All You Want and Need to Know About Export Control Reform

Please contact us if you have any questions or would like further information.

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Initial Implementation of Export Control Reform

Kevin Wolf
Assistant Secretary of Commerce for Export Administration

Note: This presentation is merely a summary of official statements and final rules published by the Departments of Commerce and State. Final rules, as well as the Export Administration Regulations and International Traffic in Arms Regulations, must be reviewed to determine the full scope of any applicable requirements.

Date of Last Revision: July 25, 2013
Topics

• ECR Background/Summary
• Determining Changes in Jurisdiction
  • Order of Review
  • USML Framework/600 Series Framework
  • “Specially Designed”
• Authorization for Items Moving from USML to CCL
  • Grandfathering DDTC Approvals
  • License Exceptions for 600 Series
  • BIS Licenses
  • DDTC § 120.5(b) Approvals
• Export Clearance
• Reexport Considerations
ECR Background

- In August 2009, President Obama directed the agencies involved in the U.S. export control system to conduct a broad-based review of export controls to identify additional ways to enhance U.S. national security.

- In April 2010, former Secretary of Defense Gates described how national security required a fundamental reform of the export control system.
ECR Background

• To enhance national security, the Administration determined that the export control system needed to be reformed to:
  – Increase interoperability with NATO and other close allies;
  – Reduce the current incentives for companies in non-embargoed countries to design out or avoid US-origin content; and
  – Allow the Administration to focus its resources on the transactions of greater concern.
ECR Background

• To implement the objectives, the Administration needed to:
  – Identify the specific sensitive and other items on a more positive USML that warrant individual license reviews even for ultimate end use by NATO and other regime allies; and
  – Amend the EAR and the CCL to control all formerly USML items that would no longer be on the revised USML so that they still could be controlled as military items, but in a more flexible way regarding such allies.
Summary

- Items that are now defense articles but that are no longer listed on the revised USML categories will become subject to the EAR’s “600 series” ECCNs.
- Licenses from Commerce will still be required to export and reexport most 600 series items worldwide (minus Canada), unless an EAR license exception is available.
- New license exception STA will be available to authorize exports and reexports to 36 countries if (a) for ultimate end use by a government of such countries, (b) return to the US, or (c) in connection with an existing authorization.
- Will make defense trade in the supply chain for NATO and other allies more efficient.
- Will have compliance obligations.
- Final rules available at www.bis.doc.gov.
ECR Background

• The Departments of Commerce and State have published proposed or final rules on the following aspects of ECR:

| Framework: | more “positive” USML and establishment of “600 series” structure |
| Revised USML categories: | will publish over 2013 proposed and final revisions to USML categories and corresponding “600 series” ECCNs |
| “Specially Designed”: definition of the term for both the ITAR and EAR |
| Transition/Implementation: | grandfathering, changes to license exceptions and license structure |

• All changes in the jurisdictional status of items will need to comply with the congressional notification requirements of § 38(f) of the AECA.
• Executive Order 13637 sets out the new delegations of authority for the administration of the new rules.
• Final rules will have a six-month delay in implementation after publication (in addition to a two-year optional grandfathering period for existing USML authorizations.)
Status

<table>
<thead>
<tr>
<th>USML</th>
<th>Description</th>
<th>ECCNs</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Firearms</td>
<td>0Y601</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>II</td>
<td>Artillery</td>
<td>0Y602</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>III</td>
<td>Ammunition</td>
<td>0Y603</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>IV</td>
<td>Launch Vehicles/Missiles</td>
<td>9Y604</td>
<td>Proposed rule 1/31/13</td>
</tr>
<tr>
<td>V</td>
<td>Explosives/Propellants</td>
<td>1Y608</td>
<td>Proposed rule 5/2/12</td>
</tr>
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<td>VI</td>
<td>Vessels of War</td>
<td>8Y609</td>
<td>Proposed rule 12/23/11</td>
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<td></td>
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<td>Final rule 7/8/13</td>
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<td></td>
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<td></td>
<td>Effective 1/6/14</td>
</tr>
<tr>
<td>VII</td>
<td>Tanks/Military Vehicles</td>
<td>0Y606</td>
<td>Proposed rule 7/5/11</td>
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<td></td>
<td></td>
<td></td>
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<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIII</td>
<td>Aircraft</td>
<td>9Y610</td>
<td>Proposed rule 11/7/11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Final rule 4/16/13</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Effective 10/15/13</td>
</tr>
<tr>
<td>IX</td>
<td>Training Equipment</td>
<td>0Y614</td>
<td>Proposed rule 6/13/12</td>
</tr>
<tr>
<td>X</td>
<td>Personal Protective Equipment</td>
<td>1Y613</td>
<td>Proposed rule 6/7/12</td>
</tr>
<tr>
<td>XI</td>
<td>Electronics</td>
<td>3Y611, 9Y620</td>
<td>Proposed rule 11/28/12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Proposed rule 7/25/13</td>
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<tr>
<td>XII</td>
<td>Fire Control/Sensors/Night Vision</td>
<td>TBD</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XIII</td>
<td>Miscellaneous</td>
<td>0Y617</td>
<td>Proposed rule 5/18/12</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Final rule 7/8/13</td>
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<td></td>
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<tr>
<td>XIV</td>
<td>Toxicological Agents</td>
<td>1Y607</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XV</td>
<td>Spacecraft/Satellites</td>
<td>9Y515</td>
<td>Proposed rule 5/24/13</td>
</tr>
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<tbody>
<tr>
<td>XVI</td>
<td>Nuclear</td>
<td>N/A</td>
<td>Proposed rule 1/30/13</td>
</tr>
<tr>
<td>XVIII</td>
<td>Directed Energy Weapons</td>
<td>TBD</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XIX</td>
<td>Gas Turbine Engines</td>
<td>9Y619</td>
<td>Proposed rule 12/6/11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Final rule 4/16/13</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Effective 10/15/13</td>
</tr>
<tr>
<td>XX</td>
<td>Submersible Vessels</td>
<td>8Y620</td>
<td>Proposed rule 12/23/11</td>
</tr>
<tr>
<td></td>
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Order of Review
(Supp. No. 4 to part 774)

• Review the USML
  – Specifically enumerated items
  – “Catch-all” controls and ITAR definition of “specially designed”

• If not on the USML, review the CCL
  – Review characteristics of item to determine applicable CCL category and product group
  – Review applicable 600 series ECCNs
    • Specifically enumerated items
    • “Catch-all” controls and EAR definition of “specially designed”
  – Review applicable non-600 series ECCNs
USML Framework

- Control text for:
  - End platforms and major systems
  - Parts, components, accessories, and attachments
  - Classified articles

- Technical data (including software) and defense services

- Items subject to the EAR – new “(x)” paragraph
600 Series Framework

9A610

CCL
Category 0-9
Product Group A-E

“600 series” derives its name from the 3rd character of the ECCN

Former USML items (and -018 items) listed in the “Items” paragraph.

Order of review:

• .a - .w: specifically enumerated end items, materials, parts, components, accessories, and attachments
  - Some items may be “specially designed”
• .y: specifically enumerated parts, components, accessories, and attachments that are “specially designed”
• .x: “specially designed” parts, components, accessories, and attachments that are not specifically enumerated
600 Series Framework

9A610 Military aircraft and related commodities.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

<table>
<thead>
<tr>
<th>Control(s)</th>
<th>Country chart</th>
</tr>
</thead>
<tbody>
<tr>
<td>NS applies to entire entry except 9A610.u, .v, .w, and .y</td>
<td>NS Column 1</td>
</tr>
<tr>
<td>RS applies to entire entry except 9A610.y</td>
<td>RS Column 1</td>
</tr>
<tr>
<td>MT applies to 9A610.u, .v, and .w</td>
<td>MT Column 1</td>
</tr>
<tr>
<td>AT applies to entire entry</td>
<td>AT Column 1</td>
</tr>
<tr>
<td>UN applies to entire entry except 9A610.y</td>
<td>See § 746.1(b) for UN controls</td>
</tr>
</tbody>
</table>

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA:
(1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (i.e., “end item” military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.
600 Series and China Military End Use

• Section 744.21 currently imposes a license requirement for exports or reexports of certain items subject to the EAR when one knows such items are intended for a military end use.

