

# **Export Control Reform Implementation: It's Finally Here!**

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## **Co-Sponsors**

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# Overview of Export Control Reform Effort

- Overarching issue is whether an export can occur without first obtaining a U.S. government license
- Export = shipping product abroad, transferring technology to certain foreign national employees, providing particular types of technical assistance for foreign companies etc.
- Compliance is important, but is burdensome and violations are costly – possible \$250,000 penalty per violation, loss of export privileges, auditing, etc.
- But which rules apply and how to apply them? Historically an answer has been difficult to find, and reforms help substantially



# Overview of Export Control Reform Effort

- Context
  - Export Administration Regulations (“EAR”)
  - International Traffic in Arms Regulations (“ITAR”)
  - April 2010 – Reform kicks off
- Background and Goals
  - Make industry more competitive overseas
  - Use government resources more efficiently
  - Coordinate with allies better
  - 4 Singularities – Control list, Licensing agency, Enforcement agency, IT platform



# Overview of Export Control Reform Effort

- Proposed rules to date
  - Almost 20 rounds of proposed rulemaking
  - Including: aerospace, satellites, electronics, propellants/explosives and military vehicles
- New final rules – Finally arrived
  - Aerospace
  - Military vehicles are close behind
  - Others to follow soon



# The Highlights

- **Realigned Control Lists**

- Many items on the **simple** / **highly restrictive** International Traffic In Arms Regulations (ITAR) United States Munitions List (USML)
- Will move to the **complex** / **far less restrictive** Export Administration Regulations (EAR) Commerce Control List (CCL)



# Highlights (Cont.)

- **Positive USML – e.g. changes USML VIII – enumerates specific aircraft and specific parts, components, accessories, attachments, associated equipment and systems**
  - If it's not enumerated – it is no longer ITAR and has moved to CCL
  - Design intent is no longer important
- **Creation of the “600 Series” on the CCL – e.g. ECCN 9Y610**
  - Captures items that have moved from USML
  - 3 types of subparagraphs - .a through .w; .x; .y
  - Consolidates 13 items that were in former ECCN xx018 categories
- **New USML category XIX; ECCN 9Y619**
- **On the horizon – USML VII and XV**



# Highlights (Cont.)

- **Order of review and tips on determining jurisdiction**
- **New definition of “Specially Designed”**
- **New 600 series licensing issues**
- **Partial demise of the “See Through Rule” & foreign made with 600 series technology**
- **License exceptions including STA**
- **Transition considerations**
- **Future compliance considerations**



# Realigning the Lists: USML Category VIII - Today

- **USML VIII – Aircraft and Associated Equipment (As of 5/29/13)**
  - \*(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones and lighter-than-air aircraft, which are specifically designed, modified or equipped for military purposes;
  - \*(b) military aircraft engines;
  - \*(c) cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment;
  - (d) launch and recovery equipment; ...
  - **(h) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (d) of this category, excluding aircraft tires and propellers used with reciprocating engines;**
  - (i) Technical data ... and defense services.

Specifically  
designed –  
very broad





# Realigning the Lists: Example Defense Co.



# USML Category VIII – October 15, 2013

## End Items / Platforms

Detailed list  
of end items

Asterisk  
shows SME

MT  
parenthetical  
if on Missile  
Technology  
Control  
Regime  
Annex

### Category VIII—Aircraft and Related Articles

(a) Aircraft (*see* § 121.3 of this subchapter) as follows:

- \* (1) Bombers;
- \* (2) Fighters, fighter bombers, and fixed-wing attack aircraft;
- \* (3) Turbofan- or turbojet-powered trainers used to train pilots for fighter, attack, or bomber aircraft;
- \* (4) Attack helicopters;
- \* (5) Unarmed military unmanned aerial vehicles (UAVs) (MT if the UAV has a “range” equal to or greater than 300km);
- \* (6) Armed unmanned aerial vehicles (UAVs) (MT if the UAV has a “range” equal to or greater than 300km);
- \* (7) Military intelligence, surveillance, and reconnaissance aircraft;
- \* (8) Electronic warfare, airborne warning and control aircraft;
- (9) Air refueling aircraft and strategic airlift aircraft;
- (10) Target drones (MT if the drone has a “range” equal to or greater than 300km);
- (11) Aircraft incorporating any

mission system controlled under this subchapter;

