers, make, model and calibre.

The proposed rules would also amend the EAR's record-keeping requirements in two ways: first, with regard to many firearms and shotguns, the exporter or any other 'party to the transaction' that creates or receives the EAR-required record – including the serial number, make, model, and calibre of the export – would be the person responsible for retaining the records; second, the proposed rules would narrow the scope of an EAR record-keeping exemption regarding warranty certificates, requiring exporters to maintain such certificates when issued for many firearms and shotguns.

Entry clearance process for temporary imports

Under the proposed rules, the EAR would regulate temporary imports into the US of firearms, ammunition, and other items previously under the jurisdiction of the Department of State. Although the temporarily imported items would now be listed on the CCL, some of these items would remain on the USMIL, the ATF's control list for permanent imports; the proposed rules would establish a new entry clearance process for such items so that US businesses would not need to obtain temporary import authorisation from two different government agencies.

The entry clearance process would also facilitate US law enforcement officials' ability to track items temporarily imported into the US and listed on both the CCL and USMIL by requiring businesses to furnish certain information on such imports which could then be used to identify the items upon their subsequent export. US exporters temporarily importing items that would transition to the CCL under the new rules and which are listed on the USMIL would not need to

Links and notes

¹ The proposed rules would add a new paragraph (x) to USML Categories I-III, allowing ITAR licensing for items subject to the EAR, provided the items are to be used in or with defense articles listed in USML Categories I-III and are described in the purchase documentation submitted with the application.

obtain a licence for the export of such items, but would be required to make use of EAR License Exception TMP.

Export licence exceptions

Under the proposed regulatory reforms, US businesses would still need to obtain an EAR licence for exports of most firearms, ammunition, and related technology that would transition to the CCL for all destinations. Nonetheless, the Departments of State and Commerce drafted the proposed rules with the intent that the conditions under which

exporters could take advantage of EAR licence exceptions for items transitioning from the USML to the CCL would be no more restrictive than those that currently apply to the items under the ITAR's licence exemptions.

Although the proposed rules should provide exporters with equal or greater ability to take advantage of licence exceptions than under the current rules, the conditions under which such exceptions apply remain tightly circumscribed, and exporters would need to undertake a critical analysis to determine whether EAR

licence exceptions apply to their exports.

Significant proposals affecting EAR licence exceptions include those below.

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EAR license exception	Eligible items	Ineligible items
LVS	<ul style="list-style-type: none"> Parts, components, accessories, and attachments for most non-automatic and semi-automatic firearms (other than shotguns), except those specified in the Ineligible Items column [\$500 limit on net value per shipment] Guns and armament manufactured between 1890 and 1919 and flame throwers with an effective range less than 20 meters [\$500 limit on net value per shipment] Parts and components of ammunition for most non-automatic and semi-automatic firearms [\$100 limit on net value per shipment] Test, inspection, and production equipment for most non-automatic and semi-automatic firearms and related ammunition [\$3,000 limit on net value per shipment] 	<ul style="list-style-type: none"> Complete non-automatic and semi-automatic firearms Receivers (frames), complete breech mechanisms, including castings, forgings or stampings thereof for most non-automatic or semi-automatic firearms (unless the ultimate destination is Canada) Ammunition for most non-automatic and semi-automatic firearms
TMP	<ul style="list-style-type: none"> Certain firearms and shotguns transitioning from the USML to the CCL and listed on the USMIL* Firearms controlled under new ECCN 0A501 and any shotgun with a barrel length less than 18 inches controlled under new ECCN 0A502 to exhibitions or demonstrations or for inspection, test, calibration, or repair 	<ul style="list-style-type: none"> Most firearms, shotguns, and related ammunition to destinations in Country Group D:5** or shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan
GOV	<ul style="list-style-type: none"> Most non-automatic and semi-automatic firearms, as well as related parts, components, and ammunition*** 	<ul style="list-style-type: none"> Any '500 series' item to be exported to destinations in Country Groups E:1 or E:2**, unless narrow exceptions apply
BAG	<ul style="list-style-type: none"> Most non-automatic and semi-automatic firearms (maximum of three per person), and up to 1,000 rounds of related ammunition 	
STA	<ul style="list-style-type: none"> Certain parts, components, accessories, and attachments specially designed for non-automatic or semi-automatic firearms or for ITAR-controlled firearms not specifically listed either on the CCL or USML 	<ul style="list-style-type: none"> Most non-automatic and semi-automatic firearms and related parts, components, accessories, and attachments Most shotguns and discharge-type arms and related parts and components
<p>* See 'Entry Clearance Process for Temporary Imports' above. ** See Supplement No. 1 to EAR Part 740. *** Under the proposed rules, both non-automatic and semi-automatic firearms would be eligible to use EAR License Exception GOV; only non-automatic firearms are eligible to use the current ITAR license exemption.</p>		