• Since 600 series items are presumptively for a military end use, all 600 series items (including .y items) will require a license when destined for China – see new § 744.21(a)(2).

• Maintains ITAR status quo.
Definition of “Specially Designed”

• New definition of “specially designed” is based on a catch-and-release construct

• Requires answering a series of yes/no questions that lead to an objective determination whether an item is “specially designed”

• Definition is found in Part 772 and is described in an online decision tree tool published by BIS

Determining Changes in Jurisdiction

- Items previously controlled under USML Category VIII
  - End item: if not listed in VIII(a), (d), (e), or (f), then moving to the CCL’s new 9A610 (aircraft)
  - Part, component, accessory, or attachment: if not “specially designed” for stealth aircraft in VIII(h)(1) or listed in VIII(h)(2)-(26), then moving to CCL’s new 9A610 (aircraft); if not listed in XIX(a)-(f), then moving to CCL’s new 9A619 (engines)
  - Software or technology (unclassified): if commodity stays on USML, then the software and technology directly related to it stay in VIII(i) or XIX(g); otherwise moving to CCL’s new 9D610/9E610 (aircraft software/technology) or 9D619/9E619 (engine software/technology)
Determining Changes in Jurisdiction

- Prior commodity jurisdiction (CJ) determinations
  - CJs that determined item was subject to the ITAR
    - If item is moving from the USML to the CCL, then CJ superseded. No need for additional CJ unless there is doubt.
  - CJs that determined item was subject to the EAR
    - If item was not classified in an existing “-018” ECCN at the time of determination, the item will not be controlled under the 600 series
    - If item was not listed on the CCL at the time of determination (i.e., designated EAR99), the item will remain EAR99, unless later enumerated in an entry on the USML or CCL
Options for Authorizing Items Moving from the USML to the CCL

• Transactions authorized prior to effective date:
  – Grandfather existing DDTC licenses, agreements, or other approvals beyond effective date of final rule per DDTC transition plan
  – Maintain DDTC approval until effective date but pre-position BIS license application or utilize license exception or NLR designation upon effective date

• Transactions after effective date
  – Obtain BIS license, use license exception, or use NLR designation when eligible
  – Obtain DDTC license, agreement, or other approval if eligible under § 120.5(b) of the ITAR
Authorization for Items Moving from USML to CCL: Grandfathering DDTC Approvals

<table>
<thead>
<tr>
<th>Contains only items transitioning to CCL</th>
<th>Contains both transitioning and non-transitioning items</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DSP-5</strong></td>
<td></td>
</tr>
<tr>
<td>May use for up to 2 years after effective date of transition unless license expires or returned. May amend after effective date on case-by-case basis.</td>
<td>Valid for all items until expiration. May amend after effective date on case-by-case basis.</td>
</tr>
<tr>
<td><strong>DSP-61</strong></td>
<td></td>
</tr>
<tr>
<td>DSP-73</td>
<td></td>
</tr>
<tr>
<td>Valid until expiration. May amend after effective date on case-by-case basis.</td>
<td></td>
</tr>
<tr>
<td><strong>TAA MLA WDA</strong></td>
<td></td>
</tr>
<tr>
<td>May use for up to 2 years after effective date of transition unless agreement expires. May amend after effective date on case-by-case basis.</td>
<td>May use for up to 2 years after effective date of transition unless agreement expires. Agreement may be kept valid beyond the 2-year period by submitting amendment to authorize transitioning items under § 120.5(b).</td>
</tr>
</tbody>
</table>

See DDTC’s transition plan for full details.
License Exceptions for 600 Series

- Restrictions on use of License Exceptions for 600 series
  - May only use those license exceptions listed in § 740.2(a)(13)
  - Country Group D:5 (except § 740.11(b)(2) of GOV)
  - 9D610.b, 9D619.b, 9E610.b, 9E619.b or .c (except § 740.11(b)(2) of GOV)
  - 600 Series Major Defense Equipment sold under a contract exceeding certain values
  - Other applicable restrictions in § 740.2 (e.g., MT-controlled items) or specific section of applicable license exception
License Exceptions for 600 Series

- **LVS (§ 740.3):** $1500 for most 600 series commodity ECCNs
- **TMP (§ 740.9):** streamlined; expanded scope for exports to U.S. person’s subsidiary, affiliate, or facility abroad
- **RPL (§ 740.10):** allows 600 series parts to repair EAR or ITAR items under certain conditions
- **GOV (§ 740.11):** streamlined; expanded to authorize contractor support personnel and to provide for certain shipments for or on behalf of USG and DoD-directed shipments
- **TSU (§ 740.13):** expanded to allow releases of technology and source code in the U.S. to bona fide, full time regular employees of U.S. universities
- **STA (§ 740.20):** additional requirements for 600 series items
License Exception STA  
(for all items subject to the EAR)

Current requirements for all items subject to the EAR:
• ECCN must authorize
• All reasons for control that apply to the transaction must be authorized to use STA
  – NS, CB, NP, RS, CC, SI: Country Group A:5 (§ 740.20(c)(1))
    • 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 United Kingdom
  – NS only: Country Group A:6 (§ 740.20(c)(2)) [NOT available for 600 series items]
    • Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, & Taiwan
License Exception STA  
(for all items subject to the EAR)

<table>
<thead>
<tr>
<th>Exporter/Reexporter</th>
<th>Consignee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Provide ECCN(s) to Consignee</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Provide Consignee Statement to Exporter/Reexporter</td>
</tr>
<tr>
<td>3 Obtain Consignee Statement</td>
<td></td>
</tr>
<tr>
<td>4 Notify consignee that shipment (or specific items within a shipment) is (are) under STA</td>
<td></td>
</tr>
<tr>
<td>5 Keep records showing which shipments belong to each consignee statement</td>
<td>Maintain Consignee Statement and records pertaining to subsequent reexport or transfer</td>
</tr>
</tbody>
</table>

Consignee Statement – Five Points

- Aware that items are to be shipped under STA
- Been informed of ECCN by _______.
- No subsequent License Exception APR (a) or (b) shipments
- Agrees not to ship or transfer in violation of EAR
- Agrees to provide documents to USG upon request
License Exceptions for 600 Series

- License Exception STA: additional requirements for 600 series items only
  - For ultimate end use by USG or government of country in Country Group A:5 (“STA-36” countries);
  - For development, production, or servicing of an item in A:5 that is for ultimate end use by USG or government of country in Country Group A:5;
  - For return to the United States; or
  - If USG has otherwise authorized its use.
License Exceptions for 600 Series

- License Exception STA: additional requirements for 600 series items only
  - Non-U.S. parties must have been previously approved on a State or Commerce license
  - Consignee statement must also address ultimate end user restrictions for 600 series items and agree to end use check
  - Eligibility request required for end item aircraft in 9A610.a
## ITAR Exemptions and EAR Exceptions

<table>
<thead>
<tr>
<th>ITAR Exemption</th>
<th>EAR License Exception</th>
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</thead>
<tbody>
<tr>
<td>§ 123.4</td>
<td>RPL § 740.10; TMP § 740.9(b)(2) and (b)(4)</td>
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<tr>
<td>§ 123.16(b)(2)</td>
<td>LVS § 740.3</td>
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<tr>
<td>§ 123.16(b)(5)</td>
<td>TMP § 740.9(a)(5)</td>
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<tr>
<td>§ 123.16(b)(9)</td>
<td>TMP § 740.9(b)(10)</td>
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<tr>
<td>§ 123.19</td>
<td>TMP § 740.9(b)(1)</td>
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<td>§ 125.4(b)(1)</td>
<td>GOV § 740.11(b)(2)</td>
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<tr>
<td>§ 125.4(b)(3)</td>
<td>GOV § 740.11(b)(2)</td>
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<tr>
<td>§ 125.4(b)(4)</td>
<td>TSU § 740.13(g)</td>
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<td>§ 125.4(b)(5)</td>
<td>TSU § 740.13(a)</td>
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<td>§ 125.4(b)(10)</td>
<td>TSU § 740.13(f)</td>
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<tr>
<td>§ 126.4</td>
<td>GOV § 740.11(b)(2)</td>
</tr>
<tr>
<td>§ 126.6(a)</td>
<td>GOV § 740.11(b)(2)</td>
</tr>
</tbody>
</table>
BIS Licenses