(12) Aircraft capable of being refueled in flight including hover-in-flight refueling (HIFR); or

\* (13) Optionally Piloted Vehicles (OPV) (MT if the OPV has a “range” equal to or greater than 300km).

**Note 1 to paragraph (a):** “Range” is the maximum distance that the specified aircraft system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining “range.” The “range” for aircraft systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For aircraft systems, the “range” will be determined for a one-way distance using the most fuel-efficient flight profile (*e.g.*, cruise speed and altitude), assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

# USML Category VIII – October 15, 2013

## Systems

(b) [Reserved]

(c) [Reserved]

(d) Ship-based launching and recovery equipment specially designed for defense articles described in paragraph (a) of this category and land-based variants thereof (MT if the ship-based launching and recovery equipment is for an unmanned aerial vehicle, drone, or missile that has a “range” equal to or greater than 300 km).

**Note to paragraph (d):** Fixed land-based arresting gear is not included in this paragraph.

\*(e) Inertial navigation systems (INS), aided or hybrid inertial navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) specially designed for aircraft controlled in this category or controlled in ECCN 9A610 and all specially designed components, parts, and accessories therefor (MT if the INS, IMU, or AHRS is for an unmanned aerial vehicle, drone, or missile that has a “range” equal to or greater than 300 km). For other inertial reference systems and related components refer to USML Category XII(d).

(f) Developmental aircraft and specially designed parts, components, accessories, and attachments therefor funded by the Department of Defense.

**Note 1 to paragraph VIII(f):** Paragraph VIII(f) does not control developmental aircraft and specially designed parts, components, accessories, and attachments therefor (a) determined to be subject to the EAR via a commodity jurisdiction determination (*see* § 120.4 of this subchapter) or (b) identified in the relevant Department of Defense contract as being developed for both civil and military applications.

**Note 2 to paragraph VIII(f):** Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

(g) [Reserved]

Use of “specially designed” term



# USML Category VIII – October 15, 2013

## Parts, Components ...

(h) Aircraft parts, components, accessories, attachments, associated equipment and systems, as follows:

(1) Parts, components, accessories, attachments, and equipment specially designed for the following U.S.-origin aircraft: the B-1B, B-2, F-15SE, F/A-18 E/F/G, F-22, F-35 and future variants thereof; or the F-117 or U.S.

Government technology demonstrators. Parts, components, accessories, attachments, and equipment of the F-15SE and F/A-18 E/F/G that are common to earlier models of these aircraft, unless listed in paragraph (h) of this category, are subject to the EAR;

(2) Face gear gearboxes, split-torque gearboxes, variable speed gearboxes, synchronization shafts, interconnecting drive shafts, or rotorcraft gearboxes with internal pitch line velocities exceeding 20,000 feet per minute and able to operate 30 minutes with loss of lubrication and specially designed parts and components therefor;

(3) Tail boom, stabilator and automatic rotor blade folding systems and specially designed parts and components therefor;

(4) Wing folding systems and specially designed parts and components therefor;

(5) Tail hooks and arresting gear and specially designed parts and components therefor;

(11) Air-to-air refueling systems and hover-in-flight refueling (HIFR) systems and specially designed parts and components therefor;

(12) Unmanned aerial vehicle (UAV) flight control systems and vehicle management systems with swarming capability (*i.e.*, UAVs interact with each other to avoid collisions and stay together, or, if weaponized, coordinate targeting) (MT if for a UAV, drone or missile that has a “range” equal to or greater than 300 km);

