U.S. Dual-Use Export Controls for the Aerospace Industry

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Bureau of Industry and Security
Overview

- Who we are
- What are you exporting?
- Where are you exporting?
- Who will receive your item?
- What will be the end-use of your item?
- Re-export controls
- BIS licensing process:
  - Who, What, When and How?
Who We Are
U.S. Department of Commerce, Bureau of Industry and Security

Office of the Chief Financial Officer and Director of Administration

Under Secretary for Industry and Security

Deputy Under Secretary for Industry and Security

Office of Congressional and Public Affairs

Office of the Chief Counsel for Industry and Security

Assistant Secretary for Export Administration

Deputy Assistant Secretary for Export Administration

End-User Review Committee Chair

Office of Technology Evaluation

Office of Exporter Services

Office of National Security and Technology Transfer Controls

Office of Strategic Industries and Economic Security

Assistance Secretary for Export Enforcement

Deputy Assistant Secretary for Export Enforcement

Office of Antiboycott Compliance

Office of Enforcement Analysis

Office of Export Enforcement
Export Control Reform: 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.
Export Control Reform: 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.
Export Control Reform: Implementation

• On April 19, 2013, the Bureau of Industry and Security published in the Federal Register:

Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform

• The revisions described in this rule will not take effect until October 15, 2013.

• The items that will be first affected by this rule are aircraft, gas turbine engines, and related items.

• References to the revisions in this presentation appear in red.
What Are You Exporting?

Licensing Jurisdiction
And
Commodity Classification
Three Main Regulatory Agencies

• **U.S. Department of Commerce**
  – Controls “dual-use” items
    • Items that have both commercial and military applications

• **U.S. Department of State**
  – Controls “defense articles” and “defense services”
    • Items specifically designed, developed, configured, modified or adapted for a military application

• **U.S. Department of the Treasury**
  – Administers economic and trade sanctions against
    • Foreign governments
    • Entities (e.g., charities linked to terrorist groups, drug front companies)
    • Individuals (e.g., terrorists, narcotics traffickers)
    • Practices (e.g., WMD proliferation, trade in non-certified rough diamonds)
Department of Commerce and Department of State Regulations

- **U.S. Department of Commerce, Bureau of Industry and Security (BIS)**
  - Administers the Export Administration Regulations (EAR)
  - Control “dual-use” items described on the Commerce Control List (CCL), Part 774 of the EAR

- **U.S. Department of State, Directorate of Defense Trade Controls (DDTC)**
  - Administers the International Traffic in Arms Regulations (ITAR)
  - Control “defense articles” and “defense services” described on the United States Munitions List (USML), Part 121 of the ITAR
Establishing Licensing Jurisdiction: Why is This Important?

• Establishing licensing jurisdiction is the first step in determining any licensing requirements associated with an item(s).

• The Department of Commerce (EAR) and the Department of State (ITAR) have differing licensing requirements.

• The exporter is responsible for abiding by the exporting requirements of the agency having jurisdiction over their item(s).
Commodity Jurisdiction (CJ) Request

• Used to obtain an official government determination when there is uncertainty as to whether an item is subject to the licensing jurisdiction of the Department of Commerce or the Department of State.

• The CJ process is chaired by the Department of State, with the Departments of Commerce and Defense providing analyses and recommendations.

• Information on submitting a Commodity Jurisdiction (CJ) request may be found at: http://www.pmddtc.state.gov/commodity_jurisdiction/index.html
Export Control Reform:  
the USML and the CCL

• To implement the objectives of the reform, 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.
Export Control Reform: Determining Changes in Jurisdiction

• Is my item still subject to the ITAR?
  – Review the relevant existing and revised USML categories

• What if I have a prior ITAR CJ determination?
  – If the item is moving from the USML to the CCL, then the CJ is superseded.
  – No need for an additional CJ unless there is doubt.