• Free online submission system (SNAP-R); no cost associated with license application
• Default four-year validity period
• May export or reexport to *and* among end users listed on license
• No purchase order required
• No large agreements to draft or lengthy agreement guidelines to follow
• May pre-position applications prior to effective date of applicable final rule
DDTC § 120.5(b) Approvals

• DDTC may license items subject to the EAR pursuant to Executive Order 13637
  – § 734.3(e) of the EAR
  – §§ 120.5(b), 120.42, 123.1(b), and 123.9(b) of the ITAR

• Items subject to the EAR must be used in or with items subject to the ITAR

• Items subject to the EAR that are licensed under § 120.5(b) remain subject to the EAR

• Future transfers not covered by the ITAR approval will require BIS authorization for items subject to the EAR

• Potential violations pertaining to the use of § 120.5(b) may result in voluntary disclosures to both DDTC and BIS
Export Clearance

• Furnishing Classification to Consignees
  – Exports under EAR: must supply 600 series ECCN on export control documents
  – Exports under DDTC § 120.5(b) Approval: must supply EAR classification (§ 123.9(b)(2))

• Automated Export System
  – BIS Authorizations
    • All exports of 600 series items (except .y items) require AES filing, regardless of value or destination
    • Exports of .y items exempt from AES filing when value is $2500 or less or when destined for Canada
    • All exports authorized under STA require AES filing
  – DDTC § 120.5(b) Approval
    • For items subject to the EAR, report the ECCN or EAR99 designation in “ECCN” field
    • For items subject to the ITAR, report USML category code
Reexport Considerations

• *De minimis*: foreign-made items incorporating below *de minimis* levels of controlled U.S. content are generally not subject to the EAR
  – 0% *de minimis* amount for 600 series items destined for Country Group D:5 countries (maintains ITAR status quo for 126.1 countries such as China)
  – 25% *de minimis* for 600 series items destined for all other countries (ITAR will continue to have a zero *de minimis* “see-through” rule for all defense articles that remain on USML)

• Direct product rule: certain foreign-made items that are the direct product of certain U.S. origin technology or software are subject to the EAR when reexported to certain destinations
  – Foreign-made 600 series items that are the direct product of U.S.-origin 600 series technology or software require authorization under the EAR when reexported to countries in Country Groups D:1, D:3, D:4, D:5, or E:1
Contact Information

**600 Series Licensing and Classification Requests**: Munitions Control Division
- Director: Todd Willis, todd.willis@bis.doc.gov
- Deputy Director: Elena Love, elena.love@bis.doc.gov
- Deputy Director: Anthony Mitchell, anthony.mitchell@bis.doc.gov

**Technical Product Questions on Aircraft and Gas Turbine Engines**
- Office of National Security and Technology Transfer Controls: Gene Christiansen, gene.christiansen@bis.doc.gov
- Munitions Control Division: Jeff Leitz, jeffrey.leitz@bis.doc.gov

**Regulatory Interpretation and Transition Guidance**
- Regulatory Policy Division: rpd2@bis.doc.gov, 202-482-2440
- Office of the Assistant Secretary for Export Administration: steven.emme@bis.doc.gov

**Outreach Assistance**: Outreach and Educational Services Division
- Director: Rebecca Joyce, OESDseminar@bis.doc.gov, 202-482-4811
- Western Regional Office Director: Michael Hoffman, 949-660-0144

Web: [www.bis.doc.gov](http://www.bis.doc.gov)  [www.export.gov/ecr](http://www.export.gov/ecr)
More information on export compliance and export control reform can be found on our blog: www.exportcompliancematters.com
U.S. Export Control Reform and Impact on Reexports

Kevin Wolf
Assistant Secretary of Commerce for Export Administration

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Date of Last Revision: Sept. 10, 2013
Topics

• ECR Background and Status
  – Order of Review
  – USML and 600 Series Frameworks
  – Aircraft and Gas Turbine Engine Changes

• Reexport Considerations
  – U.S. Government Approvals: DDTC Approvals and BIS Authorizations
  – Reexports or Transfers of Items Incorporating U.S. Content
  – Reexports or Transfers of Direct Products of U.S. Technology or Software
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• In August 2009, President Obama directed the agencies involved in the U.S. export control system to conduct a broad-based review of export controls to identify additional ways to enhance U.S. national security.

• In April 2010, former Secretary of Defense Gates described how national security required a fundamental reform of the export control system.
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• To implement the objectives, the Administration needed to:
  – Identify the specific sensitive and other items on a more positive USML that warrant individual license reviews even for ultimate end use by NATO and other regime allies; and
  – Amend the EAR and the CCL to control all formerly USML items that would no longer be on the revised USML so that they still could be controlled as military items, but in a more flexible way regarding such allies.
ECR Background

• Items that are now defense articles but that are no longer listed on the revised USML categories will become subject to the EAR’s “600 series” ECCNs.
• Licenses from Commerce will still be required to export and reexport most 600 series items worldwide (minus Canada), unless an EAR license exception is available.
• New license exception STA will be available to authorize exports and reexports to 36 countries if (a) for ultimate end use by a government of such countries, (b) return to the US, or (c) in connection with an existing authorization.
• Will make defense trade in the supply chain for NATO and other allies more efficient.
• Will have compliance obligations.
• Final rules available at www.bis.doc.gov.
ECR Background

- The Departments of Commerce and State have published proposed or final rules on the following aspects of ECR:

<table>
<thead>
<tr>
<th>Framework:</th>
<th>more “positive” USML and establishment of “600 series” structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised USML categories:</td>
<td>will publish over 2013 proposed and final revisions to USML categories and corresponding “600 series” ECCNs</td>
</tr>
<tr>
<td>“Specially Designed”:</td>
<td>definition of the term for both the ITAR and EAR</td>
</tr>
<tr>
<td>Transition/Implementation:</td>
<td>grandfathering, changes to license exceptions and license structure</td>
</tr>
</tbody>
</table>

- All changes in the jurisdictional status of items will need to comply with the congressional notification requirements of § 38(f) of the AECA.
- Executive Order 13637 sets out the new delegations of authority for the administration of the new rules.
- Final rules will have a six-month delay in implementation after publication (in addition to a two-year optional grandfathering period for existing USML authorizations.)
## Status

<table>
<thead>
<tr>
<th>USML</th>
<th>Description</th>
<th>ECCNs</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Firearms</td>
<td>0Y601</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>II</td>
<td>Artillery</td>
<td>0Y602</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>III</td>
<td>Ammunition</td>
<td>0Y603</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>IV</td>
<td>Launch Vehicles/Missiles</td>
<td>9Y604</td>
<td>Proposed rule 1/31/13</td>
</tr>
<tr>
<td>V</td>
<td>Explosives/Propellants</td>
<td>1Y608</td>
<td>Proposed rule 5/2/12</td>
</tr>
<tr>
<td>VI</td>
<td>Vessels of War</td>
<td>8Y609</td>
<td>Proposed rule 12/23/11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Final rule 7/8/13</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Effective 1/6/14</td>
</tr>
<tr>
<td>VII</td>
<td>Tanks/Military Vehicles</td>
<td>0Y606</td>
<td>Proposed rule 7/5/11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Proposed rule 12/6/11</td>
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<tr>
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</table>
## Status