# USML Category VIII – October 15, 2013

## Parts, Components ...

(16) Fire control computers, stores management systems, armaments control processors, aircraft-weapon interface units and computers (*e.g.*, AGM-88 HARM Aircraft Launcher Interface Computer (ALIC));

(17) Mission computers, vehicle management computers, and integrated core processors specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(18) Drive systems and flight control systems specially designed to function after impact of a 7.62mm or larger projectile;

(19) Thrust reversers specially designed to be deployed in flight for aircraft controlled in this category or controlled in ECCN 9A610;

\*(20) Any part, component, accessory, attachment, equipment, or system that:

- (i) is classified;
- (ii) contains classified software; or
- (iii) is being developed using classified information.

(25) Thermal batteries specially designed for aircraft controlled in this category or controlled in ECCN 9A610 (MT if the thermal battery is for an unmanned aerial vehicle, drone, or missile that has a “range” equal to or greater than 300 km); or

(26) Thermionic generators specially designed for aircraft controlled in this category or controlled in ECCN 9A610.

?

Looks like this, apparently!





# USML Category VIII – October 15, 2013

## Technical Data; Defense Services; Dual Licensing

(i) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category and classified technical data directly related to items controlled in ECCNs 9A610, 9B610, 9C610, and 9D610 and defense services using classified technical data. (*See* § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(j)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

**Note to paragraph (x):** Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).



# Recap

## Existing USML Cat. VIII

- **Broad**
- **Not specific**
- **Catches all parts, components, accessories, attachments**
- **Over-inclusive**
- **Subjective**

## New USML Cat. VIII

- **Narrow**
- **Very specific**
- **Only enumerated defense articles, technical data**
- **Focused**
- **Objective**