• For items moving from the USML to the CCL, the next step is to identify the item’s classification under the EAR to determine whether a license is required, and if so, what License Exception(s) may be available.
Classifying an Item on the CCL

• Entries on the Commerce Control List (CCL) are alpha-numeric codes called Export Control Classification Numbers (ECCNs).

• Each ECCN provides:
  – A description of the technical parameters of a particular item or type of item
  – The control(s) associated with the item
  – Any License Exception(s) for which the item is eligible
CCL Construct:
ECCN 9A001

• The CCL is divided into ten broad categories:
  0 = Nuclear materials, facilities, and equipment (and miscellaneous items)
  1 = Materials, Chemicals, Microorganisms and Toxins
  2 = Materials Processing
  3 = Electronics
  4 = Computers
  5 = Telecommunications and Information Security
  6 = Sensors and Lasers
  7 = Navigation and Avionics
  8 = Marine
  9 = Aerospace and Propulsion
CCL Construct:
ECCN 9A001

• Each category is further subdivided into five product groups:

A. Systems, Equipment and Components
B. Test, Inspection and Production Equipment
C. Material
D. Software
E. Technology
CCL Construct:
ECCN 9A001

- The next digit identifies the type of control associated with the items contained in the entry:

  0: National Security controls for items on the Wassenaar Arrangement Dual-Use and Munitions Lists and Items on the Nuclear Suppliers Group Dual-Use Annex and Trigger List

  1: Missile Technology controls

  2: Nuclear Nonproliferation controls

  3: Chemical & Biological Weapons controls

  6: Items transferring from the United States Munitions List to the Commerce Control List

  9: Non-regime and unilateral controls (Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.)
Anatomy of the New “600-Series” ECCN

9A610

CCL Category 0-9

Product Group A-E

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

Last two characters will generally track the Wassenaar Arrangement Munitions List (WAML)
New 600-Series
Aircraft and Engine ECCNs

• Aircraft and Related Items “600 series” ECCNs:
  – 9A610 – Military Aircraft and Related Commodities
  – 9B610 – Related Test, Inspection and Production Equipment
  – 9C610 – Related Material
  – 9D610 – Related Software
  – 9E610 – Related Technology

• Gas Turbine Engines and Related Items “600 series” ECCNs:
  – 9A619 – Military Gas Turbine Engines and Related Commodities
  – 9B619 – Related Test, Inspection and Production Equipment
  – 9C619 – Related Material
  – 9D619 – Related Software
  – 9E619 – Related Technology
600-Series ECCN Framework

• For items formerly on the USML, and items formerly on the CCL ending in -018:
  – Subparagraphs .a-.w: specifically enumerated end-items, materials, parts, components, accessories, and attachments
  – Subparagraph .y: specifically enumerated parts, components, accessories, and attachments that are “specially designed”
  – Subparagraph .x: “specially designed” parts, components, accessories, and attachments that are not specifically enumerated
A new definition of “specially designed” was crafted to provide objective criteria that government agencies, industry, and organizations can apply with minimal interpretation error.

Based on a simplified, two paragraph “catch-and-release” construct:
- Paragraph (a) is intended to be broad in scope and to “catch” all items that may warrant being controlled as “specially designed”
- Paragraph (b) lists 6 exceptions that “release” items caught in Paragraph (a) based, in part, on production and development intent

This construct requires answering a series of yes/no questions that lead to an objective determination whether an item is “specially designed”
“Specially Designed”

• BIS has developed a new web-based interactive decision tree tool to assist in determining whether your item is “specially designed.”

• Go to [WWW.BIS.DOC.GOV](http://WWW.BIS.DOC.GOV)  
  – Click on “Exporter Portal”  
  – Click on “Decision Tree Tools”  
  – Click on “Specially Designed”
“Specially Designed”

• BIS has also developed a new web-based tutorial to assist in determining whether your item is “specially designed.”

• Go to WWW.BIS.DOC.GOV
  – Click on “Reform”
  – Click on “Ask the experts about reform”
  – Click on “May 15, 2013 ‘Specially Designed’ in the initial implementation of Export Control Rule”

• Both the video and the transcript of the video are available.
“EAR99”

• If the item does not fit within the technical parameters of any ECCN on the CCL, it is designated “EAR99”.