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<tr>
<th>USML</th>
<th>Description</th>
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</tr>
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<tbody>
<tr>
<td>VIII</td>
<td>Aircraft</td>
<td>9Y610</td>
<td>Proposed rule 11/7/11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Final rule 4/16/13</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Effective 10/15/13</td>
</tr>
<tr>
<td>IX</td>
<td>Training Equipment</td>
<td>0Y614</td>
<td>Proposed rule 6/13/12</td>
</tr>
<tr>
<td>X</td>
<td>Personal Protective Equipment</td>
<td>1Y613</td>
<td>Proposed rule 6/7/12</td>
</tr>
<tr>
<td>XI</td>
<td>Electronics</td>
<td>3Y611, 9Y620</td>
<td>Proposed rule 11/28/12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Proposed rule 7/25/13</td>
</tr>
<tr>
<td>XII</td>
<td>Fire Control/Sensors/Night Vision</td>
<td>TBD</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XIII</td>
<td>Miscellaneous</td>
<td>0Y617</td>
<td>Proposed rule 5/18/12</td>
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<td></td>
<td></td>
<td></td>
<td>Final rule 7/8/13</td>
</tr>
<tr>
<td></td>
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<td>Effective 1/6/14</td>
</tr>
<tr>
<td>XIV</td>
<td>Toxicological Agents</td>
<td>1Y607</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XV</td>
<td>Spacecraft/Satellites</td>
<td>9Y515</td>
<td>Proposed rule 5/24/13</td>
</tr>
</tbody>
</table>
## Status

<table>
<thead>
<tr>
<th>USML</th>
<th>Description</th>
<th>ECCNs</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>XVI</td>
<td>Nuclear</td>
<td>N/A</td>
<td>Proposed rule 1/30/13</td>
</tr>
<tr>
<td>XVIII</td>
<td>Directed Energy Weapons</td>
<td>TBD</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XIX</td>
<td>Gas Turbine Engines</td>
<td>9Y619</td>
<td>Proposed rule 12/6/11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Final rule 4/16/13</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Effective 10/15/13</td>
</tr>
<tr>
<td>XX</td>
<td>Submersible Vessels</td>
<td>8Y620</td>
<td>Proposed rule 12/23/11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Final rule 7/8/13</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Effective 1/6/14</td>
</tr>
</tbody>
</table>
Order of Review
(Supp. No. 4 to part 774)

• Review the USML
  – Specifically enumerated items
  – “Catch-all” controls and ITAR definition of “specially designed”

• If not on the USML, review the CCL
  – Review characteristics of item to determine applicable CCL category and product group
  – Review applicable 600 series ECCNs
    • Specifically enumerated items
    • “Catch-all” controls and EAR definition of “specially designed”
  – Review applicable non-600 series ECCNs
USML Framework

• Control text for:
  – End platforms and major systems
  – Parts, components, accessories, and attachments
  – Classified articles

• Technical data (including software) and defense services

• Items subject to the EAR – new “(x)” paragraph
600 Series Framework

**9A610**

CCL
Category 0-9
Product Group A-E

“600 series” derives its name from the 3rd character of the ECCN

Former USML items (and -018 items) listed in the “Items” paragraph.

Order of review:

- **.a - .w**: specifically enumerated end items, materials, parts, components, accessories, and attachments
  - Some items may be “specially designed”
- **.y**: specifically enumerated parts, components, accessories, and attachments that are “specially designed”
- **.x**: “specially designed” parts, components, accessories, and attachments that are not specifically enumerated

Last two characters will generally track the WAML
600 Series Framework

9A610 Military aircraft and related commodities.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

<table>
<thead>
<tr>
<th>Control(s)</th>
<th>Country chart</th>
</tr>
</thead>
<tbody>
<tr>
<td>NS applies to entire entry except 9A610.u, .v, .w, and .y</td>
<td>NS Column 1</td>
</tr>
<tr>
<td>RS applies to entire entry except 9A610.y</td>
<td>RS Column 1</td>
</tr>
<tr>
<td>MT applies to 9A610.u, .v, and .w</td>
<td>MT Column 1</td>
</tr>
<tr>
<td>AT applies to entire entry</td>
<td>AT Column 1</td>
</tr>
<tr>
<td>UN applies to entire entry except 9A610.y</td>
<td>See § 746.1(b) for UN controls</td>
</tr>
</tbody>
</table>

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA:
(1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (i.e., “end item” military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.
600 Series and China Military End Use

- Section 744.21 currently imposes a license requirement for exports or reexports of certain items subject to the EAR when one knows such items are intended for a military end use.
- Since 600 series items are presumptively for a military end use, all 600 series items (including .y items) will require a license when destined for China – see new § 744.21(a)(2).
- Maintains ITAR status quo.
Definition of “Specially Designed”

• New definition of “specially designed” is based on a catch-and-release construct
• Requires answering a series of yes/no questions that lead to an objective determination whether an item is “specially designed”
• Definition is found in Part 772 and will be described in an online decision tree tool BIS will publish
Determining Changes in Jurisdiction

• Items previously controlled under USML Category VIII
  – End item: if not listed in VIII(a), (d), (e), or (f), then moving to the CCL’s new 9A610 (aircraft)
  – Part, component, accessory, or attachment: if not “specially designed” for stealth aircraft in VIII(h)(1) or listed in VIII(h)(2)-(26), then moving to CCL’s new 9A610 (aircraft); if not listed in XIX(a)-(f), then moving to CCL’s new 9A619 (engines)
  – Software or technology (unclassified): if commodity stays on USML, then the software and technology directly related to it stay in VIII(i) or XIX(g); otherwise moving to CCL’s new 9D610/9E610 (aircraft software/technology) or 9D619/9E619 (engine software/technology)
Determining Changes in Jurisdiction

- Prior commodity jurisdiction (CJ) determinations
  - CJ determinations that determined item was subject to the ITAR
    - If item is moving from the USML to the CCL, then CJ superseded. No need for additional CJ unless there is doubt.
  - CJ determinations that determined item was subject to the EAR
    - If item was not classified in an existing “-018” ECCN at the time of determination, the item will not be controlled under the 600 series
    - If item was not listed on the CCL at the time of determination (i.e., designated EAR99), the item will remain EAR99, unless later enumerated in an entry on the USML or CCL
Requirements for "600 series" items located outside U.S.

- If the "600 series" item is a U.S.-origin item, it remains subject to the EAR regardless of how many times it is reexported, transferred or sold.

- Therefore any subsequent reexports or transfers (in-country) must be done in accordance with the EAR, including any items received prior to their movement from the USML to the CCL.

- There is no “see through” rule in the EAR, but in certain cases controls extend to foreign-made items located outside the U.S. as a result of the de minimis and direct product rules.
600 Series: U.S. Approvals

After the effective date of October 15, 2013, you may receive 600 series items under:

• Grandfathered DDTC Approvals

• ITAR § 120.5(b) Approvals – Use “In or With” ITAR Defense Articles
  – Exporter must supply EAR classification (§ 123.9(b)(2))

• BIS Authorizations – Licenses, License Exceptions, or No License Required
  – Exporter must supply 600 series ECCN on export control documents, such as invoice and bill of lading or air waybill
## Grandfathering DDTC Approvals

<table>
<thead>
<tr>
<th></th>
<th>Contains only items transitioning to CCL</th>
<th>Contains both transitioning and non-transitioning items</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DSP-5</strong></td>
<td>May use for up to 2 years after effective date of transition unless license expires or returned. May amend after effective date on case-by-case basis.</td>
<td>Valid for all items until expiration. May amend after effective date on case-by-case basis.</td>
</tr>
<tr>
<td><strong>DSP-61</strong></td>
<td>Valid until expiration. May amend after effective date on case-by-case basis.</td>
<td></td>
</tr>
<tr>
<td><strong>DSP-73</strong></td>
<td>Valid until expiration. May amend after effective date on case-by-case basis.</td>
<td></td>
</tr>
<tr>
<td><strong>TAA MLA WDA</strong></td>
<td>May use for up to 2 years after effective date of transition unless agreement expires. May amend after effective date on case-by-case basis.</td>
<td>May use for up to 2 years after effective date of transition unless agreement expires. Agreement may be kept valid beyond the 2-year period by submitting amendment to authorize transitioning items under § 120.5(b).</td>
</tr>
</tbody>
</table>

See DDTC’s transition plan for full details.
DDTC § 120.5(b) Approvals

• Items subject to the EAR authorized under § 120.5(b)
  – Must be included with items subject to the ITAR in the purchase documentation
  – Must be for use in or with the items subject to the ITAR that are proposed for export or reexport
  – Must be enumerated in the DDTC license application under the USML “(x)” paragraph
  – Must be classified (i.e., appropriate ECCN or EAR99 designation), and such classification must be provided to end user and consignees
BIS Authorizations

• BIS Authorizations: Licenses, License Exceptions, No License Required
• Conditions
• Reexport or transfer (in-country) in the form received
• Reexport or transfer of items incorporating U.S. content
• Reexport or transfer of direct products of U.S. technology or software
BIS Reexports In Form Received

• Generally, reexports or in-country transfers require same type of authorization (e.g., license, exception) as direct exports from U.S.