Visual representation of proposed changes to USML categories I-III²

CATEGORY I	Paragraph	Articles controlled	
		Pre-ECR	Post-ECR [summary of changes]
	* ³ (a)	Non-automatic and semi-automatic firearms to caliber .50 inclusive (12.7 mm)	REVISED ■ Would control only firearms that fire caseless ammunition
	*(b)	Fully automatic firearms to .50 caliber inclusive (12.7 mm)	NO CHANGE
	*(c)	Firearms or other weapons (e.g. insurgency-counterinsurgency, close assault weapons systems) having a special military application regardless of caliber	REVISED ■ Would control firearms specially designed to integrate fire control, automatic tracking, or automatic firing systems ■ Articles previously described in paragraph *(c) and still warranting ITAR control would be controlled by paragraphs *(a), *(b), or *(c) or by USML Category II
	*(d)	Combat shotguns. This includes any shotgun with a barrel length less than 18 inches.	REVISED ■ Would control fully automatic shotguns regardless of gauge
	*(e)	Silencers, mufflers, sound and flash suppressors for the articles in (a) through (d) of this category and their specifically designed, modified or adapted components and parts	REVISED ■ Would continue to control silencers, mufflers, and sound suppressors, and specially designed parts and components, but flash suppressors would be controlled by the EAR
	(f)	Riflescopes manufactured to military specifications (See category XII(c) for controls on night sighting devices)	RESERVED ⁴ ■ Riflescopes with night vision or infrared capabilities would be controlled by USML Category XII; all others would be controlled by the EAR
	*(g)	Barrels, cylinders, receivers (frames) or complete breech mechanisms for the articles in paragraphs (a) through (d) of this category.	REVISED ■ Would control barrels, receivers (frames), bolts, bolt carriers, slides, and sears specially designed for articles listed in USML Category I ■ Would no longer be designated SME
	(i)	Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h) of this category. Technical data directly related to the manufacture or production of any defense articles described elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.	REVISED ■ Would control technical data and defense services directly related to articles listed in USML Category I ■ Would control classified technical data directly related to items controlled by new ECCNs 0A501 , 0B501 , 0D501 , and 0E501 and defense services using the classified technical data
	(j)	The following interpretations explain and amplify the terms used in this category and throughout this subchapter: 1. A firearm is a weapon not over .50 caliber (12.7 mm) which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so. 2. A rifle is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer. 3. A carbine is a lightweight shoulder firearm with a barrel under 16 inches in length.	RESERVED

Visual representation of proposed changes to USML categories I-III²

CATEGORY I	Paragraph	Articles controlled	
		Pre-ECR	Post-ECR [summary of changes]
	(j) [continued]	<p>4. A pistol is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.</p> <p>5. A revolver is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.</p> <p>6. A submachine gun, 'machine pistol' or 'machine gun' is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.</p>	
	(k)-(w)	N/A [Paragraphs to be added under proposed rules]	NEW [Reserved]
	(x)	N/A [Paragraph to be added under proposed rules]	<p>NEW</p> <p>■ Would allow ITAR licensing for commodities, software, and technology controlled by the EAR that are: (1) to be used in or with defense articles controlled in USML Category I; and (2) described in the purchase documentation submitted with the license application</p>
	Notes	<p>Note: This coverage by the U.S. Munitions List in paragraphs (a) through (i) of this category excludes any non-combat shotgun with a barrel length of 18 inches or longer, BB, pellet, and muzzle loading (black powder) firearms.</p> <p>This category does not cover riflescopes and sighting devices that are not manufactured to military specifications. It also excludes accessories and attachments (e.g., belts, slings, after market rubber grips, cleaning kits) for firearms that do not enhance the usefulness, effectiveness, or capabilities of the firearm, components and parts.</p> <p>The Department of Commerce regulates the export of such items. See the Export Administration Regulations (15 CFR parts 730- 799). In addition, license exemptions for the items in this category are available in various parts of this subchapter (e.g., §§ 123.17, 123.18 and 125.4).</p>	<p>REVISED</p> <p>■ Would clarify which non-automatic firearms, semi-automatic firearms, non-automatic shotguns, BB guns, pellet guns, and muzzle loading firearms, and parts, components, accessories, and attachments for firearms and shotguns listed in USML Category I would be controlled by the EAR</p> <p>■ Would clarify the meaning of the following terms as used in USML Category I: 'firearm,' 'fully automatic firearm,' 'shotgun,' and 'caseless ammunition'</p>

