

ARTICLE

State and Commerce Departments Issue Proposed Rules on Fire Control, Range Finder, Optical, and Guidance and Control Equipment

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Today, the Department of State's Directorate of Defense Trade Controls (DDTC) issued a proposed rule to amend the International Traffic in Arms Regulations (ITAR) to revise Category XII of the U.S. Munitions List (USML).[1] The Department of Commerce's Bureau of Industry and Security (BIS) issued a companion proposed rule to amend the Export Administration Regulations (EAR). [2]

These proposed rules are part of the Administration's ongoing Export Control Reform (ECR) Initiative. One of the primary goals of the ECR effort is to create a "bright line" between ITAR- and EAR-controlled items. In addition, items that are not inherently military in nature or possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States generally are being moved from the ITAR to the EAR.

Category XII of the USML currently controls a broad basket category of fire control, range finder, optical, and guidance and control equipment. The proposed ITAR rule, on the other hand, identifies a positive list of specific fire control; weapons sights; imaging systems; laser systems; infrared focal plane arrays (IRFPAs); image intensifier tubes; night vision equipment; guidance, navigation, and control systems; and parts and components for such equipment that would remain ITAR-controlled.

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DDTC's proposed rule also marks a departure from its typical "see-through" rule, where items remain ITAR-controlled even if incorporated into larger commercial or dual-use systems. In this connection, certain items, including several IRFPAs as well as parts and components, are controlled for export according to the controls applicable to the higher assembly when they are integrated into and included as an integral part of an item subject to the EAR and cannot be removed without destruction or damage to the article or rendering the item inoperable. However, most technical data for ITAR-controlled IRFPAs remains ITAR-controlled even when the defense article is part of a system subject to the EAR. The proposed rule does include exclusions for certain data, including technology for the incorporation or integration of IRFPAs into items subject to the EAR, as long as such information does not include design methodology, engineering analysis, or manufacturing know-how.

BIS's companion proposed rule makes several changes to the EAR to add controls on those fire control, range finder, optical, and guidance and control items that will shift from the ITAR to the EAR. Among the many (and fairly complex) changes, the proposed rule adds a new "600 series" Export Control Classification Number (ECCN) – 6x615 – for military fire control, range finder, and optical items; revises ECCN 7A611 and adds additional 7x611 ECCNs for military guidance and control items; and revises existing ECCNs controlling optical sighting devices, concealed object detection equipment, lasers, radar systems, inertial measurement equipment, and other related items.

The rule also adds a worldwide license requirement for certain non-600 series items; expands controls, eliminates the use of some license exceptions, and adds new ECCNs for certain software and technology related to night vision items; and expands the end-use restrictions on certain exports and reexports of specified cameras, systems, and equipment.

Each proposed rule has a 60-day comment period. Industry members are encouraged to submit comments on the rules, particularly to identify areas where there still is no bright line between ITAR- and EAR-controlled items and to alert the agencies to those items in the proposed rules that are in normal commercial use.

[1] *Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XII*, 80 Fed. Reg. 25,821 (May 5, 2015 Dep't State) (proposed rule).

[2] *Revisions to the Export Administration Regulations (EAR): 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 (USML)*, 80 Fed. Reg. 25,798 (May 5, 2015 Dep't Commerce) (proposed rule).