• Reexport authority may be requested by U.S. exporter at time of application for export license, for shipment to and among multiple end users.

• Reexport authority may be requested by foreign companies.
BIS Reexport Licenses

- Apply through SNAP-R
- Use the form BIS-748P; appendices for additional items or end users
- Guidance on applications and support documents in part 748 of the EAR
- Four-year validity period; extended validity periods may be requested
- Cite prior equivalent DDTC approvals
BIS Reexport Licenses

• No cost associated with license application
• May export or reexport to and among end users listed on license
• No purchase order required
• No large agreements to draft or lengthy agreement guidelines to follow
• May pre-position applications or request classifications prior to effective date of applicable final rule
EAR License Exceptions

• What is a License Exception?
  Part 740

• An authorization that allows you to export, reexport, or transfer (in-country) under stated conditions, items subject to the EAR that would otherwise require a license.
Country Groups

Supplement 1 to Part 740

Group A: Regime Members
Group B: Less Restricted
Group D: Countries of Concern
Group E: Terrorist Supporting
Country Groups

• Country Group A:5 = close allies and multi-regime members

• Country Group D:5 = U.S. arms embargoed countries (see also § 126.1 of the ITAR)
License Exceptions for 600 Series

• Restrictions on use of License Exceptions for 600 series
  – May only use those license exceptions listed in § 740.2(a)(13)
  – Country Group D:5 (except § 740.11(b)(2) of GOV)
  – 9D610.b, 9D619.b, 9E610.b, 9E619.b or .c (except § 740.11(b)(2) of GOV)
  – Other applicable restrictions in § 740.2 (e.g., MT-controlled items) or specific section of applicable license exception
License Exceptions for 600 series

Available license exceptions listed in §740.2(a)(13):

– LVS (§ 740.3)
– TMP (§ 740.9)
– RPL (§ 740.10)
– GOV (§ 740.11)
– TSU (§ 740.13)
– STA (§ 740.20)
LVS – Limited Value Shipments (§740.3)

• Single shipment must not exceed value limit in ECCN – no splitting orders or shipments, etc.
• May not exceed 12 times LVS limit to same consignee per year
• Group B (countries not of NS concern) – 600 series can’t go to D:5 per §740.2 restrictions
• Corresponds to ITAR §123.16(b)(2)
• Temporary exports to a U.S. person’s foreign subsidiary, affiliate, or facility abroad would no longer be limited to exports to Country Group B (corresponds to ITAR §123.16(b)(9))
• Temporary export term still one year
• When authorization to retain the item abroad beyond one year is requested, the term of the authorization may be for a total of four years (versus the current additional six months)
RPL – Repair & Replacement (§740.10)

- One for one replacement of parts, servicing, replacement of defective equipment
- Equipment must be lawfully exported
- Original capability may not be enhanced
- Revisions allow repairs of ITAR items using 600 series parts and components, return of 600 series item serviced or replaced

Note: the EAR do not control temporary imports into the U.S., thus no need to alert U.S. company to obtain temporary import authorization for 600 series items
GOV – Governments (§740.11)

• USG and cooperating governments split into separate paragraphs – 600 series to A:5
• New definition for “contractor support personnel” that are to be treated as USG personnel
• New authorization for shipments by or on behalf of USG – generally requires written authorization from head of responsible agency – reflects DDTC draft
• New authorization for DOD-directed shipments (corresponds to ITAR §§ 125.4(b)(1), 125.4(b)(3), and 126.6(a))
TSU – Technology and Software Unrestricted (§740.13)

• Various technology and software, including minimum necessary for operation of lawfully exported items

• Allows copies of technology previously authorized to same recipient (corresponds to ITAR §125.4(b)(4))
License Exception STA
(for all items subject to the EAR)

Current requirements for *all* items subject to the EAR:

- ECCN must authorize
- All reasons for control that apply to the transaction must be authorized to use STA
  - NS, CB, NP, RS, CC, SI: Country Group A:5 (§ 740.20(c)(1))
    - 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 United Kingdom
  - NS only: Country Group A:6 (§ 740.20(c)(2))  [NOT available for 600 series items]
    - Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, & Taiwan
License Exception STA  
(for all items subject to the EAR)

<table>
<thead>
<tr>
<th>Exporter/Reexporter</th>
<th>Consignee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Provide ECCN(s) to Consignee</td>
<td></td>
</tr>
<tr>
<td>2. Provide Consignee Statement to Exporter/Reexporter</td>
<td></td>
</tr>
<tr>
<td>3. Obtain Consignee Statement</td>
<td></td>
</tr>
<tr>
<td>4. Notify consignee that shipment (or specific items within a shipment) is (are) under STA</td>
<td></td>
</tr>
<tr>
<td>5. Keep records showing which shipments belong to each consignee statement</td>
<td>Maintain Consignee Statement and records pertaining to subsequent reexport or transfer</td>
</tr>
</tbody>
</table>

**Consignee Statement – Five Points**
- Aware that items are to be shipped under STA
- Been informed of ECCN by _______.
- No subsequent License Exception APR (a) or (b) shipments
- Agrees not to ship or transfer in violation of EAR
- Agrees to provide documents to USG upon request
License Exceptions for 600 Series

• License Exception STA: additional requirements for 600 series items only
  – For ultimate end user that is USG or government of country in Country Group A:5 ("STA-36" countries);
  – For development, production, or servicing of an item in A:5 that is for ultimate end use by USG or government of country in Country Group A:5;
  – For return to the United States; or
  – If USG has otherwise authorized its use.
License Exceptions for 600 Series

• License Exception STA: additional requirements for 600 series items only
  – Non-U.S. parties must have been previously approved on a State or Commerce license
  – Consignee statement must also address ultimate end user restrictions for 600 series items and agree to end use check
  – Eligibility request required for end item aircraft in 9A610.a
Summary

EAR License Exceptions

• Make sure your transaction requires a license (i.e., there is an “X” in the box), before reviewing the License Exceptions.

• Before going to a specific license exception, make sure there are no restrictions.

• Each exception is unique; make sure you meet all of the criteria.
### ITAR Exemptions and EAR Exceptions

<table>
<thead>
<tr>
<th>ITAR Exemption</th>
<th>EAR License Exception</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 123.4</td>
<td>RPL § 740.10, TMP § 740.9(b)(2) and (b)(4)</td>
</tr>
<tr>
<td>§ 123.16(b)(2)</td>
<td>LVS § 740.3</td>
</tr>
<tr>
<td>§ 123.16(b)(5)</td>
<td>TMP § 740.9(a)(5)</td>
</tr>
<tr>
<td>§ 123.16(b)(9)</td>
<td>TMP § 740.9(b)(10)</td>
</tr>
<tr>
<td>§ 123.19</td>
<td>TMP § 740.9(b)(1)</td>
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<tr>
<td>§ 125.4(b)(1)</td>
<td>GOV § 740.11(b)(2)</td>
</tr>
<tr>
<td>§ 125.4(b)(3)</td>
<td>GOV § 740.11(b)(2)</td>
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<tr>
<td>§ 125.4(b)(4)</td>
<td>TSU § 740.13(g)</td>
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<tr>
<td>§ 125.4(b)(5)</td>
<td>TSU § 740.13(a)</td>
</tr>
<tr>
<td>§ 125.4(b)(10)</td>
<td>TSU § 740.13(f)</td>
</tr>
<tr>
<td>§ 126.4</td>
<td>GOV § 740.11(b)(2)</td>
</tr>
<tr>
<td>§ 126.6(a)</td>
<td>GOV § 740.11(b)(2)</td>
</tr>
</tbody>
</table>
Reexport or Transfer of Items
Incorporating U.S. Content

• Unlike the ITAR, the EAR do not have a “see through” rule.