² These visual representations of the proposed revisions to USML Categories I-III capture the bulk of the most significant rule changes, but they are not exhaustive and omit many important changes proposed by the new rules. While intended to be useful as a starting point for exporters seeking to understand how the proposed rules would affect their operations, they are not a substitute for a thorough review of the proposed rules themselves.

³ '*' indicates that articles within the paragraph are designated 'Significant Military Equipment'.

⁴ 'Reserved' indicates that the contents of the paragraph have been removed and the paragraph is reserved for future use while remaining listed on the USML.

Visual representation of proposed changes to USML categories I-III²

CATEGORY II	Paragraph	Articles controlled	
		Pre-ECR	Post-ECR [summary of changes]
	*(a)	Guns over caliber .50 (i.e., 12.7 mm), whether towed, airborne, self-propelled, or fixed, including but not limited to, howitzers, mortars, cannons, recoilless rifles, and grenade launchers.	<p>REVISED</p> <ul style="list-style-type: none"> ■ Would include articles removed from reserved paragraph (c) still warranting ITAR control ■ Would add new paragraph (a)(5) controlling developmental guns and armaments, and specially designed parts and components for these articles, funded by the Department of Defense ■ Would add 5 new Notes clarifying guns and armament to be controlled by revised paragraph (a) ■ Would remove the designation of SME from paragraph (a) as a whole, but would designate certain articles controlled by paragraph (a) as SME
	(b)	Flame throwers specifically designed or modified for military application	<p>REVISED</p> <ul style="list-style-type: none"> ■ Would control flame throwers with a minimum effective range of 20 meters ■ Would remove the designation of SME from paragraph (b)
	(c)	Apparatus and devices for launching or delivering ordnance, other than those articles controlled in Category IV.	<p>RESERVED</p> <ul style="list-style-type: none"> ■ Would control articles previously controlled by paragraph (c) and still warranting ITAR control by new paragraph *(a)(4)
	*(d)	Kinetic energy weapon systems specifically designed or modified for destruction or rendering mission-abort of a target.	<p>REVISED</p> <ul style="list-style-type: none"> ■ Would control kinetic energy weapon systems specially designed for destruction or rendering mission-abort of a target ■ Would add new Note clarifying kinetic energy weapons systems controlled by revised paragraph *(d)
	(e)	Signature control materials (e.g., parasitic, structural, coatings, screening) techniques, and equipment specifically designed, developed, configured, adapted or modified to alter or reduce the signature (e.g., muzzle flash suppression, radar, infrared, visual, laser/electro-optical, acoustic) of defense articles controlled by this category.	<p>REVISED</p> <ul style="list-style-type: none"> ■ Would control signature reduction devices specially designed for the guns and armament listed in USML Category II
	*(f)	Engines specifically designed or modified for the self-propelled guns and howitzers in paragraph (a) of this category	<p>RESERVED</p> <ul style="list-style-type: none"> ■ Articles formerly controlled by paragraph *(f) would be controlled by new ECCN 0A606
	(g)	Tooling and equipment specifically designed or modified for the production of defense articles controlled by this category	<p>RESERVED</p> <ul style="list-style-type: none"> ■ Articles formerly controlled by paragraph (g) would be controlled by new ECCN 0B602
	(h)	Test and evaluation equipment and test models specifically designed or modified for the articles controlled by this category. This includes but is not limited to diagnostic instrumentation and physical test models.	<p>RESERVED</p> <ul style="list-style-type: none"> ■ Articles formerly controlled by paragraph (h) would be controlled by new ECCN 0B602

