October 2014 COGR Meeting Thursday Afternoon Presentation - Kevin Wolf

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Implementation of Export Control Reform

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

- 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.)

**Framework:** more “positive” USML and establishment of “600 series” structure

**Revised USML categories:** will continue to publish 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
<table>
<thead>
<tr>
<th>USML Category</th>
<th>ECCNs</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>I: Firearms</td>
<td>0Y601</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>II: Artillery</td>
<td>0Y602</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>III: Ammunition</td>
<td>0Y603</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>IV: Launch Vehicles/Missiles</td>
<td>0Y604</td>
<td>Final rule Jan. 2, 2014; <strong>Effective July 1, 2014</strong></td>
</tr>
<tr>
<td></td>
<td>9Y604</td>
<td></td>
</tr>
<tr>
<td>V: Explosives/Propellants</td>
<td>1Y608</td>
<td>Final rule Jan. 2, 2014; <strong>Effective July 1, 2014</strong></td>
</tr>
<tr>
<td>VI: Vessels of War</td>
<td>8Y609</td>
<td>Final rule July 8, 2013; <strong>Effective Jan. 6, 2014</strong></td>
</tr>
<tr>
<td>VII: Tanks/Military Vehicles</td>
<td>0Y606</td>
<td>Final Rule July 8, 2013; <strong>Effective Jan. 6, 2014</strong></td>
</tr>
<tr>
<td>VIII: Aircraft</td>
<td>9Y610</td>
<td>Final rule Apr. 16, 2013; <strong>Effective Oct 15, 2013</strong></td>
</tr>
<tr>
<td>IX: Training Equipment</td>
<td>0Y614</td>
<td>Final rule Jan. 2, 2014; <strong>Effective July 1, 2014</strong></td>
</tr>
<tr>
<td>X: Personal Protective Equip.</td>
<td>1Y613</td>
<td>Final rule Jan. 2, 2014; <strong>Effective July 1, 2014</strong></td>
</tr>
<tr>
<td>XI: Electronics</td>
<td>3Y611</td>
<td>Final rule July 1, 2014; <strong>Effective Dec. 30, 2014</strong></td>
</tr>
<tr>
<td></td>
<td>9Y620</td>
<td></td>
</tr>
<tr>
<td>USML Category</td>
<td>ECCNs</td>
<td>Status</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>XII: Sensors/Night Vision</td>
<td>TBD</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XIII: Miscellaneous</td>
<td>0Y617</td>
<td>Final rule July 8, 2013; Effective Jan. 6, 2014</td>
</tr>
<tr>
<td>XIV: Toxicological Agents</td>
<td>1Y607</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XV: Spacecraft/Satellites</td>
<td>9Y515</td>
<td>Interim final rule May 13, 2014, Effective June 27, 2014 (for rad-hard ICs), Effective Nov. 10, 2014 (for all other items)</td>
</tr>
<tr>
<td>XVI: Nuclear</td>
<td>N/A</td>
<td>Final rule Jan. 2, 2014; Effective July 1, 2014</td>
</tr>
<tr>
<td>XVII: Classified</td>
<td>N/A</td>
<td>Final rule Apr. 16, 2013; Effective Oct 15, 2013</td>
</tr>
<tr>
<td>XVIII: Directed Energy Weapons</td>
<td>TBD</td>
<td>Proposed rule TBD</td>
</tr>
<tr>
<td>XX: Submersible Vessels</td>
<td>8Y620</td>
<td>Final rule July 8, 2013; Effective Jan. 6, 2014</td>
</tr>
<tr>
<td>XXI: Not Otherwise Enumerated</td>
<td>N/A</td>
<td>Final rule Apr. 16, 2013; Effective Oct 15, 2013</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
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**

**CCL**

**Category**

**0-9**

**Product Group**

**A-E**

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

**9A610**

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

**Order of review:**

- **.a - .w**: specifically enumerated end items, materials, parts, components,
600 Series Framework

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled)

License Requirements

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

<table>
<thead>
<tr>
<th>Control(s)</th>
<th>Country Chart (See Supp. No. 1 to part 738)</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>

**List Based License Exceptions** (See Part 740 for a description of all license exceptions)

- LVS: $1500
- GBS: N/A
- CIV: N/A

**Special Conditions for STA**

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.

.a - .x items controlled to all countries except Canada

.y items controlled to Country Group E:1, China, and Russia
## Examples: USML to 600 Series

### Revised USML End-Items

**“A More Positive List”**

- F-15, F-16
- Assembled engines
- Weapons pylons
- Mission systems
- Bomb racks
- Missile launchers
- Fire control computer
- Fire control Radar

### Commerce Control List 600 Series

#### ("a-.w" items)

Specially enumerated end-items, "parts", "components", "accessories" & "attachments".

- Aircrew life support and safety equipment
- Parachutes/paragliders
- Controlled opening equipment of automatic piloting systems, designed for parachuted loads
- T-1 Aircraft

#### ("x" items)

"Specially Designed" "parts", "components", "accessories", and "attachments".

- Wings, Rudder, Fin, Panels
- Fuselage – forward, center, aft
- Cockpit structure
- Forward equipment bay
- Control surfaces, activation and control systems

#### ("y" items)

Specifically enumerated "parts" "components", "accessories", "specially designed"...

- Aircraft tires
- Hydraulic system filters
- Hydraulic and fuel hoses, fittings, clips, couplings, brackets
- Cockpit panel knobs, switches, buttons, dials
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, entirely or in part, for a military end use in China or for a military end use or military end user in Russia.