• The EAR include a *de minimis* rule based on the percentage by value of U.S.-origin controlled content in a foreign-made item.

• A foreign-made item located outside the U.S. that incorporates controlled U.S.-origin content that does **not** exceed the applicable *de minimis* percentage for a particular country is **not** subject to the EAR.

• A foreign-made item located outside the U.S. that incorporates controlled U.S.-origin content that **exceeds** the applicable *de minimis* percentage for a particular country is **subject** to the EAR.
De minimis – Controlled Content

• “Controlled content” = U.S.-origin items that require a license to the ultimate destination of the foreign product

• EAR99 items may be controlled content to certain destinations; do not count content eligible for GBS or NLR to new destination

• Use fair market value of controlled content to calculate de minimis percentage
De minimis

U.S.-origin content **not** eligible for *de minimis*:

- “600 series” when foreign-made items are destined to Country Group D:5
- Certain 9E003 technology
- Certain components of high performance computers
- 5E002 technology and certain encryption commodities and software
- QRS11 sensor in commercial standby instrument or flight control system, or aircraft with such a system
- 6A003.b.4.b cameras when incorporated into a non-U.S. origin military commodity
- Foreign-made military commodities incorporating 6A003.b.4.b cameras
Reexport or Transfer of Items Incorporating U.S. Content

The "600 series" *de minimis* rule

| Item with U.S. content reexported to all countries, except D:5 (see also ITAR §126.1) | 25% *de minimis* rule |
| D:5 (U.S. arms embargoed) | 0% *de minimis* rule |

*Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules*

*Note 2: If exceeds de minimis, the foreign made item is subject to the EAR.*
De minimis – Incorporated

U.S. items are “incorporated” when they are:

• Essential to the functioning of the non-U.S. equipment;
• Customarily included in the sale of non-U.S.-made items; and
• Reexported with the non-U.S.-made items.
De minimis - Bundling

• U.S.-origin software may be “bundled” with foreign-made commodities
• Eligible software is configured for a specific commodity, but is not necessarily physically integrated into the commodity
• Eligible software is controlled for AT reasons only or is EAR99
Reexport or Transfer of Items Incorporating U.S. Content

• For subject items, determine licensing requirements by the classification of the foreign-made item.

• For commingled U.S.-origin and foreign technology, a one-time report detailing calculations must be submitted to BIS before *de minimis* applies.
Reexport or Transfer of Direct Products of U.S. Technology or Software

• Under § 124.8(5) of the ITAR, any defense article produced or manufactured from ITAR technical data or defense service requires DDTC approval prior to transfer to any non-U.S. person.

• Under the EAR, certain foreign-made items that are located outside the U.S. that are the direct product of certain U.S.-origin technology or software are subject to the EAR when exported from abroad or reexported to certain countries.

• “600 series” is subject to a broader direct product rule (additional country and product scope) than other items subject to the EAR.

• Foreign-made items subject to the EAR because of this rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin.
The “600 series” direct product rule

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the foreign-produced direct product of:</td>
<td>Yes</td>
</tr>
<tr>
<td>(i) U.S.-origin “600 series” technology or software or</td>
<td></td>
</tr>
<tr>
<td>(ii) a plant or major component of a plant that is a direct product of U.S.-origin “600 series” technology or software?</td>
<td></td>
</tr>
<tr>
<td>Is the foreign-produced direct product a “600 series” item?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is the foreign-produced direct product being reexported or exported from abroad to countries listed in Country Groups D:1, D:3, D:4, D:5 E:1?</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*Note: If “yes” to all three questions, then the foreign made item is subject to the EAR.*
Contact Information

600 Series Licensing and Classification Requests: Munitions Control Division
• Director: Todd Willis, todd.willis@bis.doc.gov
• Deputy Director: Elena Love, elena.love@bis.doc.gov
• Deputy Director: Anthony Mitchell, anthony.mitchell@bis.doc.gov

Technical Product Questions on Aircraft and Gas Turbine Engines
• Office of National Security and Technology Transfer Controls: Gene Christiansen, gene.christiansen@bis.doc.gov
• Munitions Control Division: Jeff Leitz, jeffrey.leitz@bis.doc.gov

Regulatory Interpretation and Transition Guidance
• Regulatory Policy Division: rpd2@bis.doc.gov, 202-482-2440
• Office of the Assistant Secretary for Export Administration: steven.emme@bis.doc.gov

Outreach Assistance: Outreach and Educational Services Division
• Director: Rebecca Joyce, OESDseminar@bis.doc.gov, 202-482-4811
• Western Regional Office Director: Michael Hoffman, 949-660-0144

Web: www.bis.doc.gov  www.export.gov/ecr
More information on export compliance and export control reform can be found on our blog: www.exportcompliancematters.com
Update on U.S. Space Export Controls

Kevin Wolf
Assistant Secretary of Commerce for Export Administration

Note: This presentation is merely a summary of official statements and final rules published by the Departments of Commerce and State. Final rules, as well as the Export Administration Regulations and International Traffic in Arms Regulations, must be reviewed to determine the full scope of any applicable requirements.

Date of Last Revision: Sept. 10, 2013
Space Export Controls Update

• Since Delivering the 1248 Report to Congress - April 2012
  - Congress added language into the FY13 National Defense Authorization Act that gave the President the authority to transfer certain satellites and related items to the Commerce Control List (CCL)
  - Prohibits export of CCL satellites and related items to China, North Korea, or any state sponsor of terrorism
  - Friday, May 24, 2013: Published proposed rules for satellite sections in USML (CAT XV) and CCL (ECCN 9x515) for public comment

• Future Tasks
  - Fall 2013: Final rules for satellites and related items notified to Congress
  - End of calendar year 2013: Final rules published
500 Series Framework

- Order of review: for spacecraft items, first review USML Category XV, then 9x515, then other ECCNs
- Subject to same scope of controls as 600 series items
  - NS1, RS1, and AT1 generally
  - MT for some items
- Generally eligible for many license exceptions (e.g., LVS, TMP, RPL, GOV, TSU, STA)
  - Restrictions apply in § 740.2
  - Certain software (9D515.b-.g) and technology (9E515.b) only eligible for GOV (§ 740.11(b)(2))
  - Subject to fewer STA conditions than 600 series items
500 Series Framework

- License applications for Country Group D:5 reviewed consistent with ITAR § 126.1
  - Policy of denial for Country Group E:1 and China
- Subject to same *de minimis* and direct product rule scope as 600 series
## Summary of Proposed Controls

### Cat XV Today

#### USML
- **Cat XV**
  - Military Satellites
  - Military Ground equip
  - Parts critical for military functions
  - Services for USML and CCL satellites
  - GPS Rocs
- **Other**

#### CCL
- **New ECCN 9x515**
  - Worldwide license, except Canada.
  - 25% *de minimis*, except 0% for China and other ITAR 126.1 countries.
  - STA-36 eligible, except for certain software and technology
- **Existing ECCNs**
  - Controls for satellite items transferred from USML to be the same as for 9x515

- **Spec electronics**
- **Spec optical sensors**
- **Spec radar systems**

---

*Sats and Ground equip not in USML* | *Rad Hard ICs* | *Parts not on USML or other CCL* | *New sat related item or tech*
Items Proposed for Transfer to CCL

