

Information Filtration under the Export Administration Regulations

WorldECR

May 31, 2017

Information provides the cornerstone to the modern economy. Information flows across information technology networks similar to water naturally flowing down our mountains, into our streams and rivers, and out to the oceans. Within organizations, however, information must be dammed to restrict access and the release of export-controlled information. The complex process of applying the Export Administration Regulations (EAR) to classify export-controlled information has long frustrated trade compliance professionals. Information filtration is a novel methodology to better manage this process by filtering a broad set of information possibly subject to the EAR and providing a clear indicator from the outset of whether such information is initially caught by exceptions and exclusions of the EAR.[1]

The simplification resulting from information filtration occurs because often the individual information filters are easier to broadly apply across an organization than the process of collecting and analyzing the detailed technical attributes necessary to compare the attributes against classification parameters within each candidate Export Control Classification Number (ECCN).[2] Information filtration serves to remove the detailed classification process from the initial determination of whether information is possibly subject to common exceptions and exclusions of the EAR, while distilling down remaining information that merits a more detailed classification analysis.

The information filtration structure filters information by first applying broad filters, and then naturally trickling the remaining information through narrower filters. In brief, the filters function to collect information subject to common exceptions and exclusions the EAR of as follows: (1) Filter One – Jurisdiction: this filter collects information subject to the exclusive jurisdiction of a US government agency other than Bureau of Industry and Security (BIS); (2) Filter Two - Publicly Available: this filter collects information released publicly as defined under the EAR; (3) Filter Three - Sales: this filter collects information commonly used to support an organization’s sales process; (4) Filter Four - Operations: this filter collects information minimally required to operate a properly exported item; (5) Filter Five - Technology: this filter collects information that does not qualify for the definition of technology under the EAR; and, (6) Filter Six – Required Technology: this filter collects information that does not qualify as “required” under the General Technology Note.

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[1] Export Administration Regulations, 15 C.F.R. §§730-774 (2016). The EAR is administered by the Bureau of Industry and Security (BIS).

[2] 15 C.F.R. §774, Supp. No. 1 to Part 774 — The Commerce Control List).

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