**If not enumerated on USML then refer to EAR CCL 600 Series**

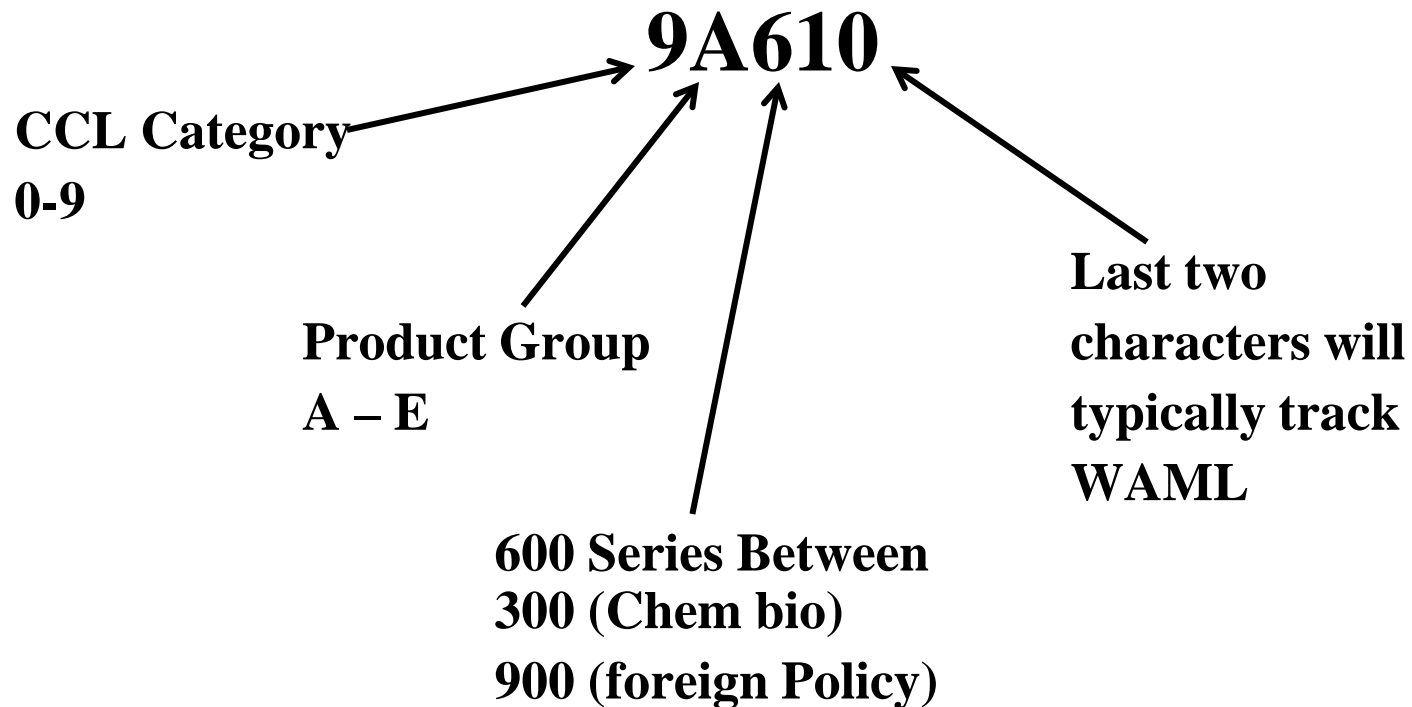


# 600 Series

- Items no longer listed on revised USML will become subject to EAR 600 Series ECCN's
- Still controlled as military items
- License will be required to export and re-export most 600 series Worldwide (except Canada) unless:
  - EAR license exception applies; or
  - Enumerated in .y subparagraph



# 600 Series Framework





# ECCN 9A610

- Each 600 series ECCN will have three types of subparagraphs:
  - ECCN 9A610.**a** - **w**: Specifically enumerated end items, materials, parts, components, accessories, and attachments
    - Some items may be “specially designed”
  - ECCN 9A610.**y**: Specifically enumerated parts, components, accessories, and attachments that are “specially designed” but warrant no more than AT controls
  - ECCN 9A610.**x**: “specially designed” parts, components, accessories, and attachments that are “specially designed”

# ECCN 9A610.a - .w

## 9A610 Military aircraft and related commodities.

### License Requirements

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

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

### 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.

a. ‘Military Aircraft’ “specially designed” for a military use that are not enumerated in USML paragraph VIII(a).

*Note 1:* For purposes of paragraph .a the term ‘military aircraft’ includes the following types of aircraft to the extent they were “specially designed” for a military use, and are not enumerated in USML paragraph VIII(a): trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft, and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are “unmodified” for the purposes of this paragraph .a.

*Note 2:* 9A610.a does not control ‘military aircraft’ that:

- a. Were first manufactured before 1946;
  - b. Do not incorporate defense articles enumerated on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and
  - c. Do not incorporate weapons enumerated on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.
- b. [Reserved].
  - c. [Reserved].
  - d. [Reserved].
  - e. [Reserved].



# ECCN 9A610.a - .w

f. 'Ground equipment' "specially designed" for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

**Technical Note:** *'Ground equipment' includes pressure refueling equipment and equipment designed to facilitate operations in confined areas.*

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete canopies, harnesses, platforms, electronic release mechanisms "specially designed" for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and "equipment" "specially designed" for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, "specially designed" for use by a military.

k. through s. [Reserved]

t. Military aircraft instrument flight trainers that are not "specially designed" to simulate combat. (See USML Cat IX for controls on such trainers that are "specially designed" to simulate combat.)

u. Apparatus and devices "specially designed" for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.



