Export Control Reform: Where We Are Now and How We Got There

Steven Emme
Senior Advisor to the Assistant Secretary 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.
ECR Timeline

**August 2009:** President Obama directed the agencies involved in U.S. export controls to conduct a broad-based review to identify additional ways to enhance U.S. national security.

**April 2010:** former Secretary of Defense Gates described how national security required a fundamental reform of the export control system. U.S. agencies began reviewing the U.S. Munitions List (USML) later in 2010 to determine what items no longer warranted control under the USML.

**July 2011:** final rule creating License Exception STA for dual-use items

**January 2013:** President Obama signed the National Defense Authorization Act for FY2013, which authorized the President to review commercial satellites and related items controlled under USML Category XV.

**March 2013:** E.O. 13637 – Administration of Reformed Export Controls

**April 2013:** publication of Commerce and State final rules providing initial implementation of ECR; effective October 2013
**ECR Implementation**

**Framework:**
- Items providing a significant military or intelligence capability are listed on the USML, which is now a more “positive” list.
- Military items no longer listed on the USML are subject to the EAR’s “600 series.”
- Commercial spacecraft items no longer on the USML are listed in the EAR’s 9x515 ECCNs.
- When items cannot be positively enumerated, they will be described using the defined term “specially designed.”

**License Requirements:**
- Licenses from BIS will still be required to export or reexport most 600 series items worldwide (minus Canada), unless an EAR license exception is available.
License Exception STA for 600 series:
• Makes defense trade with allies more efficient by authorizing exports and reexports of 600 series items 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.
• Also allows for exports and reexports of 9x515 items to 36 countries under fewer conditions than those for 600 series.

Transition/Implementation:
• ECR final rules will have generally have a six-month delay in implementation after publication. DDTC approvals containing 600 series or 9x515 items may continue to be used in accordance with DDTC’s transition plan.
Where We Are Now

• Movement of tens of thousands of items from the ITAR to the EAR
  – 57% decline in license applications to DDTC for revised USML categories
  – Over 30,000 license applications submitted to BIS for 600 series and 9x515 items
    • 13.4% RWA’d (common reasons: incomplete party information, incorrect jurisdiction, no license required)
    • Average processing time: 16.5 days (Oct. 2013 – present)
    • Around $9.8 billion of 600 series and 9x515 items shipped under BIS authorization
Where We Are Now

- Comparison of ITAR and EAR (and collateral benefits of ECR):

<table>
<thead>
<tr>
<th>ITAR</th>
<th>EAR</th>
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<tbody>
<tr>
<td>Annual registration requirement/fee</td>
<td>No registration or fees</td>
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<tr>
<td>Applies to exports, reexports, retransfers, and temporary imports</td>
<td>Applies to exports, reexports, and some in-country transfers</td>
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<tr>
<td>Applies to defense services</td>
<td>Does not apply to services, unless controlled technology is released or General Prohibitions 4, 7, or 10 apply</td>
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<tr>
<td>Multiple templates for approvals (e.g., DSP-5, TAA, GC)</td>
<td>One general template for all license applications</td>
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<tr>
<td>Restricted ability to implement country-based exemptions</td>
<td>Ability to implement country-based exceptions (e.g., STA)</td>
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Where We Are Now

• Review of EAR to ensure requirements are not more burdensome than ITAR, unless warranted
  – Updated license exceptions
    • TSU: release of technology and source code in the U.S. by U.S. universities to bona fide and full time regular employees
    • AVS: export by accredited U.S. institutions of higher learning of commodities fabricated for fundamental research purposes
  – Incorporation of ITAR §§ 124.16 and 126.18 into deemed reexport guidance
  – Increased validity period for BIS licenses and ability to export/reexport to and among authorized end users
  – Revised support document requirements for license applications
Where We’re Headed

• Definitions rule
• USML Categories XIV and XVIII
• USML Category XII
• Harmonized Destination Control Statement
• Single application form
• Continual review of USML categories and corresponding CCL entries
Contact Information

600 Series Licensing and Classification Requests: Munitions Control Division

- Elena Love, elena.love@bis.doc.gov; Tom DeFee, thomas.defee@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
- Spacecraft/satellites: Dennis Krepp, dennis.krepp@bis.doc.gov; Mark Jaso, mark.jaso@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