CLIENT ALERTS & INSIGHTS

ITAR Proposed Changes - DDTC Comment Period Ending Soon

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Featured Industries: Transportation & Logistics, International Trade & Supply Chain Management, Regulatory Compliance

Key Takeaways

- DDTC has proposed changes to ITAR that would create a new export license exemption, expand exclusions from the "specially designed" definition, and remove certain low-risk items from the USML.
- If adopted, these changes could reduce regulatory burdens for companies involved in the manufacture, servicing, export, and transfer of defense articles.
- Defense related companies and business lines can now evaluate whether the proposed changes will impact their ITAR compliance obligations and the value of timely submitting comment.

The U.S. Department of State (the “Department”) recently published a proposed rule intended to change the scope and application of provisions in the International Traffic in Arms Regulations (“ITAR”) enforced by the Directorate of Defense Trade Controls (“DDTC”). 91 FR 62361. The rule would narrow the scope of the U.S. Munitions List (“USML”) to only “the most sensitive technologies” and also reduce the regulatory burden facing industry participants in ITAR-regulated trades. This client alert summarizes these four categories of potential changes and the opportunity for public comment.

New License Exemption - A new license exemption would be added to 22 CFR Part 123 allowing for the temporary export of unclassified foreign defense articles. The article must be exported solely for “servicing, inspecting, testing, calibrating, repairing, overhauling, upgrading, reconditioning, or one-to-one replacement of a defective item by the *original equipment manufacturer (OEM) or its authorized service provider*” (emphasis added).

Narrowed “Specially Designed” Scope - The Department proposes adding new subsections to 22 CFR 120.41, which would expand the list of articles that are not considered specifically designed for USML categorization. Specifically, this change would include: (1) articles outside the scope of ITAR which, in the first year after leaving development, are subsequently used in a USML category; and (2) certain unsophisticated mechanical components or equipment that would not be considered specially designed for purposes of ITAR regulation.

Demilitarized Product Category - Articles that have been "demilitarized" would no longer fall under the "specially designed" definition as provided in 22 CFR 120.41(b). Demilitarization requires that "all characteristics that made the item a defense article have been permanently removed," and the determination of any remaining military capability is a fact-based analysis. The Department does not provide specificity on dispositive factors for this analysis but does state that the mere removal of all USML components may be insufficient.

As an example, the Department states that a helicopter designed to carry munitions would not be demilitarized when used for fighting wildfires since the airframe was designed to meet the specific requirements of delivering munitions. Additionally, the Department specifically notes that identification of an article as "demilitarized" by the Department of Defense (DOD) or another agency does not indicate that the article is no longer described in the USML.

USML Category Reductions - The Department also contemplates removing certain low-risk articles from USML categories, specifically:

- USML Category II(a)(4) - Smooth-bore, fixed-barrel canister launchers
- USML Category VIII(h)(10) - Certain radar altimeters
- USML Category X(a)(7) - Certain goggles, spectacles, visors, vision blocks, canopies, or filters for optical sights or viewers

Public Comment Opportunity - Public comments are due November 30, 2026. Interested parties can submit public comments to the DDTC at DDTCPublicComments@state.gov using the reference number RIN 1400-AF40.

Benesch's team are available to counsel clients on managing export controls compliance, preparing risk assessments, filing voluntary self-disclosures, and defending government investigations and enforcement actions. You may receive our client alerts on these and related supply chain issues by signing up HERE.

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