• EAR99 items generally consist of low-technology consumer goods and do not require a license in most situations . . . more on this later.
Classifying Your Item on the CCL

• The proper classification is essential to determining the licensing requirements associated with your item.

• Classification options:
  – Classify the item on your own
  – Check with the item’s manufacturer or exporter
  – Submit a classification request to have BIS determine the classification for you
Commodity Classification Process

• **Anyone** can submit a Commodity Classification Request (*e.g.*, manufacturer, distributor, exporter, etc.).
  – Go to WWW.BIS.DOC.GOV
  – Click on “Reform”
  – Click on “Publications”
  – Click on “How to Request an Export Control Classification Number (ECCN)”

• Commodity Classification Requests are submitted electronically via the Simplified Network Application Process Redesign (SNAP-R) on the BIS website.
  – In order to submit electronic requests in SNAP-R, an applicant must register with BIS via an on-line registration process.
  – Upon completion of the registration process, the applicant will receive a Company Identification Number (CIN) from BIS.
  – There is no charge to register with BIS or to submit electronic requests in SNAP-R.

• Commodity Classifications are issued electronically via SNAP-R.
Is the item subject to the EAR? [no]

*The item is not subject to EAR. EXIT here, but first review the three WARNING Notes.*

yes

Have you reviewed characteristics and identified category and product group for the item? [no]

STOP. Review characteristics and identify category and product group for the item before proceeding. Once you determine these, return to the previous question, unless you use Option 3 below. Option 2 you should still also review the CCL.

3 ways to classify an item:
(1) Contact manufacturer, developer or producer,
(2) Self-classify, or
(3) Submit a classification request to BIS.

yes

**Guidance Note for Steps 3-6: You will determine if the item is described on the CCL by conducting:
(A) a “600 series” ECCNs analysis, followed by (B) a Non-“600 series” ECCNs analysis. If subject to the EAR, but not described, see Step 6.**

yes

**(A) “600 series” ECCNs analysis — Steps 3 and 4**

Step 3

Is the item enumerated in 600 series? [yes]

The item is classified in a military ECCN (“600 series”) [yes]

The item is classified in a military ECCN (“600 series”)

no

Step 4 - including 4.a. (‘catch’) and 4.b (‘release’) [yes]

The item is a “specially designed” 600 series item? [no]

Is the item described elsewhere in the CCL? [no]

The item is classified in a non-“600 series” ECCN [yes]

The item is classified in a non-“600 series” ECCN

no

Step 5

Is the item described elsewhere in the CCL? [yes]

The item is designated as EAR99 [no]

The Item is designated as EAR99

no

Step 6 (If subject to EAR, but not described, then EAR99)

no

The item is not subject to EAR. EXIT here, but first review the three WARNING Notes.
## Top Aerospace Items by Value Exported from the U.S. under a BIS License in CY 2012

<table>
<thead>
<tr>
<th>ECCN</th>
<th>Description</th>
<th>Value</th>
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<tbody>
<tr>
<td>7A103</td>
<td>Instrumentation, Navigation Equipment and Systems</td>
<td>$183,933,676</td>
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<tr>
<td>9A001</td>
<td>Aero Gas Turbine Engines</td>
<td>$74,955,281</td>
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<td>7A002</td>
<td>Gyros or Angular Rate Sensors and Specially Designed Components</td>
<td>$8,507,209</td>
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<td>9A991</td>
<td>Aircraft/Gas Turbine Engines/Parts and Components N.E.S.</td>
<td>$4,090,092</td>
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<td>7A001</td>
<td>Accelerometers and Specially Designed Components</td>
<td>$3,989,220</td>
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<td>7A003</td>
<td>Inertial Systems and Specially Designed Components</td>
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<td>Accelerometers, Other Than Those in 7A001</td>
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<td>7A994</td>
<td>Navigation, Communication and Avionic Equipment N.E.S.</td>
<td>$942,567</td>
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<td>9A018</td>
<td>Equipment on the Wassenaar Arrangement Munitions List</td>
<td>$332,997</td>
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<tr>
<td>9A012</td>
<td>Non-military UAVs/Airships and Associated Equipment</td>
<td>$123,660</td>
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</tbody>
</table>
Where Are You Exporting?