- **Satellites**
  - Commercial Communication Satellites
  - Lower-Performance Remote Sensing Satellites
  - Planetary Rovers
  - Planetary and Interplanetary Probes

- **Related systems for the above:**
  - Ground control systems
  - Training simulators
  - Test, inspection, and production equipment
  - Non-critical software for production, operation or maintenance
  - Non-critical technology for development, production, installation, operation or maintenance
  - Radiation hardened microelectronics

- **Parts and components of satellite bus and payloads not listed on USML**
  - Thousands of *types* of parts and subsystems
  - Hundreds of thousands of specific parts

(Note: Technology related to spaceflight passenger experience previously determined to be EAR99)
CCL Satellite-Related Parts and Components

SATELLITE BUS SYSTEMS INCLUDES:

- Solar Array
- Propulsion Tank
- Optical Solar Reflector
- Tower Structure
- Stationary Plasma Thruster
- Antenna Reflector
- Antenna Subreflector
- Comm Panel Electronics
- Spacecraft Control Electronics
- Thruster
- Antenna Feed
- Earth Sensor
- Thermal Blanket
- TWTA
- Batteries
- TT&C Antenna
Items Remaining on USML

- **Satellites and spacecraft**
  - Unique military and intelligence functions, including nuclear detection, intelligence collection, missile tracking, anti-satellite or space-based weapons, classified operation or equipment, and navigation
  - Certain remote sensing with military applications
  - Man-rated habitats
- **Ground control equipment**
  - Performs a uniquely military function for one of satellites above
- **Parts & components**
  - Sixteen specific technologies critical to military functions
  - Any payload that performs one of military functions listed above
  - DoD funded payloads
16 Critical Technologies Remaining on USML

1) Certain specified antennas having particular capabilities
2) Certain space qualified optics with particular properties
3) Space qualified FPAs having particular peak response wavelength
4) Space qualified mechanical cryocooler
5) Space qualified active vibration suppression
6) Certain optical bench assemblies
7) Certain non-communication space qualified directed energy systems
8) Space-based kinetic or charged particle energy systems
9) Certain space qualified atomics clocks
10) High performance attitude determination and control systems
11) Certain Space based thermoionic converters or generators
12) Certain thrusters for orbit adjustment
13) Control moment gyroscopes
14) Certain space qualified MIMICs
15) Certain space qualified oscillators
16) Certain high performing star trackers
USML - Spacecraft

Proposed Category XV - Satellites

• Nuclear Detection
• Tracking – ground, airborne, missile using imaging, infrared, radar, or laser
• SIGINT
• MSINT
• Space-based logistics
• Anti-satellite or anti-spacecraft
• High Performance Remote Sensing
  • Electro-optical VNIR or IR with < 40 spectral bands and an aperature >0.35 m
  • Electro-optical Hyperspectral VNIR and SWIR with > 40 bands, with narrow spectral bandwidth of delta lambda < 20nmFWHM AND ground sample distance <200m
  • Same as above but for MWIR
  • Same as above but for LWIR
• Radar remote sensing, including AESA, SAR, ISAR, ultra-wideband SAR EXCEPT for those with center frequency of 1GHz<x<10GHz and BW <300MHz
• Position, Navigating, and Timing
• Constellation of satellites that form a virtual satellite performing any function listed here
• Man-rate sub-orbital, orbital, lunar, or inter-planetary
• Man-rated habitat
• Contained a classified system, subsystem or component
• Ground control systems for TM, tracking, and control of any satellite listed here

• Illustrative list only
USML – Spacecraft-Related Articles

Proposed Category XV – Parts and Components

• Antennas with dia >25m
• Actively scanned antennas
• Adaptive beam forming antennas
• Interferometric radar antennas
• Space qualified optics including coating with active properties
• Space qualified optics including coating with largest lateral dimension >0.35 m
• Space qualified FPAs having peak response wavelength >900nm and associated ROICs
• Space qualified mechanical cryocooler, active coldfinger, and associated control electronics
• Space qualified active vibration suppression, including isolation and dampening, and associated electronics
• Optical bench assemblies and control electronics for satellites on previous page
• Control moment gyroscopes
• Certain space qualified MIMICs, oscillators for radar, star trackers

• Secondary or hosted payloads that perform any function listed on previous page
• DoD funded payloads
• Classified components
• Non-communication space-qualified directed energy designed for spacecraft on previous page
• Space-based kinetic energy systems
• Charged particle energy systems
• Attitude Determination and Control Systems with ground location points better than or equal to 5m (LEO), 30m (MEO), 150m (GEO), or 225m (HEO)
• Thrusters for orbit adjustment with .150lbf vacuum thrust
• Space qualified cesium, rubidium, hydrogen Master, or Quantum atomics clocks
• Space based thermoionic or non-nuclear thermoionic converters or generators

• Illustrative list only
Services Remaining on USML

• Satellite integration and launch services
  – Provided by a U.S. person
  – To a foreign launch integrator or launch vehicle provider

• Launch support considered a defense service, includes furnishing assistance or information for:
  – Integration of satellite to vehicle
  – Launch failure analysis
More information on export compliance and export control reform can be found on our blog: 
www.exportcompliancematters.com
The Definition of “Specially Designed”

Kevin Wolf
Assistant Secretary of Commerce for Export Administration

Note: This presentation is merely a summary of official statements and final rules published by the Departments of Commerce and State. Final rules, as well as the Export Administration Regulations and International Traffic in Arms Regulations, must be reviewed to determine the full scope of any applicable requirements.

Date of Last Revision: April 17, 2013
The published definition

• Read pages 22728 and 22729 of Commerce’s Federal Register notice published on April 16, 2013 (78 Fed. Reg. 22660)

• The “specially designed” definition will be common to the EAR and ITAR, although slight differences in wording to make definition EAR and ITAR specific.
Goals

• Wanted to develop something so that if ten different people in industry and government got the same set of facts then they would all come to the same conclusion.

• Necessary to define clearly what would be caught by new “catch-all” controls moving to the CCL from the USML and also to harmonize definition throughout the CCL and the USML.

• Wanted a structure that would allow for evolution and clarification as put in to practice.
Reason for structure

• In working through options for a definition, became clear that it was easier to clearly describe what was not “specially designed” than what was.

• One sentence definitions left too much room for ambiguity and subjectivity.

• So, we established broad “catches” (paragraph (a)) and specific, objective “releases” (paragraph (b)).
Take a breath

• We realize this is a new approach and will, at first, seem complicated.

• Based on our testing, it becomes much easier to apply than the “design intent” aspects of currently undefined term.

• The content is not radical, but rather codifies existing concepts and good faith applications of the term to further USG policy objectives.
Steps

• To determine whether an item is “specially designed,” one answers a series of yes/no questions.

• Be sure to apply existing EAR definitions (such as “development,” “production,” and “knowledge”) and also new EAR definitions (such as for “part,” “component,” and “end item.”)
Paragraph (a)(1) “catch”

- Paragraph (a)(1) ‘catches’ any item that:

  as a result of “development” has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant:

  - ECCN, or

  - U.S. Munitions List (USML) paragraph.
Paragraph (a)(1) comments

- Paragraph (a)(1) is mainly used for determining whether an end item or material is “specially designed,” although it also applies to other items subject to the EAR.

- For end-items and material, paragraph (a)(1) is the entire “specially designed” definition – meaning (a)(1) acts as the ‘catch’ and ‘release.’ If your end item or material is not ‘caught’ under (a)(1), then it is **NOT** “specially designed.”

- For “parts,” “components,” “accessories,” “attachments,” and “software,” before determining not ‘caught’ under “specially designed,” paragraph (a)(2) should be reviewed.
Paragraph (a)(2) “catch”

- Paragraph (a)(2) ‘catches’ any “part,” “component,” “accessory,” “attachment” or “software” that:

  Is for **use** in or with a **commodity or defense article**
  ‘**enumerated**’ or otherwise described
  - on the CCL **or**
  - the USML.
Understanding *the ‘release’* - introduction to paragraphs (b)(1)-(b)(6)

- Paragraph (b) is only used for ‘releasing’ “parts,” “components,” “accessories,” “attachments” or “software.”