# ECCN 9A610.y

y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities “specially designed” for a military use, as follows:

- y.1. Aircraft tires;
- y.2. Analog cockpit gauges and indicators;
- y.3. Audio selector panels;
- y.4. Check valves for hydraulic and pneumatic systems;
- y.5. Crew rest equipment;
- y.6. Ejection seat mounted survival aids;
- y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);
- y.8. Filters and filter assemblies for hydraulic, oil and fuel systems;
- y.9. Galleys;
- y.10. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, nutplates, and brackets;
- y.11. Lavatories;
- y.12. Life rafts;
- y.13. Magnetic compass, magnetic azimuth detector;
- y.14. Medical litter provisions;
- y.15. Mirrors, cockpit;
- y.16. Passenger seats including palletized seats;
- y.17. Potable water storage systems;

- y.18. Public address (PA) systems;
- y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);
- y.20. Underwater beacons;
- y.21. Urine collection bags/pads/cups/pumps;
- y.22. Windshield washer and wiper systems;
- y.23. Filtered and unfiltered cockpit panel knobs, indicators, switches, buttons, and dials;
- y.24. Lead-acid and Nickel-Cadmium batteries;
- y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;
- y.26. Fire extinguishers;
- y.27. Flame and smoke/CO<sub>2</sub> detectors; and
- y.28. Map cases.
- y.29. ‘Military Aircraft’ that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; *and* do not incorporate weapons enumerated on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

**Controlled for AT reasons only  
NLR to most countries except  
Cuba, Iran N. Korea, Syria,  
Sudan (and China per 744.21)**




# ECCN 9A610.x

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified on the USML or the CCL.

*Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A610.x are controlled by ECCN 9A610.x.*


*Note 2: “Parts,” “components,” “accessories,” and “attachments” specified in USML subcategory VIII(f) or VIII(h) are subject to the controls of that paragraph. “Parts,” “components,” “accessories,” and “attachments” specified in ECCN 9A610.y are subject to the controls of that paragraph.*

**License will be required unless to Canada or license exception applies**



# New USML Category XIX and CCL 9Y619

- Gas Turbine Engines
  - USML Category XIX
  - 9Y619
- Category XV (space/satellites) proposed Friday
- Category VII (military vehicles) final to be published any day



# Order of Review

## Supp. No. 4 to 774

- **Review USML**
  - Is it specifically enumerated
  - Is it within a catch-all control
- **If not, Review CCL**
  - Determine CCL category and product group
  - Review 600 series
    - Is it specifically enumerated in .a through .w
    - Is it specifically enumerated in .y
    - Is it specially designed in .x
  - Review non-600 series ECCN

**BIS CCL Order of Review Tool:**

<http://beta-www.bis.doc.gov/index.php/export-control-classification-interactive-tool>





# Transitioning Items – Tips on Determining Jurisdiction

- Consider what remains on USML rather than what transitions
  - For example, for aircraft end items:
    - is it an aircraft staying in USML Cat. VIII(a)(1)-(13)?
    - Or a system staying in VIII (d), (e), (f)?
    - If not – review 9A610.a
- For aircraft parts, components, accessories, and attachments:
  - Is it specially designed for one of the aircraft enumerated in (VIII(h)(1)?
  - Is it specifically enumerated in USML Cat. VIII(h)(2)-(26)?
  - If not, then it has moved to EAR ECCN 9A610.x unless:
    - Specifically enumerated in ECCN 6A610.f - .w; or
    - Specifically enumerated in ECCN 6A610.y and effectively decontrolled except for AT reasons



# Transitioning Items – Tips on Determining Jurisdiction

- Software and Technology (Unclassified)
  - If commodity stays on the USML – then software and technology directly relating to it stay in USML Cat. VIII(i) for aircraft or XIX(g) for gas turbines
  - Otherwise will move to EAR CCL ECCN 9D610 for software or ECCN 9E610 for technology (aircraft) or 9D619 for software or ECCN 9E619 for technology (gas turbines)
- Classified
  - USML Cat. VIII(i) controls classified technical data directly related to items controlled in ECCN's 9A610, 9B610, 9C610, and 9D610
  - Same for USML Cat. XIX(g) for classified technical data directly related to items controlled in ECCN's 9A619, 9B619, 9C619, and 9D619
  - See also Definition of Technical Data in ITAR §120.10



# “Specially Designed”

- Key concept that could continue to make life difficult, BUT is actually workable, fret not
- Progeny of “specially designed or modified....”
- Concept continues because required in some instances by Wassenaar and government belief some catchall is needed
- But is meant to result in predictable and reliable conclusions, as opposed to standards based on design intent.