REASONS FOR CONTROL, COMMERCE COUNTRY CHART AND LICENSE EXCEPTIONS
License Requirements
Based on Reason(s) for Control

- The proper classification is essential to determining the licensing requirements associated with the item.
- Each ECCN indicates the reason(s) the item is controlled.

<table>
<thead>
<tr>
<th>Regime/Convention-based</th>
<th>Unilateral</th>
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<tbody>
<tr>
<td>CB = Chemical &amp;</td>
<td>AT = Anti-Terrorism</td>
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<tr>
<td>Biological Weapons</td>
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<td>CW = Chemical Weapons</td>
<td>CC = Crime Control</td>
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<td>Convention</td>
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<td>EI = Encryption Item</td>
<td>RS = Regional Stability</td>
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<td>FC = Firearms Convention</td>
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<td>NP = Nuclear</td>
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<td>Nonproliferation</td>
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<td>NS = National Security</td>
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<tr>
<td>MT = Missile Technology</td>
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<tr>
<td>UN = United Nations</td>
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</table>
With the control reason(s) and the country of the consignee, the Commerce Country Chart affixes the licensing requirement.

<table>
<thead>
<tr>
<th>Countries</th>
<th>CB 1</th>
<th>CB 2</th>
<th>CB 3</th>
<th>NP 1</th>
<th>NP 2</th>
<th>NS 1</th>
<th>NS 2</th>
<th>MT 1</th>
<th>RS 1</th>
<th>RS 2</th>
<th>FC 1</th>
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</table>
ECCN 9A610

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>
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</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.
No License Required

• Items eligible for export/re-export without a license according to their classification and the Country Chart, or their EAR99 designation, may be exported/re-exported using the designator “NLR” (No License Required) to all destinations except:
  – Cuba
  – Iran
  – Sudan
  – Syria

• Items eligible for export/re-export using the designator NLR:
  – Require a license if the exporter/re-exporter knows or is informed that the items will be used in certain prohibited end-uses . . . more on this later.
  – May require a license, or be prohibited from export/re-export, to the individuals and entities identified on any of the restricted/prohibited end-user lists maintained by the U.S. Government . . . more on this later.
License Exceptions

• A License Exception is an authorization to export or re-export, under stated conditions, items subject to the EAR that would otherwise require a license.

• License Exception eligibility is largely dependent on the Country Groups in Supplement No. 1 to EAR Part 740.

• All License Exceptions are subject to the restrictions set forth in §740.2 of the EAR.

• Two types of License Exceptions:
  – List driven
  – Transaction driven
License Exceptions for 600-Series Items

• **LVS (EAR § 740.3)**
  
  – $1500 for most 600-series commodity ECCNs

• **TMP (EAR § 740.9)**
  
  – Expanded scope for exports to U.S. person’s subsidiary, affiliate, or facility abroad

• **RPL (EAR § 740.10)**
  
  – 600-series parts to repair EAR or ITAR items
  
  – Return 600-series item serviced or replaced

*Note: the EAR do not control temporary imports into the U.S., thus, there is no need to alert the U.S. company to obtain authorization for 600-series items*
License Exceptions for 600-Series Items

- **GOV (EAR § 740.11)**
  - Expanded to authorize contractor support personnel and to provide for certain shipments for or on behalf of USG and Department of Defense-directed shipments

- **TSU (EAR § 740.13)**
  - Allows editorial changes to already authorized technology

- **STA (EAR § 740.20)**
  - Additional requirements for 600-series items
# Items Moving from USML to CCL: Corresponding EAR License Exceptions