- All 600 series items (including .y items) will require a license when destined for China or Russia – see new § 744.21(a)(2)
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
  http://www.bis.doc.gov/index.php/decision-tree-tools
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
Authorization for Items Moving from USML to CCL: Grandfathering DDTC Approvals

<table>
<thead>
<tr>
<th>Authorization Type</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DSP-5</strong></td>
<td>Contains only items transitioning to CCL&lt;br&gt;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>
</tr>
<tr>
<td><strong>DSP-61</strong>&lt;br&gt;<strong>DSP-73</strong></td>
<td>Contains both transitioning and non-transitioning items&lt;br&gt;Valid for all items until expiration. May amend after effective date on case-by-case basis.</td>
</tr>
<tr>
<td><strong>TAA</strong>&lt;br&gt;<strong>MLA</strong>&lt;br&gt;<strong>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. May also amend after effective date if defense services are being provided and an agreement is necessary.</td>
</tr>
<tr>
<td></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)
  - Generally inapplicable for Country Group D:5
    - Exception: § 740.11(b)(2) of GOV
    - Exception: personal protective equipment provisions of TMP and BAG (effective 7/1/14)
  - 9D610.b, 9D619.b, 9E610.b, 9E619.b or .c (except § 740.11(b)(2) of GOV)
# License Exceptions for 600 Series

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LVS § 740.3</strong></td>
<td>Low value shipments ($1500 for most 600 series commodity ECCNs)</td>
</tr>
<tr>
<td><strong>TMP § 740.9</strong></td>
<td>Temporary exports (tools of trade, exhibition/demonstration, certain exports to U.S. person’s facility abroad); certain returns of items temporarily in the U.S.; temporary exports of personal protective equipment</td>
</tr>
<tr>
<td><strong>RPL § 740.10</strong></td>
<td>One-for-one replacement parts/components; return repaired or replaced items</td>
</tr>
<tr>
<td><strong>GOV § 740.11</strong></td>
<td>Personnel and agencies of USG, including contractor support personnel; certain shipments for or on behalf of USG and DoD-directed shipments; cooperating governments; NATO agencies and Cooperating Governments</td>
</tr>
<tr>
<td><strong>TSU § 740.13</strong></td>
<td>Operation technology/software; sales technology; technology/source code in the U.S. to bona fide, full time regular employees of U.S. universities; copies of technology previously authorized</td>
</tr>
<tr>
<td><strong>BAG § 740.14</strong></td>
<td>Certain personal protective equipment with U.S. person’s baggage or effects</td>
</tr>
<tr>
<td><strong>STA § 740.20</strong></td>
<td>600 series for Country Group A:5 (see restrictions on next slides)</td>
</tr>
</tbody>
</table>
License Exception STA
(for all items subject to the EAR)

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>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Provide ECCN(s) to Consignee</td>
</tr>
<tr>
<td>2</td>
<td>Provide Consignee Statement to Exporter/Reexporter</td>
</tr>
<tr>
<td>3</td>
<td>Obtain Consignee Statement</td>
</tr>
<tr>
<td>4</td>
<td>Notify consignee that shipment (or specific items within a shipment) is (are) under STA</td>
</tr>
<tr>
<td>5</td>
<td>Keep records showing which shipments belong to each consignee statement</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 the USG or government of country in Country Group A:5 ("STA-36" countries);
  - For development, production, or servicing of an item in A:5 or the United States that is:
    - Ultimately to be used by the USG or government of country in Country Group A:5, or
    - Sent to a person in 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 approval 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 items in 0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a
## 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>§ 123.17(f)-(i)</td>
<td>TMP § 740.9(a)(11); BAG § 740.14(h)(2)</td>
</tr>
<tr>
<td>§ 123.19</td>
<td>TMP § 740.9(b)(1)</td>
</tr>
<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>
</tr>
<tr>
<td>§ 125.4(b)(4)</td>
<td>TSU § 740.13(g)</td>
</tr>
<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>
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

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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
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
  - 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
  
  - Foreign-made items incorporating U.S.-origin 600 series content (described in paragraphs .a through .x) will not be subject to the EAR so long as: (1) the value of the controlled U.S. content comprises 25% or less of the total value of the foreign item; and (2) the foreign-made item will not be destined to countries in Country Group D:5
  
  - If the foreign-made item incorporates any amount of U.S.-origin 600 series .y items only, then reexports of the foreign-made item will not be subject to the EAR, unless it is destined for Cuba, China, Iran, North Korea, Sudan, or Syria
  
  - If the foreign-made item incorporates any amount of U.S.-origin 600 series content (other than .y items) and is destined to a country subject to a U.S. arms embargo, then reexports of the foreign-made item will be subject to the EAR
Reexport Considerations

- 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

Technical Product Questions

- Aircraft, gas turbine engines, or ground vehicles: Gene Christiansen, gene.christiansen@bis.doc.gov; Jeff Leitz, jeffrey.leitz@bis.doc.gov
- Surface or submersible vessels: Alex Lopes, alexander.lopes@bis.doc.gov; Jeff Leitz, jeffrey.leitz@bis.doc.gov
- Materials, miscellaneous items, energetic materials, or protective equipment: Mike Rithmire, michael.rithmire@bis.doc.gov
- Military training equipment: Dan Squire, daniel.squire@bis.doc.gov
- Missiles/launch vehicles: Dennis Krepp, dennis.krepp@bis.doc.gov
- Electronics: Brian Baker, brian.baker@bis.doc.gov; Tom DeFee, thomas.defee@bis.doc.gov

Regulatory Interpretation and Transition Guidance

- Regulatory Policy Division: rpd2@bis.doc.gov, 1-202-482-2440
- 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, 1-202-482-4811
- Western Regional Office Director: Michael Hoffman, 1-949-660-0144