
U.S. Proposes Changes to Streamline Export Rules for Personal Protective Equipment

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Body armor and helmets are crucial equipment for contractors, business professionals, NGO volunteers and government workers operating in dangerous areas abroad. They also can pose an organizational challenge due to export controls under U.S. law. On June 7, the State Department's Directorate of Defense Trade Controls (DDTC) and Commerce Department's Bureau of Industry and Security (BIS) proposed rules to reorganize the regulation of personal protective equipment (PPE), protective shelters and related items. Several items and technologies would be moved from stricter DDTC control under the International Traffic in Arms Regulations (ITAR) to new BIS-administered categories under the Export Administration Regulations (EAR), with license exceptions available under certain circumstances. Companies have the opportunity to submit comments on the proposed rules.

Under the "President's Export Control Initiative," the different U.S. agencies responsible for national security and export control have been systematically reviewing the country's export regulations. These latest proposed rules result from the review of Category X of Part 121 of the ITAR (the U.S. Munitions List or USML). Under current law, Category X includes:

- body armor for military applications, defined to include those with NIJ level III and IV characteristics;
- helmets compatible with military communication hardware, optical sights or slewing devices;
- anti-gravity, pressure and atmospheric diving suits;
- certain clothing to protect against and reduce detection by radar, infrared (IR) or other sensors and visors/eyewear to protect against lasers or thermal flashes discharged by ITAR-controlled articles; and
- tooling and equipment specially designed/modified for the production of Category X equipment.

The DDTC and BIS Proposed Rules¹ would shift several items and technologies from ITAR to EAR control, in many cases easing or streamlining the regulations for use, export and manufacture of PPE, shelters providing ballistic or nuclear/biological/chemical protection and related items. Those items remaining on the USML would be clarified in a revised Category X. It is important to note that these are proposed rule changes which have not taken effect. Similar proposed rules are still awaiting finalization after several months pending review and comment, and there is no schedule for full implementation.

Under the proposed rules, armored plate "specially designed" for military use, body armor made to "military standards or specifications"² and military helmets would be controlled by the EAR under new Export Control Classification Number (ECCN) 1A613, except for those NIJ level IV. The items which would move from ITAR to EAR control under the proposed rules include level-III body armor made to military standards and helmets compatible with military communications hardware.³ Certain specially designed shelters currently under ITAR control would also move to this new ECCN.⁴ Existing ECCN 1A005 would control soft body armor not made to military standards and hard body armor level IIIA or less. Police helmets and shields would continue to be controlled by ECCN 0A979.

Items, equipment, software and technologies controlled under the new proposed ECCNs would be subject to export control for all countries except for Canada, but would have license exceptions available under certain circumstances. The Strategic Trade Authorization (STA) license exception would provide an exception for the export of items and equipment under ECCN 1A613 for destinations in or nationals of certain U.S.-allied countries⁵ when end-use statements and other requirements of the STA license exception are met. The Temporary import, export and reexport (TMP) and Baggage (BAG) license exceptions would allow individuals to travel with ECCN 1A613 body armor for personal use under ECCNs 1A613(d)⁶ and 1A005 without a license to countries not subject to an arms embargo (however, export to Afghanistan would be allowed when meeting certain conditions and to Iraq under more limited circumstances). Additional license exceptions may apply for limited-value shipments and replacement parts. It would be advisable to seek guidance regarding whether these license exceptions may apply in a given circumstance and what implementing steps may be required.



¹ 77 FR 33688 (June 7, 2012) and 77 FR 33698 (June 7, 2012).

² Military design, standards or specifications serve as the dividing line between control under ECCNs 1A613 and 1A005 for level IIIA and lower plates and body armor under the proposed rules. Removal of such non-objective standards has been one of the goals of the export control reform initiative. BIS might consider clarification and introduction of more objective, positive standards during the comment period for these two ECCNs.

³ DDTC has already published a Commodity Jurisdiction (CJ) decision under present rules finding that an advanced ACH/MICH-style helmet, designed in certain respects to be compatible with communication equipment, was EAR-controlled under ECCN 1A005. See CJ of 6/24/2011 for Advanced Combat Helmet AS-501. MICH stands for "Modular Integrated Communications Helmet."

⁴ In an important change for manufacturers of PPE and shelters, as well as equipment for their production, the proposed rules would move test, inspection, and production equipment controlled by ECCN 1A613 or USML Category X to new ECCN 1B613. Thus, test, inspection and production equipment for both EAR-controlled *and* ITAR-controlled items under USML Category X would be subject to EAR control. Similarly, software and technology relating to ECCNs 1A613 and 1B613 (including certain equipment relating to USML-Category-X items as noted above) would be EAR-controlled under ECCNs 1D613 and 1E613, respectively.

⁵ The countries authorized for these ECCNs under STA are Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

⁶ This would exclude armored plate "specially designed for military use" and helmets.

Certain PPE would remain under ITAR control in a new Category X as described in the DDTC proposed rule. This includes:

- NIJ level IV body armor, ceramic or composite plates and helmets or helmet shells.
- Integrated helmets incorporating "optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions."
- Certain protective clothing, equipment or face paints specially designed to protect against or reduce detection by radar, IR or other sensors 900-nanometer or greater wavelengths.
- Certain visors or eyewear "employing other than common broadband absorptive dyes and UV inhibitors" with optical density greater than 3 to protect against visible wavelengths, thermal flashes associated with nuclear detonations or near-IR or ultraviolet wavelengths.
- Developmental PPE and shelters as well as parts/components/accessories/attachments developed under a Department of Defense contract.
- Parts, components, assemblies and associated equipment for controlled PPE, including any component, part, accessory, attachment, equipment or system that is classified, contains classified software, is manufactured using classified production data or is developed using classified information.

Technical data and defense services related to the revised Category X would also be ITAR-controlled, but not test, inspection or equipment for the production of the controlled items, which would be EAR-controlled under ECCN 1B613.

The DDTC and BIS are accepting comments on the proposed rules until July 23, 2012. Companies, organizations or industry groups who use PPE or manufacture PPE, shelters or items covered by the proposed rules may be interested in commenting, given the potential impact of the changes being contemplated.

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