<table>
<thead>
<tr>
<th>ITAR Exemption</th>
<th>EAR License Exception</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 123.4</td>
<td>RPL, TMP</td>
</tr>
<tr>
<td>§ 123.16(b)(2)</td>
<td>LVS</td>
</tr>
<tr>
<td>§ 123.16(b)(5)</td>
<td>TMP</td>
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<td>§ 123.16(b)(9)</td>
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<tr>
<td>§ 123.16(b)(10)</td>
<td>TSU</td>
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<td>§ 123.19</td>
<td>TMP</td>
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<td>§ 125.4(b)(1)</td>
<td>GOV</td>
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<td>§ 125.4(b)(3)</td>
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<tr>
<td>§ 126.6(a)</td>
<td>GOV</td>
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</table>
License Exception
Strategic Trade Authorization (STA)

• Two authorizing paragraphs:
  1. Items controlled for NS, CB, NP, RS, CC, and SI reasons only are eligible for License Exception STA to 36 destinations, including France.
  2. Items controlled for NS reasons only are eligible for License Exception STA to 8 destinations.

• Conditions:
  – Exporter furnishes ECCN(s) to the consignee
  – Exporter must obtain a five-point statement from the consignee
  – Exporter must provide shipment notifications to the consignee
License Exception STA for 600-Series Items

• Restrictions for 600-series items only:
  – For ultimate end-use by the U.S. Government or by the government of an “STA-36” country;
  – For return to the United States; or
  – In connection with an existing U.S. Government authorization

• Additional requirements for 600-series items only:
  – Non-U.S. parties must have been previously approved on a Department of 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 ECCN 9A610.a
Determining STA Eligibility

• BIS has developed a web-based interactive decision tree tool to assist in determining whether your contemplated export/re-export is eligible for License Exception STA.

• Go to **WWW.BIS.DOC.GOV**
  – Click on “Exporter Portal”
  – Click on “Decision Tree Tools”
  – Click on “STA”

• BIS is currently in the process of expanding this tool to cover 600-series exports/re-exports as well.
Where Are You Exporting?
Country Considerations

• The EAR maintain strict licensing requirements for the following comprehensively sanctioned/embargoed countries:
  – Cuba
  – Iran
  – North Korea
  – Sudan
  – Syria

• Limited sanctions also apply to:
  – Iraq (UN arms embargo)

• In certain instances, BIS and Department of the Treasury, Office of Foreign Assets Control (OFAC) controls overlap.
Who Will Receive Your Item?

END-USER BASED LICENSE REQUIREMENTS
End-User Controls

- The U.S. Government publishes various end-user lists identifying certain individuals and organizations that:
  - Are prohibited from receiving U.S. exports
  - May only receive goods if they have been licensed (including items that would not normally require a license based on their classification and the Commerce Country Chart, a License Exception, or their EAR99 designation)
  - Constitute a “Red Flag” that should be resolved prior to carrying out a transaction
End-User Lists

- Denied Persons List
- Entity List
- Unverified List
- Specially Designated Nationals List
- Nonproliferation Sanctions
- Debarred List
Consolidated End-User List Screening

• The Departments on Commerce, State and the Treasury have consolidated their end-user lists into one downloadable file as an aide in conducting electronic screens of potential parties to regulated transactions.

• Go to **WWW.BIS.DOC.GOV**
  – Click on “Consolidated Screening List”
For What Will Your Item be Used?

END-USE BASED LICENSE REQUIREMENTS
End-Use Controls

• End-use controls, or “catch-all controls”, impose a licensing requirement based on end-use for items otherwise eligible for export/re-export without a license according to their classification and the Country Chart, a License Exception, or their EAR99 designation.