# The “Catch”

- (a) Except for items described in (b), an “item” is “specially designed” if it:
- (1) 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; *or*
  - (2) Is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML.



# The “Catch” Decoded

- Item’s design gives it the characteristics that make it controlled
- For parts etc., they are used in or with an item on the CCL or USML
- So, pretty much anything with a direct connection to a controlled item



# The “Release”

(b) A “part,” “component,” “accessory,” “attachment,” or “software” that would be *controlled* by paragraph (a) is not “specially designed” if it:

- (1) Has been identified to be in an ECCN paragraph that does not contain “specially designed” as a control parameter or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to §748.3(e);
- (2) Is, 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, solder;



# The “Release” Continued

- (3) Has the same function, performance capabilities, and the same or ‘equivalent’ form and fit, as a commodity or software used in or with an item that:
  - i. Is or was in “production” (*i.e.*, not in “development”); *and*
  - ii. Is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons;
  
- (4) Was or is being developed with “knowledge” that it would be for use in or with commodities or software (i) described in an ECCN *and* (ii) also commodities or software either not ‘enumerated’ on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;



# The “Release” Continued

- (5) Was or is being developed as a general purpose commodity or software, i.e., with no “knowledge” for use in or with a particular commodity (e.g., an F/A–18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool); *or*
- (6) Was or is being developed with “knowledge” that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software.





# The “Release” Decoded

- CJ or CCATS confirmation
- Fasteners and related items
- Items that have been tweaked to fit in a military application but are otherwise for EAR99 or AT items
- Intended for a CCL item as well as an EAR99 or AT item
- No particular intended end application
- Intended to be used in either an EAR99 or AT application or only EAR99 applications



# “Specially Designed” Classification Requests

- New 748.3 (e) – Confirmation you’re not “specially designed”
- For parts, components etc.
- Limited to situations where:
  1. Fit has been modified, can’t say is equivalent and there’s good chance the government would find tweak insignificant; or
  2. Same performance capabilities of item that is not specially designed per (b)(3)



# Official Specially Designed Web Tool

- Designed as a guide through the specially designed thought process
- Utility will likely vary significantly by audience
- <http://beta-www.bis.doc.gov/index.php/specially-designed-tool>



# New 600 Series Licensing Requirements

- Reasons for control – Generally will all be at least NS1, RS1, AT1 and UN, which means export license required for everywhere other than Canada. .y will be AT only.
- Expanded China Rule
- ITAR licenses can now cover EAR items – § § 734.3 (e) and 120.5 (b) provided the purpose of the EAR items is sufficiently aligned with ITAR purpose
- EAR licenses may now authorize activities between end-users – §750.7 (c)(1)(ix)



# The Demise of the “See Through Rule”

- “Taint” no more (for items that are transitioning)
- Long live *de minimus* EAR §734.4
  - A foreign made item located outside the U.S that incorporate controlled U.S. origin content that does not exceed the applicable *de minimis* percentage for a particular country is not subject to the EAR.
    - 25% for most countries except D:5
    - 0% for country group D:5 (Afghanistan; Belarus; Burma; China; Congo; Cote D’Ivoire; Cuba, Cyprus; Eritrea; Fiji; Haiti; Iran; Iraq; N. Korea; Lebanon; Liberia; Libya; Somalia; Sri Lanka, Sudan; Syria; Venezuela; Vietnam; Zimbabwe)



