

Agencies Propose Expanding US Export Controls on Cameras, Night Vision Equipment and Sensing Technology

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On May 5, 2015, the U.S. Commerce Department's Bureau of Industry and Security (BIS) and the U.S. State Department's Directorate of Defense Trade Controls (DDTC) proposed extensive revisions to the current U.S. export controls on sensing and optical devices, instrumentation, control equipment, and technology and software for the development, production and use of such items.¹ These proposed rules are significant both in their scope and in how they would impose new export controls and licensing requirements, including on certain exports to traditional allies like Canada, other NATO members and Japan. Given the likely impact of the proposed rules, industry stakeholders should take advantage of the agencies' invitation to submit comments by July 6, 2015.

Among other things, the new rules proposed by DDTC and BIS would:

- transfer certain military fire control, range finder, optical, and guidance and control equipment and related technology and software from Category XII of the U.S. Munitions List (USML) administered by DDTC to new "600 Series" Export Control Classification Numbers (ECCNs) under the Commerce Control List (CCL) administered by BIS;
- eliminate license exceptions for certain existing ECCNs covering sensors, sensor components such as focal plane arrays and intensifier tubes, night vision equipment, cameras and related systems and equipment, camera components and read-out integrated circuits;
- expand the scope of end-user restrictions on sensors, cameras and related equipment;
- impose new licensing requirements on worldwide exports of technology and software for certain covered items, including those that incorporate a focal plane array or image intensifier tube, and either presumptively deny such license applications or review them on a case-by-case basis; and
- reduce available license exceptions for exports of certain items, technology and software to Canada and other major U.S. allies.

These proposals differ from the approach taken in previous phases of the Obama administration's ongoing Export Control Reform process. Prior revisions to the USML and CCL generally have had the effect of streamlining the export of military items and "dual-use" items, *i.e.*, items with both military and civil applications. By contrast, the latest proposals would counterbalance the transfer of USML items to the CCL by eliminating license exceptions, restricting exports to Canada and other major allies, expanding controls on multiple items, and establishing a presumption of denial for export license applications for the export and re-export of certain software and technology. As written, the proposed rules also tighten export controls on many items that are already listed on the CCL.

It is important to note that the proposed rules may be modified by DDTC or BIS before they are finalized if stakeholders actively engage with the agencies. DDTC and BIS have specifically asked for detailed comments regarding: (i) whether the proposed controls are consistent with the Wassenaar Arrangement's Munitions or Dual Use Lists, (ii) whether the proposed rules create effective "bright lines" clearly assigning an item to the USML, the 600 Series of the CCL or the remainder of the CCL; (iii) whether the

¹ *Revisions to the Export Administration Regulations: Control of Fire Control, Range Finder, Optical, and Guidance and Control Equipment the President Determines No Longer Warrant Control Under the United States Munitions List*, 80 Fed. Reg. 25798 (May 5, 2015) (proposed rule); *Amendment to the International Traffic in Arms Regulation: Revision of U.S. Munitions List Category XII*, 80 Fed. Reg. 25821 (May 5, 2015) (proposed rule).

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proposed rules cover items that are in commercial use or have foreign availability and whether different control parameters would be more appropriate for such items; (iv) the impact of proposed rules expanding license requirements on items that currently may be exported without a license, including certain items exported to Canada; and (v) the definition of terms used in the export control parameters of the USML and CCL.

Manufacturers, exporters and brokers with international sales and operations — as well as those seeking to gain market share overseas — should take this opportunity to help shape the export

control regulations that will govern their businesses for the foreseeable future. The international trade attorneys at Skadden are familiar with the policies and practices of DDTC and BIS and can develop strategies for successfully engaging with these agencies to protect your interests. We encourage you to contact any of the attorneys listed here or your regular Skadden contact with any questions specific to your situation or business.