• Aerospace-related end-use controls:
  – Restrictions on certain rocket systems and UAV end-uses (See EAR §744.3)
  – Restrictions on certain exports to and for the use of certain foreign vessels or aircraft (See EAR §744.7)
  – Restrictions on certain military end-uses in the PRC (See EAR §744.21)
    • Affected Aerospace ECCNs:
      – Navigation and Avionics: ECCNs 7A994, 7B994, 7D994 and 7E994
      – Propulsion Systems, Space Vehicles and Related Equipment: ECCNs 9A991, 9D991 and 9E991
Re-export Controls
Exports vs. Re-exports

- The same rules apply to exports, transfers, and re-exports of U.S.-origin items.
  - Same licensing requirements (except for certain sanctioned/embargoed countries)
  - Same License Exceptions, plus Additional Permissive Re-exports (APR)
  - Same license application

- For foreign-produced items, these rules extend to
  - Items having more than the *de minimis* amount of controlled U.S. content
  - Certain items that are the direct products of U.S.-origin technology

- BIS published guidance on re-exports:
  - Go to [WWW.BIS.DOC.GOV](http://WWW.BIS.DOC.GOV)
  - Click on “Reform”
  - Click on “Publications”
  - Click on “Guidance on the Commerce Department's Re-export Controls”
Licensing Authorities for Re-exports to Certain Countries

- **Re-exports of CCL items to Iran:** OFAC
- **Re-exports of EAR99 items to Iran:**
  - by a non-U.S. persons: BIS
  - by a U.S. Person: OFAC
- **Re-exports of all items to Sudan:** OFAC
- **Re-exports of CCL items to Sudan:** BIS & OFAC
- **Re-exports of all items to Cuba:** BIS
- **Re-exports of all items to Syria:** BIS
- **Re-exports of all items to North Korea:** BIS
Requirements for 600-Series Items Located Outside the 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 re-exported, transferred or sold.

• Therefore, any subsequent re-exports 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.
Re-exports or Transfers of Items
Incorporating U.S. Content: *De Minimis*

http://www.bis.doc.gov/policiesandregulations/ear/734.pdf

- 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 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.
Re-exports or Transfers of Items
Incorporating U.S. Content: *De Minimis*

• 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.
  – 10% for Cuba, Iran, North Korea, Sudan, and Syria
  – 25% for all other destinations

• For 600-series items:
  – 25% for items with U.S. content re-exported to all countries, except D:5 countries (See also ITAR §126.1)
  – 0% for D:5 countries (U.S. arms embargoed)

*NOTE: The ITAR will continue to have a zero *de minimis* “see-through” rule for all defense articles that remain on USML.
Aerospace *De Minimis* Exclusions

- There is no *de minimis* level for foreign-made:
  - Commercial primary or standby instrument systems of the type described in ECCN 7A994 when the systems integrate QRS11-00100-100/101 Micromachined Angular Rate Sensors
  - Commercial automatic flight control systems when the systems integrate QRS11-00050-443/569 Micromachined Angular Rate Sensors
  - Aircraft of the type described in ECCN 9A991 when such aircraft incorporate a primary or standby instrument system integrating a QRS11-00100-100/101 sensor or an automatic flight control system integrating a QRS11-00050-443/569 sensor.

- There is no *de minimis* level for U.S.-origin technology controlled by ECCN 9E003.a.1-a.8, .h, .i, and .j (certain gas turbine engine components or systems) when redrawn, used, consulted, or otherwise commingled abroad.
EAR99 and *De Minimis*

- EAR99 items are calculated as controlled for U.S. content when exporting to certain countries:
  - Cuba
  - North Korea
  - Syria
Re-exports or Transfers of Direct Products of U.S.-Origin Technology or Software


• If your product is the direct product of U.S. controlled technology, it will be subject to U.S. re-export law if:
  – The foreign-made item is controlled for National Security (NS) reasons, and
  – The foreign-made item is the direct product of U.S. technology or software that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception Technology and Software Under Restriction (TSR) (See EAR §740.14).

• Foreign produced direct products require a license for re-export to destinations in Country Groups D:1 and E:2 (See Supplement No. 1 to EAR Part 740).
**Re-exports or Transfers of Direct Products of U.S.-Origin 600-Series Technology or Software**

- “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.

