

State and Commerce Forge Ahead with ECR Changes; Propose Revisions to Controls on Toxicological Agents and Associated Equipment and Directed Energy Weapons

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On June 17, 2015, the Department of State's Directorate of Defense Trade Controls (DDTC) and the Department of Commerce's Bureau of Industry and Security (BIS) published proposed rules to amend U.S. export controls on toxicological agents and associated equipment and directed energy weapons.^[1] The proposed rules mark yet another important step in the President's Export Control Reform (ECR) Initiative. They will revise Categories XIV and XVIII of the International Traffic in Arms Regulations' (ITAR) U.S. Munitions List (USML) and move several currently ITAR-controlled items to the Export Administration Regulations' (EAR) Commerce Control List (CCL).

Toxicological Agents and Associated Equipment

Category XIV of the ITAR's USML broadly controls chemical and biological agents and associated equipment. The proposed rules would provide for a risk-based approach, such that the ITAR will only control "Tier 1" pathogens and toxins established in the Department of Health and Human Services' and the Department of Agriculture's select agent regulations that meet specific capabilities. Consistent with one of the primary goals of the ECR Initiative, proposed Category XIV will positively list other items that are ITAR-controlled, including the M53 Chemical Biological Protective Mask; the M50 Joint Service General Purpose Mask; and equipment for the detection, identification, warning, or monitoring of certain chemical or biological agents that contains reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed

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Practice Areas

Export Controls and Economic Sanctions
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under a Department of Defense contract or other funding authorization.

BIS has created a new set of Export Control Classification Numbers (ECCNs), 1x607, to cover those toxicological items shifting from control under the ITAR to control under the EAR. Riot control agents, equipment for the destruction of chemical and biological agents, and equipment for the sample collection and decontamination or remediation of chemical and biological agents, among other items, will be moved to the EAR's CCL.

Directed Energy Weapons

In addition to the changes to Category XIV of the USML, the agencies also propose changes to export controls on directed energy weapons. Category XVIII of the ITAR's USML currently controls a wide array of directed energy weapons systems (e.g., laser systems specifically designed or modified to cause blindness, particle beam systems, target acquisition or tracking systems). The proposed changes would limit the ITAR's controls to only those directed energy weapons that, as their sole or primary purpose, degrade, destroy, or cause mission-abort of a target; disturb, disable, or damage electronic circuitry; etc. The purpose of this proposed limitation is to exclude from control under the ITAR items that might achieve the same effect as a directed energy weapon but in an incidental, accidental, or collateral manner. Further, tooling and equipment, test and evaluation equipment, and test models related to directed energy weapons will be EAR-controlled. BIS has created a new set of ECCNs, 6x619, to cover these and other items moving to the EAR's CCL.

With these proposed rules, there are only three USML categories remaining—covering firearms, artillery, and ammunition—where DDTC and BIS have yet to issue either proposed or final ECR rules. As with prior ECR-related proposed rules, industry members are encouraged to submit comments on the rules, including to point out areas where there still is no bright line between ITAR- and EAR-controlled items. Comments are due to DDTC and BIS by August 17, 2015.

[1] *Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories XIV and XVIII*, 80 Fed. Reg. 34,572 (Dep't State June 17, 2015) (proposed rule); *Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)*, 80 Fed. Reg. 34,562 (Dep't Commerce June 17, 2015) (proposed rule).