

PUBLICATION

New Export Rules for Firearms and Ammunition – Opening the Door for More Commercial Sales

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On May 14, the Department of Commerce's Bureau of Industry and Security (BIS) in conjunction with the Department of State's Directorate of Defense Trade Controls (DDTC) issued newly proposed rules regarding export classifications of firearms, guns, ammunition and related articles. BIS and DDTC determined that certain articles previously controlled by the U.S. Munitions List (USML) and regulated under the International Traffic in Arms Regulations (ITAR) should be transferred to the Commerce Control List (CCL) and regulated by the Export Administration Regulations (EAR). The stated goals of the proposed rules are to reduce procedural burdens and costs of export compliance on the U.S. firearms industry, while allowing the Commerce and State Departments to more efficiently enforce their relevant export controls.

The BIS proposal describes certain articles determined to no longer warrant control under the USML in Category I (Firearms, Close Assault Weapons and Combat Shotguns), Category II (Guns and Armament), and Category III (Ammunition/Ordnance), that would be transferred to control under the CCL. BIS and DDTC concluded that these articles were either not inherently for military use or do not warrant the obligations imposed under the ITAR. In addition, articles subject to the transfer were determined to not provide a critical military advantage to the U.S., are not the types of weapons that are almost exclusively available from the U.S., and are manufactured from technology that is widely available.

The scope of the items subject to change are mostly commercial items widely available in retail outlets, and were described as having commercial and other non-military characteristics that distinguish them from articles subject to control under the ITAR. For example, the proposal would transfer all non-automatic and semi-automatic firearms, as well as their parts and components, from the USML to the CCL. However, the USML will continue to control fully automatic firearms and their parts and components, including guns up to .50-caliber, as well as firearms that fire caseless ammunition. In addition, silencers, mufflers, and sound suppressors will still be subject to the USML.

The BIS proposal would create 17 new Export Control Classification Numbers (ECCNs) to control the items proposed for removal from the USML, and would further revise seven existing ECCNs and remove nine ECCNs to help make it easier to identify and classify your articles for export. It is important to note that the articles moved to the CCL are not being “de-controlled,” and BIS would still require a license to export/reexport the articles subject to the new ECCNs. While the proposed rules will contain license exceptions that will permit certain components and other items to be exported without a license, exports of complete firearms will still require licensing under the EAR.

The DDTC's proposed rule revises Categories I, II, and III of the USML to more precisely describe the articles warranting control on that list, limiting their scope to defense articles that provide the U.S. a critical military or intelligence advantage or are inherently for a military end use. The proposed rules establish bright lines to help exporters distinguish between USML- and CCL-controlled articles. The proposed rules are expected to soon be published in the Federal Register, at which point they will be subject to a 45-day public comment period. The full Commerce proposal is available [here](#), and the State Department proposal is available [here](#).

Bottom line- Manufacturers, brokers, and exporters of these items and components will need to document any classification changes and should have compliance procedures to correctly classify each product. Your checklist could start with an ITAR decision tree and then proceed to the 600 series or other ECCN and then complete your EAR licensing determination. Don't forget restricted party and OFAC compliance requirements. Yes, this may mean more work to do but you only have to perform the classification analysis once and it offers new exporting opportunities. Keep your documentation of your review for at least 5 years. These changes also trigger new training requirements.