<table>
<thead>
<tr>
<th>The 600-Series Direct Product Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is the foreign-produced direct product of:</strong></td>
</tr>
<tr>
<td>(i) U.S.-origin 600-series technology or software or</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>
</tr>
<tr>
<td><strong>Is the foreign-produced direct product a 600-series item?</strong></td>
</tr>
<tr>
<td><strong>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 or E:1?</strong></td>
</tr>
</tbody>
</table>

Note: If “yes” to all three questions, then the foreign made item is subject to the EAR.
The BIS Licensing Process
Who Can Apply for a License?

• Unlike Commodity Classification requests, there are certain restrictions on who can apply for a license:

• Who can apply for an export license?
  – Only a person in the United States can apply for a license to export from the United States.

• Who can apply for a re-export license?
  – U.S. or foreign principal party in interest (FPPI)
  – Other duly authorized U.S. agent of the FPPI (agent must usually obtain written authorization from the FPPI)
When Can I Apply for a License?

• **Anytime!**
  - No sales documentation (*e.g.*, purchase order, letter of intent, etc.) is necessary.
  - However, enough information about the potential transaction must be known in order to accurately fill-out the license application.

• A license application need not be limited to a single shipment, but may represent a reasonable estimate of items to be shipped throughout the validity of the license.

• Applicants are encouraged to not wait until the license they are using expires before submitting a new application. Applicants may submit a new application prior to the expiration of their current license in order to ensure uninterrupted shipping.

• Re-export authority may be requested by U.S. exporter at time of application for export license, for shipment to and among multiple end users. **This includes license applications for 600-series items.**
When Can I Apply for a License for 600-Series Items?

• Options for transactions currently authorized by DDTC:
  – Grandfather beyond October 15, 2013, per DDTC transition plan
  – Maintain DDTC approval until October 15, 2013, but pre-position a BIS license application or utilize an eligible License Exception or NLR designation on October 15, 2013 and going forward.

• Options for transactions after October 15, 2013:
  – Obtain a BIS license or use an eligible License Exception
    • Exporter must supply 600-series ECCN on export control documents, such as invoice and bill of lading or air waybill
  – Obtain a DDTC license, agreement, or other approval if eligible under §120.5(b) of 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
ITAR §120.5(b) Authorizations for 600-Series Items

• Items subject to the EAR authorized under §120.5(b) of the ITAR:
  – 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 re-export
  – 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
How do I Apply for a License?

• Like Commodity Classification Requests, license applications are submitted electronically via the Simplified Network Application Process Redesign (SNAP-R) on the BIS website.

• There is no charge to register with BIS to use SNAP-R or to submit electronic applications in SNAP-R.
The License Application

• On the license application
  – Define the item(s) in terms of the technical parameter(s) of the ECCN(s)
  – Identify the specific end-use(s)
  – Provide any information you know about the ultimate consignee/end-user(s)
  – Provide information on any internal controls in place to mitigate the risk of diversion or unauthorized end-uses
  – For 600-series items, cite prior equivalent DDTC approvals

• BIS licenses authorize exports/re-exports to and among the end-users listed on license, so craft the license application accordingly.

• All information provided in support of a license application is restricted to U.S. Government reviewers only.
Interagency Review

• Ensures that the U.S. Government decision on a license application draws on the breadth and scope of the government’s expertise

• Reviewing agencies have common national security and foreign policy interests, but unique perspectives.

• Reviewing Agencies:
  – Department of Commerce
    • Technical issues
    • Economic issues
  – Department of Defense
    • National security issues - Brings the technical expertise of the Services focused on an individual export/re-export
  – Department of Energy
    • Nuclear issues
  – Department of State
    • Foreign policy issues
Common Reviewing Agency Concerns

• Parties to the transaction:
  – What are their roles?
  – What do you know about the parties?
  – What is your source for information?

• End-use concerns:
  – Is there a balance between the product’s capability and the proposed end-use?
  – Is there excess capability? Why?
  – What is the risk of diversion?