- A “part,” “component,” “accessory,” “attachment,” or “software” that meets the criteria of one or more of the paragraphs under (b) is ‘released’ from “specially designed.”

- If you are reviewing a decontrol on the CCL that uses “specially designed,” stop at paragraph (a) in your analysis. Do not review paragraph (b) for decontrols on the CCL that use “specially designed.”
Quick cut questions for when *it may be beneficial* to review (b) first

<table>
<thead>
<tr>
<th>Quick cut question</th>
<th>It may be beneficial to review paragraph (b) first - <em>if answer is “yes”</em></th>
</tr>
</thead>
</table>
| Was it identified in a past Commodity Jurisdiction (CJ) determination or approved | Yes \[**QUICK TIP:** See (b)(1).\]  
Note: Also will need to review the CJ or CCATS in question.                                      |
| interagency CCATS under EAR pursuant to Section 748.3(e)?                          |                                                                                                                                   |
| Is it a fastener (*e.g.*, screw, bolt, nut, nut plate, stud, insert, clip, rivet,  | Yes \[**QUICK TIP:** See (b)(2).\]                                                                                                 |
| pin, washer, spacer, insulator, grommet, bushing, spring, wire, solder?             |                                                                                                                                   |
| Is it being used in or with an item in “production” that is lowest level commodities | Yes \[**QUICK TIP:** See (b)(3).\]                                                                                                 |
| or software (EAR99 or AT-only ECCNs)?                                              |                                                                                                                                   |
| Was or is it being developed for use in or with controlled items as well as lowest | Yes \[**QUICK TIP:** See (b)(4) and (b)(6).  \(b)(6) only if developed for AT-only and EAR99 or EAR99 only.  
Note: Requires documentation from development. \]                                      |
| level items (EAR99 or AT-only ECCNs?)                                              |                                                                                                                                   |
| Is it a general purpose commodity or software (meaning not for particular          | Yes \[**QUICK TIP:** See (b)(5).\]  
Note: Requires documentation from development.                                           |
| commodity or type of commodity)?                                                   |                                                                                                                                   |
### Paragraph (b)(1) “release”

<table>
<thead>
<tr>
<th>Paragraph (b)(1) criteria</th>
<th>Meets (b)(1) criteria</th>
<th>Does not meet (b)(1) criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CJs.</strong> Has it been identified in an ECCN paragraph that does not contain “specially designed” or as an EAR99 item in a CJ determination?</td>
<td>Yes.</td>
<td>No.</td>
</tr>
<tr>
<td><strong>NOT “specially designed.”</strong></td>
<td></td>
<td><strong>NOT ‘released’ under (b)(1). Review other (b) ‘releases.’</strong></td>
</tr>
<tr>
<td><strong>748.3(e).</strong> Has it been identified in an ECCN paragraph that does not contain “specially designed” or as an EAR99 item in an interagency-cleared (CCATS) pursuant to § 748.3(e)?</td>
<td>Yes.</td>
<td>No.</td>
</tr>
<tr>
<td><strong>NOT “specially designed.”</strong></td>
<td></td>
<td><strong>NOT ‘released’ under (b)(1). Review other (b) ‘releases.’</strong></td>
</tr>
</tbody>
</table>
## Paragraph (b)(2) “released”

<table>
<thead>
<tr>
<th>Paragraph (b)(2) criteria</th>
<th>Meets (b)(2) criteria</th>
<th>Does not meet (b)(2) criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the “part” or minor component, regardless of ‘form’ or ‘fit,’ a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder?</td>
<td>Yes. <strong>NOT “specially designed.”</strong></td>
<td>No. <strong>NOT ‘released’ under (b)(2). Review other (b) ‘releases.’</strong></td>
</tr>
</tbody>
</table>
# Paragraph (b)(3) “released”

<table>
<thead>
<tr>
<th>Paragraph (b)(3) criteria</th>
<th>Meets (b)(3) criteria</th>
<th>Does not meet (b)(3) criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the “part,” “component,” “accessory,” “attachment,” or “software” have same function, performance capabilities, and same or ‘equivalent’ form and fit, as a commodity or software used in or with an item that:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) is or was in “production” (i.e., not in “development”); and</td>
<td>Yes. NOT “specially designed.”</td>
<td>No. NOT ‘released’ under (b)(3). Review other (b) ‘releases.’</td>
</tr>
<tr>
<td>(ii) is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(b)(3) comments

• It tracks the existing releases in ITAR categories, such as XI(c) and VIII(h), so it’s not a new concept.

• Does not require research in to design history because limited to items that are or were in “production.”

• Note 2 to paragraph (b)(3) is new since proposed rule. With respect to a commodity, ‘equivalent’ means that its form has been modified solely for ‘fit’ purposes. Meant to be a very narrow carve out.

• EAR adopts the ITAR’s definitions of “form” and “fit.”
## Paragraph (b)(4) “release”

<table>
<thead>
<tr>
<th>Paragraph (b)(4) criteria</th>
<th>Meets (b)(4) criteria</th>
<th>Does not meet (b)(4) criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was or is &quot;part,&quot; &quot;component,&quot; &quot;accessory,&quot; &quot;attachment,&quot; or &quot;software&quot; developed with &quot;knowledge&quot; it would be for use in or with commodities or software:</td>
<td>Yes.</td>
<td>No.</td>
</tr>
<tr>
<td>(i) described in ECCN <em>and</em></td>
<td><strong>NOT “specially designed.”</strong></td>
<td><strong>NOT ‘released’ under (b)(4). Review other (b) ‘releases.’</strong></td>
</tr>
<tr>
<td>(ii) also commodities or software either not- ‘enumerated’ on CCL or USML (e.g., EAR99 commodity or software) or commodity or software described in ECCN controlled only for AT?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Paragraph (b)(5) “release”

<table>
<thead>
<tr>
<th>Paragraph (b)(5) criteria</th>
<th>Meets (b)(5) criteria</th>
<th>Does not meet (b)(5) criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was or is the &quot;part,&quot; &quot;component,&quot; &quot;accessory,&quot; &quot;attachment&quot; or &quot;software&quot; developed a general purpose commodity or software, i.e., with no &quot;knowledge&quot; for use in or with:</td>
<td>Yes.</td>
<td>No.</td>
</tr>
<tr>
<td>particular commodity (e.g., an F/A-18 or HMMWV) or</td>
<td>NOT “specially designed.”</td>
<td>NOT ‘released’ under (b)(5). Review other (b) ‘releases.’</td>
</tr>
<tr>
<td>type of commodity (e.g., an aircraft or machine tool)?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Paragraph (b)(6) “release”

<table>
<thead>
<tr>
<th>Paragraph (b)(6) criteria</th>
<th>Meets (b)(6) criteria</th>
<th>Does not meet (b)(6) criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was or is the &quot;part,&quot; &quot;component,&quot; &quot;accessory,&quot; &quot;attachment,&quot; or &quot;software&quot; being developed with &quot;knowledge&quot; that it would be for use in or with commodities or software:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) described in ECCN controlled only for AT reasons and also for EAR99 commodities or software, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) exclusively for use in or with EAR99 commodities or software?</td>
<td>Yes.</td>
<td>No.</td>
</tr>
<tr>
<td></td>
<td>NOT “specially designed.”</td>
<td>NOT ‘released’ under (b)(6). Review other (b) ‘releases.’</td>
</tr>
</tbody>
</table>
Note to (b)(4), (5), and (6)

— For a commodity or software to be not “specially designed” on the basis of paragraphs (b)(4), (b)(5) or (b)(6), documents contemporaneous with its "development," in their totality, must establish the elements of paragraphs (b)(4), (b)(5) or (b)(6). Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts. Absent such documents, the "commodity" may not be excluded from being "specially designed" by paragraphs (b)(4), (b)(5) or (b)(6).
More information on export compliance and export control reform can be found on our blog: www.exportcompliancematters.com