

CLIENT ALERT

On Eve of Annual Update Conference, Commerce Announces Proposed Rule To Address Future Controls Over Items Removed From USML

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Today, the Bureau of Industry & Security (BIS) published a proposed rule, [76 Fed. Reg. 41958](#), which would create a structured approach for addressing items to be removed from the U.S. Munitions List where continued control under the EAR is necessary. The extensive revisions are discussed under four general topics:

- Creation of a new "600 series" of numbers within each Category and Group on the Commerce Control List (CCL) where items to be released from control under the USML that do not otherwise fit within an existing ECCN controlled for more than AT reasons. This series of ECCNs is considered necessary to ensure adequate national security control over many of the items to be removed from the USML as well as to comply with certain multilateral commitments like the Wassenaar Military List.
- Creation of ECCN 0Y521 as an equivalent to Category XXI (Miscellaneous Items) of the USML to capture and provide temporary control over newly emerging products and technology not otherwise covered under the CCL while the government considers the appropriate control. It is envisioned this temporary control will last no longer than 1 year.
- Creation of a single definition (except for MTCR) of "specially designed" even though a goal of the "positive list" reform was to eliminate as much as possible control over items that cannot be specifically identified at least by defined functional and operational characteristics. The term has become ubiquitous, however, appearing 264 times in the CCL and in multilateral regimes (no need to wonder how it got there) such that BIS considers it impractical to excise it from the export control vocabulary.
- Other changes designed to assist the structural alignment of the USML and CCL to foster the goal of reaching a single positive list.

The proposed regulations have lofty ambitions but will require significant study and testing to determine how close they come to achieving those goals. So in the meantime, get out your pens and pencils and prepare your questions for the Update Conference next week – and watch this space for additional analysis and comment.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Alan W. H. Gourley

Partner – Washington, D.C.

Phone: +1 202.624.2561

Email: agourley@crowell.com

Adelicia R. Cliffe

Partner – Washington, D.C.

Phone: +1 202.624.2816

Email: acliffe@crowell.com