



2101 Wilson Boulevard, Suite 700, Arlington, VA 22201-3060 • (703) 522-1820 • (703) 522-1885 Fax • NDIA.org

Mr. Robert Rasmussen  
Office of Defense Trade Controls Policy  
U.S. Department of State

Electronic Submission: [www.regulations.gov](http://www.regulations.gov), DOS-2024-0035, RIN 1400-AE73

Re: NDIA comments on the proposed rule to amend the ITAR to revise USML Categories IV and XV and related sections (DOS-2024-0035)

Dear Mr. Rasmussen,

The National Defense Industrial Association (NDIA) appreciates the opportunity to provide comments on the proposed rule to amend the International Traffic in Arms Regulations (ITAR) to revise the U.S. Munitions List (USML) Categories IV and XV and related sections.

NDIA is the nation's oldest and largest defense industry association, representing over 1,700 corporate and over 65,500 individual members from small, medium, and large contractors, a majority of which are small businesses. NDIA members design, manufacture, apply, and maintain the cutting-edge technologies, systems, and platforms that our armed forces rely upon to deter aggression and defend our nation and its interests. As such, our members' professional and informed views on this request for information reflect the complexity and nuance of the issues under discussion.

#### **General Comments and Recommendations:**

***“Catch-all” Controls:*** The use of “catch-all” controls is ambiguous and potentially conflicts with the intent to expand U.S. exports of otherwise commercial items. For example, rubber tires are normally commercial items that are not subject to ITAR. However, it is unclear under the rule if consumer tires are used on a mobile surface-to-air missile system, would they be subject to the USML, would they remain under CCL as a dual-use item, or would they simply be considered commercial items that were adapted for defense use?

***Loitering Munitions:*** As currently worded, the proposed change to USML Category IV would divide loitering munitions (LMs) into two categories based on payload. LMs with armor-defeating warheads, such as an explosively formed penetrator, would seem to be controlled in IV(a)(4), while the same LMs with an anti-personnel warhead would be controlled in IV(a)(13). Some LMs are designed to be “jack of all trades” with both armor-piercing capabilities and fragmentation for “soft” target effectiveness, which can be used to neutralize tanks or other armored targets similar to Category III(d)(4) rocket-propelled grenades (RPGs). However, clearly, the Department of State (DoS) intends to control all RPGs in III(d)(4).

Further, the possible confusion about when IV(a)(13) applies to LMs is increased because IV(a)(13)

says it controls LMs that are “not otherwise described in paragraphs (a)(1) through (5) of USML Category IV,” which could be interpreted as meaning that any loitering munition that is a missile could be classified as IV(a)(5) based on the common definition of “missile.”

This confusion will increase the workload for both trade and government employees since some product lines currently controlled in one USML paragraph will be split into multiple paragraphs, requiring additional tracking and identifying more variants in classification databases as well as licenses. It will also likely result in more Commodity Jurisdiction requests being submitted to clarify the correct paragraph for LMs that seem to fit in both IV(a)(4) and IV(a)(13). In the near future, the number of LM variants is going to double, creating a wide range of size, range, and warhead options. Today, these are all under one USML paragraph.

To simplify the classification requirements, keep all LMs in IV(a)(13), and mitigate potential confusion of paragraphs, NDIA would suggest updating the Category IV(a) subparagraphs as follows:

(5) Rockets, SLVs, and missiles, not otherwise described in paragraphs (a)(1) through (4), or (13) of USML Category IV, excluding amateur rockets;

(13) Loitering munitions

If the DoS desires to track and license LMs with different capabilities, it is NDIA’s opinion that it would be best to add sub-paragraphs to IV(a)(13) to identify the particular characteristics within the same LMs paragraph.

### **Specific Comments and Recommendations:**

**Category IV(b):** Launch systems and equipment, as follows:

(1) Systems and equipment for launching articles described in paragraph (a)(1) or (2) of USML Category IV (MT) and specially designed parts and components therefor; and

(2) Systems and equipment for launching articles described within paragraphs (a)(3) through (14) or (a)(16) and (17) of USML Category IV and specially designed parts and components therefor.

- “Launch Systems and Equipment” is not defined, and industry believes that launch systems include launch pads. Some of these parts are currently controlled under the Export Administration Regulations (EAR).

- The addition of the “specially designed parts and components” will effectively move parts already subject to the Commerce Control List (CCL) back to the USML due to the specially designed catch.

**Note 1 to paragraph (c):**

- NDIA would request clarification on whether there is a difference between tanks specially designed for launch-site storage and those for the handling of certain propellants.

**Category IV(e)(5):** Separation systems, staging mechanisms, and interstages; and specially designed parts and components therefor (MT if usable in articles described in paragraph (a)(1) of USML Category IV);

- DDTC should define or remove the difference between a Staging Mechanism and an Interstage if there is a difference.
  - NDIA would propose dividing IV(e)(5) into multiple subparagraphs or adding a note to clarify that it does not control separation systems, adapters, or dispensers for satellites.
  - Separation Systems for Satellites should be controlled in the EAR. The recommended addition of 9A515.k controls these mechanisms but due to order of review would be caught in Category IV(e)(5).

**Category IV(h)(23):** Payload fairings;

- NDIA would suggest moving Payload Fairings to 9A604.x to the EAR as many payload fairing manufacturers are already outside of the U.S. for use in commercial rockets.

**Closing**

NDIA appreciates the opportunity to present our comments and recommendations for the proposed rule. If you have any questions related to these comments, please contact Michael Seeds at [mseeds@ndia.org](mailto:mseeds@ndia.org).

Sincerely,

National Defense Industrial Association