# Foreign Made With 600 Series Technology

- **Certain foreign made items located outside the U.S. that are direct product of certain U.S. origin technology are subject to the EAR when exported from abroad or re-exported to certain countries.**
  - EAR § 736.2
- **600 Series is subject to a broader direct product rule**
  - Adds additional country and product scope
  - Foreign made items subject to the EAR under this broader direct product rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin



# Foreign Made With 600 Series Technology (Cont.)

- **Applying the 600 series direct product rule:**
  - Is the foreign-produced direct product of: (i) U.S. origin “600 series” technology; or (ii) a plant or major component of a plant that is the direct product of U.S. origin “600 series” technology”?
  - Is the foreign produced direct product a “600 series” item?
  - Is the foreign-produced direct product being re-exported or exported from abroad to countries listed in D:1, D:3, D:4, D:5, or E:1?
- **If yes to all three, then foreign made item is subject to EAR.**



# License Exception Strategic Trade Authorization (STA)

- License Exception STA - authorizes the export, re-export and transfer (in-country) of specified items on the CCL to destinations posing a low risk of unauthorized or impermissible use
- Instead of licensing, STA requires the exporter to undertake certain administrative requirements
  - Notification
  - Consignee Statements
- 2013 Q1 – 4916 licenses for parts and components; 3394 of those were to STA eligible countries





# License Exception STA

- §740.20(c)(1) - STA 36 Countries:

|             |                |           |             |             |                |
|-------------|----------------|-----------|-------------|-------------|----------------|
| 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      | United Kingdom |

- If reasons for control are national security (NS); chemical or biological weapons (CB); nuclear nonproliferation (NP); regional stability (RS); crime control (CC), and/ or significant items (SI)
- Unless excluded in “License Exceptions” list within applicable ECCN



# License Exception STA

- §740.20(c)(8) – Additional STA 8 Countries:


|         |           |              |        |
|---------|-----------|--------------|--------|
| Albania | Hong Kong | India        | Israel |
| Malta   | Singapore | South Africa | Taiwan |

- If reasons for control are national security (NS) only
- Unless excluded in “License Exceptions” list within applicable ECCN



# License Exception STA


- §740.20(d)(1) Notification
  - Exporter, re-exporter, transferor must notify consignee of applicable ECCN
- §740.20(d)(2) Prior Consignee Statement
  - Is aware that items will be shipped pursuant to License Exception STA;
  - Has been informed of the description of the items and their ECCN(s) by the exporter, reexporter or transferor;
  - Understands that shipment pursuant to License Exception STA precludes subsequent use of paragraphs (a) or (b) of License Exception APR for the items;
  - Agrees not to export, reexport or transfer these items to any destination, end-use or end-user prohibited by the EAR; and
  - Agrees to produce copies of this document and all other export, reexport or transfer records (i.e., the documents described in part 762 of the EAR).
- § 740.20(d)(3) Notification to Consignee of STA Shipment
  - If reasons for control are national security (NS) only
  - Unless excluded in “License Exceptions” list within applicable ECCN



# License Exception

## STA – October 15, 2013 Changes

- §740.20(c)(1) – Now Country Group A:5 Supp. No. 1 of Part 740
- §740.20(c)(2) – Now Country Group A:6 Supp. No. 1 of Part 740
- Consignee must be in a country listed in A:5 (or national of that country if a natural person)
- Ultimate government end use, return to U.S., or in connection with existing authorization
  - Government agency of A:5 country or U.S. Government; or
  - Item is for the development, production, installation, maintenance, repair, overhaul, refurbishing of an item in an A:5 country or U.S. and ultimately used by A:5 government agency, U.S. government or person in the U.S.; or
  - U.S. Government has issued a license authorizing use of STA, license is in effect, and consignee provides a copy of the license to the exporter



# License Exception

## STA – October 15, 2013 Changes

- Consignee statement must include:
  - Acknowledgement of one of the three government end use requirements (all)
  - Agrees to permit U.S. Government end use checks (if consignee is not a governmental consignee)
- Purchaser, intermediate consignee, ultimate consignee, and end user must all have been previously approved on a license issued by BIS or DDTC
- No STA for 9A610.a without prior determination by BIS that shipment is eligible
- All STA shipments now require AES filing regardless of value