• Controls:
  – What controls are in place to prevent diversion?
  – Are the controls realistic?
  – Do the parties understand the controls?
  – Are the controls documented?
  – Who will conduct monitoring?

★ Target known agency concerns in your license application.★
License Review Period

• The Department of Commerce must review the application and refer it to the reviewing agencies within 9 days of receipt.

• Reviewing agencies have 30 days to respond with recommendations.

• If the reviewing agencies concur on the disposition of the license application, it will be:
  – Approved
  – Approved with conditions
  – Denied

• In CY 2012, BIS processed 22,800 export license applications valued at approximately $270.8 billion.
  – Approved 19,376 license applications (85%)
  – Returned 3,267 license applications without action (14.3%)
  – Denied 157 license applications (0.7%)

• In CY 2012, BIS’ average processing time for license applications was 26 days.
License Issuance

- Like Commodity Classifications, BIS export licenses are issued electronically via SNAP-R.

- The information in the license is represented by a license number or a “D number”, which is the letter “D” followed by 6 numbers (e.g., D123456).

- BIS export licenses are generally valid for two years, or for the “unit” of items approved on the license (per the item’s ECCN), whichever comes first.

- All BIS licenses issued on or after October 15, 2013 will be valid for four years.
Your Responsibilities as a License Holder

• Understand and comply with any license conditions.
  – You will be given a chance to review and agree to all proposed license conditions before the license is issued.
  – In accordance with §750.7(d) and §762.2 of the EAR, you are responsible for communicating in writing the authorizations and conditions of the license to the parties to whom those authorizations and conditions apply, and for retaining a record of the communication.

• Be mindful of the license validity period.
  – Decrement the license as exports are made
  – Maintain the records for five years from the last shipment.
Your Responsibilities as a Consignee on a License

- **Receive and review all conditions relevant to you!!!**
- Make sure that you can abide by the conditions before you accept them.
- Communicate the conditions to all employees who will have access to the item(s).
- Maintain physical security over the items.
- Make sure that you are aware of any re-export requirements/conditions that may apply to the item(s).
In CY 2012, $282.5 Million in Aerospace Advanced Technology Products were Exported under a BIS License

<table>
<thead>
<tr>
<th>Country of Destination</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>$103,524,468</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>$74,620,116</td>
</tr>
<tr>
<td>Brazil</td>
<td>$26,154,329</td>
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<tr>
<td>Germany</td>
<td>$18,590,059</td>
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<tr>
<td>China</td>
<td>$15,048,066</td>
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<tr>
<td>Singapore</td>
<td>$7,366,412</td>
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<tr>
<td>Switzerland</td>
<td>$5,473,382</td>
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<tr>
<td>Israel</td>
<td>$2,959,974</td>
</tr>
<tr>
<td>Norway</td>
<td>$2,711,001</td>
</tr>
<tr>
<td>Colombia</td>
<td>$2,415,642</td>
</tr>
</tbody>
</table>
Dual-Use Export Controls: A Summary

• What are you exporting?
  – Establish licensing jurisdiction for your item
  – Determine the proper classification for your item

• Where are you exporting?
  – The Commerce Country Chart fixes licensing requirements

• Who will receive your item?
  – Prohibited/restricted end-user lists

• What will be the end-use of your item?
  – End-use controls

• Applying for a license
  – SNAP-R
  – Address agency concerns
Looking Ahead

• On May 24, 2013, BIS published the proposed rule in the Federal Register:

   Export Administration Regulations (EAR):
   Control of Spacecraft Systems and Related Items
   the President Determines No Longer Warrant Control
   Under the United States Munitions List (USML).

• The proposed rule describes how certain articles that no longer warrant control under USML Category XV – spacecraft and related items – would be controlled on the CCL.

• Comments must be received by July 8, 2013.
How to Obtain More Information

• BIS Website:  
  www.bis.doc.gov

• State DDTC Website:  
  www.pmddtc.state.gov

• Treasury OFAC Website:  
  www.treasury.gov/offices/enforcement/ofac
How to Obtain
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