

ALERT

State Department Proposes Revision of U.S. Munitions List Regarding Military Electronics

December 4, 2012

On November 28, 2012, the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) published its proposed revision of Category XI (military electronics) of the U.S. Munitions List (USML).^[1] As part of the ongoing export control reform effort to establish a "bright line" between the USML and the Commerce Control List (CCL), the proposal more precisely describes the military electronics warranting control on the USML and provides a definition for "equipment."

DDTC is the agency responsible for implementing the International Traffic in Arms Regulations (ITAR),^[2] which control the export of items captured on the USML, including all defense articles, military-related technical data and defense services. In general and with limited exceptions, items not controlled under the ITAR are controlled under the Export Administration Regulations (EAR),^[3] which includes the CCL.^[4] The Department of Commerce's Bureau of Industry and Security (BIS) administers the EAR.

Generally, under the existing regulations, parts or components specifically designed or modified for a defense article are subject to control under the ITAR, whether or not they are critical to preserving U.S. military superiority. An essential feature of the proposed USML category, however, is the provision of a positive list of specific types of parts, components, accessories and attachments that have been deemed to require ongoing control on the USML.

In effort to establish a "bright line" between the USML and the CCL, the proposed revision of Category XI also clarifies which military electronics are covered under ITAR and EAR. In particular, the proposed rule removes military computers from the USML and

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transfers jurisdiction to BIS, under new Export Control Classification Number (ECCN) 3A611. The proposed rule also specifically lists several defense articles controlled under the broad categories: underwater hardware, equipment and systems; radar systems and equipment; electronic combat equipment; and command, control and communications identification systems and equipment. Moreover, the proposal adds several provisions to the USML to specifically cover unattended ground sensors; electronic sensor systems for anti-submarine warfare, mine warfare and concealed weapons; and test sets "specially designed" and programmed for testing counter radio controlled improvised explosive device electronic warfare systems. Additionally, the proposed USML category covers explicitly the equipment to process or analyze military equipment under Category XI. Finally, the proposed rule defines "equipment" as the "combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a specialized function of an end-item or a system." [5]

As this is a proposed rule, it is not yet effective, and should not yet be relied upon to export ITAR-controlled items. Indeed, following a 60-day comment period ending on January 28, 2013, the Department of State may decide to implement the proposed rule as written, revise the rule to incorporate any comments received, or shelve the proposed rule entirely.

[1] *See Amendment to the International Traffic in Arms Regulations*, 77 Fed. Reg. 70958 (Department of State November 28, 2012) (Revision of U.S. Munitions List Category XI and Definition for "Equipment").

[2] 22 C.F.R. § 120, *et seq.*

[3] 15 C.F.R. pts. 730-774.

[4] 15 C.F.R. pt. 774, supp. no. 1.

[5] *See Amendment to the International Traffic in Arms Regulations*, 77 Fed. Reg. 70958, 70960, 70964 (Department of State November 28, 2012) (Revision of U.S. Munitions List Category XI and Definition for "Equipment").