Visual representation of proposed changes to USML categories I-III²

CATEGORY II	Paragraph	Articles controlled	
		Pre-ECR	Post-ECR [summary of changes]
	(i)	Autoloading systems for electronic programming of projectile function for the defense articles controlled in this Category	RESERVED ■ Certain articles formerly controlled by paragraph (i) still warranting ITAR control would be controlled under paragraph (j)
	(j)	All other components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a) through (i) of this category. This includes but is not limited to mounts and carriages for the articles controlled in this category	REVISED ■ Would be revised to specifically enumerate the articles controlled under paragraph (j)
	(k)	Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (j) of this category	REVISED ■ Would control technical data and defense services directly related to articles listed in USML Category II ■ Would control classified technical data directly related to items controlled by new ECCNs 0A602 , 0B602 , 0D602 , and 0E602 and defense services using the classified technical data
	(l)-(w)	N/A [Paragraphs to be added under proposed rules]	NEW [Reserved]
	(x)	N/A [Paragraph to be added under proposed rules]	NEW ■ Would allow ITAR licensing for commodities, software, and technology controlled by the EAR that are: (1) to be used in or with defense articles controlled in USML Category II; and (2) described in the purchase documentation submitted with the license application

Visual representation of proposed changes to USML categories I-III²

CATEGORY III	Paragraph	Articles controlled	
		Pre-ECR	Post-ECR [summary of changes]
	*(a)	Ammunition/ordnance for the articles in Categories I and II of this section.	REVISED ■ Would be revised to specifically enumerate the ammunition controlled under revised paragraph *(a); ammunition not enumerated in revised paragraph *(a) would be controlled by the EAR ■ Would add new paragraph (a)(10) controlling developmental ammunition, and specially designed parts and components for such ammunition, funded by the Department of Defense ■ Would add three notes clarifying which ammunition would be controlled by the EAR
	(b)	Ammunition/ordnance handling equipment specifically designed or modified for the articles controlled in this category, such as, belting, linking, and de-linking equipment.	REVISED ■ Would be revised to control ammunition/ordnance handling equipment specially designed for the articles controlled in USML Category III

Visual representation of proposed changes to USML categories I-III²

CATEGORY III	Paragraph	Articles controlled	
		Pre-ECR	Post-ECR [summary of changes]
	(c)	Equipment and tooling specifically designed or modified for the production of defense articles controlled by this category	RESERVED ■ Articles formerly controlled by paragraph (c) would be controlled by the EAR
	(d)	Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in this category: *(1) Guidance and control components for the articles in paragraph (a) of this category; *(2) Safing, arming and fuzing components (including target detection and localisation devices) for the articles in paragraph (a) of this category; and (3) All other components, parts, accessories, attachments and associated equipment for the articles in paragraphs (a) through (c) of this category	REVISED ■ Would be revised to specifically enumerate the parts and components controlled under revised paragraph (d); parts and components not enumerated in revised paragraph (d) would be controlled by the EAR
	(e)	Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (d) of this category. Technical data directly related to the manufacture or production of any defense articles described elsewhere in this category that are designated as Significant Military Equipment ('SME') shall itself be designated SME	REVISED ■ Would control technical data and defense services directly related to articles listed in USML Category III ■ Would control classified technical data directly related to items controlled by new ECCNs 0A505 , 0B505 , 0D505 , and 0E505 and defense services using the classified technical data
	(f)	The following explains and amplifies the terms used in this category and elsewhere in this subchapter: 1. The components, parts, accessories and attachments controlled in this category include, but are not limited to cartridge cases, powder bags (or other propellant charges), bullets, jackets, cores, shells (excluding shotgun shells), projectiles (including canister rounds and submunitions therefor), boosters, firing components therefor, primers, and other detonating devices for the defense articles controlled in this category 2. This category does not control cartridge and shell casings that, prior to export, have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting or popping 3. Equipment and tooling in paragraph (c) of this category does not include equipment for hand-loading ammunition. 4. The articles in this category include any end item, component, accessory, attachment, part, firmware, software, or system that has been designed or manufactured using technical data and defense services controlled by this category 5. The articles specifically designed or modified for military application controlled in this category include any article specifically developed, configured, or adapted for military application	RESERVED

Visual representation of proposed changes to USML categories I-III²

CATEGORY III	Paragraph	Articles controlled	
		Pre-ECR	Post-ECR [summary of changes]
	(g)-(w)	N/A [Paragraphs to be added under proposed rules]	NEW [Reserved]
	(x)	N/A [Paragraph to be added under proposed rules]	NEW ■ Would allow ITAR licensing for commodities, software, and technology controlled by the EAR that are: (1) to be used in or with defense articles controlled in USML Category III; and (2) described in the purchase documentation submitted with the license application

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