

ECR (Export Control Reform) Episode VIII: New Rules for the New Year

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We have eaten all the holiday meals and treats, we have counted down and watched the ball drop, and we have emptied a fair few champagne bottles. Now, we are all resolving to be leaner, nimbler, smarter, and stronger in the New Year.

So is the ITAR.

The New Rules

On January 6, 2014, the revisions to four ITAR categories went into effect: [Category VI, Vessels of War and Special Naval Equipment](#); [Category VII, Tanks and Military Vehicles](#); [Category XIII, Auxiliary Military Equipment](#); and Category XX, Submersible Vessels, Oceanographic and Military Equipment. As with the other Export Control Reform revisions we have [discussed in this blog](#), the changes to these four categories are designed to make the ITAR leaner (by covering fewer items and technical data), smarter (by clarifying what items and technical data are “[specially designed](#)” for military use), and stronger (by placing higher controls on the items that remain on the revised ITAR). With the largest rollout of new regulations to date, we see a new ITAR for the new year.

A Word of Caution

In all the excitement created by the coming of a new year and a new ITAR, exporters may be tempted to rush the exports of items or technical data recently migrated from ITAR control to the Commerce Control List. However, we should all take care to remember that [the R in ECR](#) is for reform, not release.

As a general matter, many of the former ITAR items are moving to the 600 series Export Control Classification Numbers. Those ECCNs are subject to the following reasons for control: National Security Column 1 (NS1), Regional Stability Column 1 (RS1), Anti-Terrorism Column 1 (AT1), and United Nations embargo (UN). Additionally, certain 600 series items are also controlled for Missile Technology reasons. Notably, all items controlled for NS1 reasons and most items controlled for RS1 reasons require that an exporter obtain a license before exporting a 600 Series item to every country in the world except for Canada.

Exporters should also recall that the new 600 series items are not eligible for any de minimis threshold for U.S. arms-embargoed destinations, including China. For all other countries, the EAR 25% de minimis rule applies to 600 Series items.

Further, exceptions available for the export of most items and technology controlled under the EAR may apply differently to 600 series items. [Our article on exemptions](#) explores the nuances of these rules in further detail.

If our finger-wagging caution is insufficient to reign in the urge to careless exporting, recall that the so-called E2C2 is watching. The new [Export Enforcement Coordination Center](#) is a “conduit between federal law enforcement agencies and the intelligence community, and it is the primary point of contact between enforcement authorities and agencies engaged in export licensing, public outreach, and government-wide statistical tracking.” If that Orwellian description doesn’t have you on the phone to your export compliance department, we advise you to read more Orwell.

A Word of Guidance

If you have questions about the jurisdiction and classification of their items or technical data, we, of course, recommend you seek the assistance of expert counsel who publish clever blogs. In the first instance, however, you may go right to the source and try out the new [decision tree tools](#) that were recently released in beta by the Bureau of Industry and Security. The tools offer guidance on the review order for the CCL, a determination of Specially Designed, and the eligibility of an export for the Strategic Trade Authorization license exemption.

A Word of Words to Come

With the effectuation of four new categories, we are nearly one-third of the way through the President’s ECR initiative. As the changes proceed over the next two years, we will continue to offer comment and explanation on this blog. Thank you for following our publication (and we hope you find it useful), and all the best to you and yours in 2014.

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