

# State and Commerce Publish Final Rules Defining “Specially Designed” Military End-Items and Creating a New Category XIX

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On April 16, 2013, the **U.S. State Department (State)** and the **U.S. Commerce Department (Commerce)** published their final rules (available [here](#) and [here](#)) amending the definition of "specially designed" and establishing a new category to cover gas turbines for cruise missiles, surface vehicles, and aircraft meeting certain objective parameters. This rule finalizes the proposed definition announced in the Federal Register on June 19, 2012 and the new category proposed in November 2011. The final rule will become effective 180 days from publication, on October 14, 2013.

The final revised definition will affect **U.S. Munitions List (USML)** categories VIII (aircraft and related articles), XVII (classified articles, technical data and defense services not otherwise enumerated), and XXI (articles, technical data and defense services not otherwise enumerated (known as miscellaneous articles)). The final rule also creates Category XIX, which clarifies that gas turbine engines for cruise missiles, surface vehicles and aircraft meeting certain objective parameters are covered on the USML, superseding controls under USML categories IV, VI and VII.

Importantly, State and Commerce coordinated their definitions of “specially designed” to create a “catch and release” format. Both definitions begin by capturing articles that are designed to meet or exceed performance criteria that relate to the reasons an item or end-item is controlled or which are required for the item to perform as designed then release various articles from being considered "specially designed," such as items which are specifically enumerated elsewhere and items that are, or substantially similar to items that are, used in civil application. The goal of this important change is to move away from the previous standard under which any item modified in any way, even minimally, for use in a military end-item was considered a defense article.

The final rule also seeks to prevent dual-licensing by adding a new section to the International Traffic in Arms Regulations (ITAR) plus an accompanying section in Commerce's rule. These new sections authorize the export, re-export or in-country transfer, without needing a license from Commerce, of Export Administration Regulation (EAR) items if 1) they are being used in or with ITAR-controlled items and 2) are included on the same State approval. The final rule also adds a new paragraph to USML categories that allows ITAR licensing of commodities, software and technical data subject to EAR only if 1) the items are used in or with USML-controlled articles and 2) the items are described

in the purchase documents submitted with the application.

The rule allows license or authorizations previously issued by State to be valid for up to two years, on expiration or return by the license-holder, whichever comes first. If an exporter desires an agreement to remain valid longer than two years, the exporter must submit an amendment under the new paragraph to USML categories. Licenses that contain both transitioning and non-transitioning elements and temporary licenses issued prior to the rule's effective date will remain valid until expired, returned or otherwise revoked. License amendment requests during the transition period will be judged on a case-by-case basis. Previously issued commodity jurisdiction (CJ) determinations for EAR items will remain valid but those for USML items will be superseded by the revised lists. Exporters can submit license applications immediately after publication of this rule.

These are the first final categories published, and, hopefully, more will follow shortly. Aircraft and related parts manufacturers especially should benefit from this change as they will be able to supply their customers more easily. Also, foreign manufacturers should be more likely to incorporate U.S. components in the absence of ITAR obligations.

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