

# State and Commerce Open Public Comment Period on Rocket, Missile, Launch Vehicle, Spacecraft and Satellite Export Controls

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March 12, 2019

### Key Points

- The Departments of State and Commerce are soliciting comments on USML Categories IV and XV and related entries on the CCL (e.g., 9x004, 9x515, 9x604).
- This comment period is the first opportunity for industry to provide input on the full scope of USML Categories IV and XV and their related CCL entries since Export Control Reform efforts in 2014.
- Comments are due by April 22, 2019.

### Background

In 2014, Categories IV (launch vehicles and missiles) and XV (spacecraft) of the U.S. Munitions List (USML) were substantially revised to move commercial items and less-sensitive military items to new or amended controls on the Commerce Control List (CCL). These changes were part of the Export Control Reform (ECR) effort to implement U.S. national security and foreign policy objectives by revising the USML to only control articles providing a critical military or intelligence advantage and not inadvertently control items in normal commercial use. As described by the Department of State (“State”), “this approach, however, requires that the list be regularly revised and updated to account for technological developments, practical application issues identified by exporters and reexporters, and changes in the military and commercial applications of items affected by the list.” Although there have been several minor revisions, updates and corrections to these USML Categories since 2014, this notice is the Trump administration’s first request for comments on how these space-related USML Categories can be improved.

The requests for comments are part of the effort by the National Space Council to develop and implement recommendations to streamline the regulatory environment for commercial space companies.<sup>1</sup> On May 24, 2018, President Trump issued Space Policy Directive 2 (SPD-2), “Streamlining Regulations on Commercial Use of Space,” which directed various U.S. agencies to review and revise regulations applicable to the commercial space sector in order to promote growth, minimize uncertainty, protect national security and “encourage American leadership in space commerce.”<sup>2</sup> SPD-2 also formalized the National Space Council’s recommendation regarding export controls by directing the National Space Council to review export licensing regulations

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affecting commercial space flight activity and recommend revisions consistent with the goals of SPD-2. Although any such recommendations have yet to be released publicly, the National Space Council appears to be already working with State and the Department of Commerce (“Commerce”), both of which issued Advanced Notices of Proposed Rulemaking (ANPRMs) on March 8, 2019 as “part of their work” with the National Space Council.<sup>3</sup>

### **ANPRMs and Comment Period**

On March 8, 2019, State and Commerce issued ANPRMs requesting public comments on Categories IV and XV of the USML and related entries on the CCL, including 9x004, 9x515 and 9x604.<sup>4</sup> Among other things, these categories control rockets, missiles, launch vehicles, spacecraft, satellites and many of their related subsystems, parts, components, accessories and attachments.

While these ANPRMs relate specifically to the President’s policy objectives on the commercial use of outer space and the work of the National Space Council, the ANPRMs broadly ask how to improve and update the current versions of Categories IV and XV and their related CCL entries. Like other ECR-related ANPRMs in the past, State and Commerce seek input on the following general questions:

- Are there any emerging or new technologies that warrant control in USML Categories IV or XV, that are not currently described or not described with sufficient clarity?
- Are there specific defense articles described in USML Categories IV and XV that have entered into normal commercial use since the most recent revisions of those categories?
- Are there any defense articles described in USML Categories IV and XV for which commercial use is proposed, intended or anticipated in the next five years?
- Are there any other technical issues that should be addressed for items in USML Categories IV and XV or corresponding entries of the CCL (e.g., the addition of technical notes or defined terms)?
- Are there any other technologies controlled in USML Categories IV or XV, which are not currently described, or are not described with sufficient clarity, that should move to the CCL?
- What are the potential cost savings to private entities from shifting control over commercial items from the USML to the CCL?

Additionally, the ANPRMs identify a number of particular topics relevant to specific U.S. space program activities and the commercial space industry:

- What are the appropriate controls for items associated with the NASA Lunar Gateway project?<sup>5</sup>
- In consideration of existing control parameters on the size of space-based optical telescopes, how might future control parameters differentiate technically between space-based optical telescopes for astrophysics missions and those used for Earth observation?
- Are there any suggested revisions, such as a definition of “clear aperture,” that would clarify the scope of Categories XV(a)(7) and XV(e)(2)?

- Are there any suggested revisions, such as a definition of “servicing,” that would clarify the scope of Category XV(a)(12)?
- Should any other specific space-related technologies be added to the following list for review: satellite thrusters, gyroscopes, inertial navigation systems, large aperture earth observation cameras, spacecraft antenna systems and adaptive Global Navigation Satellite System (GNSS) antennas, suborbital systems with propulsion systems currently controlled under USML, kapton tape, star trackers and astrocompasses?
- For technologies controlled under 9A515 (including habitats, planetary rovers and planetary systems), what factors or specific technologies should be considered for movement to a different Export Control Classification Number (ECCN) or a paragraph under 9A515 with less stringent licensing requirements?

Comments are due to State and Commerce by April 22, 2019.

State and Commerce export control personnel read all public comments and take them into account when preparing proposed rules to revise the categories – if you have suggestions for how to improve the categories, now is the best time to make them. The higher the quality of the comments and supporting documentation, the more likely your suggestions are to be taken seriously as part of future revision efforts.

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<sup>1</sup> See [here](#).

<sup>2</sup> See [here](#).

<sup>3</sup> State ANPRM is available [here](#); Commerce ANPRM is available [here](#).

<sup>4</sup> *Id.*

<sup>5</sup> NASA's Lunar Orbital Platform Gateway (formerly known as "Deep Space Gateway" and colloquially referred to as "Lunar Gateway" or "Gateway") is a developing, U.S.-led project to establish a habitable outpost in lunar orbit that will serve as a strategic waystation between Earth and the Moon's surface (and ultimately, Mars). At the time of this writing, NASA plans to develop many of the various modules by competitive award to U.S. industry, and Gateway payloads (other than crew) are expected to launch on commercial rockets. Further details are available [here](#) and [here](#).