

## ALERTS AND UPDATES

### Proposed Comprehensive Revisions to the U.S. Export Administration Regulations

July 14, 2011

In furtherance of President Obama's directive in 2009, to the various agencies that are charged with administering U.S. export laws, to conduct a broad-based review of the U.S. export control system, the U.S. Departments of Commerce and State, by advance notice of proposed rulemaking, notified the public of plans for revising the Commerce Control List (CCL) contained within the Export Administration Regulations (EAR), as well as the U.S. Munitions List (USML) contained in the International Traffic in Arms Regulations (ITAR).

In furtherance of this objective, the Commerce Department intends to publish in the *Federal Register* of July 15, 2011, a new "regulatory construct" to deal with the transfer of items from the USML that the Obama administration determines no longer warrant control under the Arms Export Control Act (AECA) and that would be controlled under the EAR.

The proposed rules and regulations would be implemented once all the required notices to Congress and all necessary amendments to the ITAR and USML, and to the EAR and the CCL are completed.

The proposed revisions contemplate an initial transfer of a group of items now covered by Category VII (Tanks and military vehicles) of the USML to the CCL.

Certain items that are transferred to the CCL would be eligible for Strategic Trade Authorization (STA) license exemption, and the proposed rules and regulations also propose amendments to the EAR to provide for new definitions of such terms as "specially designed," "end items," "parts" and "components." These terms have been troublesome to the export community (particularly the term "specially designed"). The definitions contained in section 772.1 are key to the understanding of the scope of the new proposals; and consequently, particular attention should be given to those definitions.

Additionally, the proposed rules and regulations would establish a so-called "holding Export Control Classification Number (ECCN) in which items that warrant a significant level of control, but are not otherwise classified on the CCL may be temporarily placed." Under current practice,

an item that is not on the CCL would ordinarily receive EAR 99 classification with limited export control except where "end use," "end user" and other similar non-list considerations come into play. The holding process contemplates a one-year sunset period that may be extended for one additional year. The holding process would not be subject to appeal and thus may have adverse impact upon affected producers and exporters of those products.

Assuming that it is published in the *Federal Register* on July 15, 2011, comments must be submitted to the Commerce Department no later than 60 days after publication: September 13, 2011. Additional information can be obtained from Timothy Mooney of the Department of Commerce at [timothy.mooney@bis.doc.gov](mailto:timothy.mooney@bis.doc.gov).

### **For Further Information**

If you have any questions regarding the information in this *Alert*, including how it may affect your company, please contact [Brian S. Goldstein](#), any [member](#) of the [Corporate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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