# Other License Exceptions Available for 600 Series Items

- **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)
- **Restrictions on license exceptions for 600 series:**
  - Not to D:5 countries (except §740.11(b)(2) of GOV)
  - 9D610.b, 9d619.b, 9E610.d, 9E619.b or .c (except §740.11(b)(2) of GOV)
  - 600 Series Major Defense Equipment
  - MT controls
  - As restricted in specific section of license exception within ECCN



# Transition Considerations

- **Delayed implementation of USML VIII and XIX / ECCN 9x610 and 9x619 – 180 days**
  - Anticipate similar delays for future revised USML categories and 600 series ECCN's
- **Can pre-position licenses – will be held until October 15, 2013**
- **After effective date BIS will follow normal processing timelines**
- **If using a BIS license in place of an existing DDTC approval – must terminate the DDTC license in accordance with § §123.22 and 124.6**



# Transition Considerations

- **Transactions authorized prior to October, 15, 2013:**

|                              | <b>Contains only items transitioning to CCL</b>   | <b>Contains both transitioning and non-transitioning</b>   |
|------------------------------|---|--|
| <b>DSP-5</b>                 | Can use up to 2 years after effective date unless license expired or returned. May amend after effective date on case-by-case basis | Valid for all items until expiration. May amend on a case-by-case basis.   |
| <b>DSP-61;<br/>DSP-73</b>    | Valid until expiration. May amend after effective date on case-by-case basis.   |  |
| <b>TAA;<br/>MLA;<br/>WDA</b> | May use for up to 2 years after effective date unless expires before. May amend on case-by-case basis.                              | May use for up to 2 years after effective date unless expires before. May be kept valid beyond 2 years by submitting amendment to authorize transitioning items under §120.5(b). |





# Transition Considerations

- **Items subject to the EAR authorized under §120.5(b):**
  - Must be included with items subject to ITAR in purchase documentation
  - Must be for use in or with the items subject to the ITAR that are proposed for export
  - Must be enumerated in the DDTC license under the USML “(x)” paragraph
  - Must be classified with appropriate ECCN or EAR99 designation and this must be provided to end users and consignees
- **Jurisdiction unaffected**
  - Potential violations may require VD to both BIS and DDTC
- **AES filing required for all 600 series regardless of value and for STA**
- **New “DY6” for .y 600 series except low value and Canada**



# Transition Considerations

## Re-export / Transfer Authorizations

- **Previously authorized will remain valid under three scenarios:**
  - Program status DSP-5
  - Sales / distribution territory of an MLA or WDA where agreement is authority
  - Approval pursuant to §123.9
- **New requests to agency with jurisdiction at time of the request**



# Transition Considerations CJ's

- **If prior CJ determined item subject to ITAR**
  - If transitioning – CJ superseded
- **If prior CJ determined item subject to EAR**
  - Unless classified under an XX018 ECCN, will not be controlled under 600 series
  - If determined to be EAR99 – status will remain unless later enumerated on USML or CCL
- **Can submit for transitioning items but will be prospective and not effective until October 15, 2013**
  - BIS pleads – “try and self-classify if possible.” Use online tools



# **Transition Considerations Registration**

- **If all items transitioning and registration expires during transition period – can seek to extend**
- **If some items remain, continue to utilize existing licenses or agreements – must re-register**



# Future Compliance Considerations

- Classification of products, equipment, materials, technology etc. will continue to be the driver for compliance issues; start review there, implications will follow
- Need to revisit export control compliance procedures and management systems to ensure appropriate changes occur
- Possible initial increase in Commodity Jurisdiction determination requests and frequent use of Specially Designed CCATS; useful options but don't feel compelled
- It's all written in legalese but can often work for you with a little wrestling!



# Questions



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