ITAR REFORM: IMPACT ON LASERS, ELECTRO-OPTICS, & NIGHT VISION DEVICES
Points to Cover:

- ITAR reform – Purpose & Direction
- Impact on Lasers, Electro-Optics, & Night Vision Devices
- Revised DDTC Jurisdiction
- Technical Data & Defense Services
- Transition & Best Industry Practices
- The Way Ahead
Export Control Reform:

- President’s Export Control Reform Task Force
- ITAR - USML Review & Revision
- Move to a Positive List
- USML to CCL realignment
- Transition Period
Jurisdictions

International Traffic in Arms Regulations (ITAR)
- Department of State
- Directorate of Defense Trade Controls (DDTC)

Export Administration Regulations (EAR)
- Department of Commerce
- Bureau of Industry and Security (BIS)

Export Control Reform
- Interagency Consultations
  DoD, DoE, DHS, etc.

U.S. Munitions List (USML)
- Transitioned Items
- Commerce Control List (CCL)

MKTCG
Experts in Trade Compliance™
Category XII Changes

(a) fire control, weapon sights, aiming & imaging systems/equipment
(b) lasers, laser systems, & equipment
(c) IRFPAs, IITs, night vision, etc.
(d) guidance, navigation systems, etc.
(e) components, parts, accessories, attachments, & associated equipment
(f) technical data & defense services
Category XII(a): Fire Control Systems

(a) Fire control, weapon sights, aiming & imaging systems/equipment as follows:

(1) Fire control systems or equipment & specially designed parts/components
(2) Weapon sights, aiming systems, or equipment & weapon imaging systems
Category XII(a): Fire Control Systems

(3) Electronic or optical weapon positioning, laying, or spotting system or equipment

(4) Laser spot trackers or laser spot detection, location or imaging systems

(5) Bomb sights or bombing computers

(6) Electro-optical missile or ordinance tracking/guidance systems or equipment
Category XII(a):
Fire Control Systems

(7) Electro-optical systems that automatically detect & locate weapons launch or fire

(8) Remote wind sensing systems for ballistic aiming correction & parts

(9) Helmet-mounted display systems w/ optical sights or slewing equipment for aiming, launching, tracking, managing munitions or control IR imaging systems
Category XII(b): Lasers & Laser Systems

(b) lasers, laser systems, & equipment as follows:

(1) laser target designators or coded target markers
(2) aiming or target illumination systems
(3) specified laser rangefinders
(4) targeting or target location systems or equipment incorporating controlled laser rangefinders or GNSS guidance/navigation article
Category XII(b): Lasers & Laser Systems

(5) systems using specified laser energy
(6) LIDAR, LADAR, & range-gated systems incorporating controlled articles
(7) specified synthetic aperture LIDAR or LADAR systems
(8) specified LIDAR, LADAR, or range-gated systems (resolution, wave length, band width, coherent homodyne detection, explosive ID/detection, obstacles avoidance or autonomous navigation for controlled ground vehicles)
Category XII(b): Lasers & Laser Systems

(9) Lasers providing modulating output for Cat. XI(a)(4) systems
(10) Tunable semiconductor lasers
(11) Non-tunable single transverse mode semiconductor lasers
(12) Non-tunable multiple transverse mode semiconductor lasers
Category XII(b): Lasers & Laser Systems

(13) Specified laser stacked arrays

(14) Developmental lasers & laser systems funded by DoD
Category XII(c)
IRFPAs, Night Vision, etc.

- Most **bare IRFPAs** remain ITAR controlled
- IRFPAs incorporated into **higher order assembly** also controlled if meet certain parameters
- Most IRFPAs incorporated into camera cores, monocular, binocular, or other **higher order assemblies** will **not** be ITAR controlled
- Most **multispectral** IRFPAs & IRFPAs with **charge multiplication** remain ITAR controlled
Category XII(c)  
IRFPAs, Night Vision, etc.

IRFPAs, image intensifier tubes, night vision, electro-optic, infrared & tetrahertz systems, equipment & accessories, including cameras & camera cores: (w/ spec. parameters)

(1) image intensifier tubes
(2) Photon detectors, microbolometer detector, multispectral detector IRFPAs
(3) One-dimensional photon detector IRFPAs
Category XII(c)
IRFPAs, Night Vision, etc.

(4) Two-dimensional photon detector IRFPAs
(5) Microbolometer IRFPAs
(6) Multispectral IRFPAs
(7) Charge Multiplication FPAs
(8) Charge Multiplication FPAs in permanent encapsulated sensor assembly
Category XII(c)
IRFPAs, Night Vision, etc.

(9) Integrated IRFPA dewar cooler assemblies
(10) Gimbals w/ 2+ axes, min. RMS <200 microradians
(11) Gimbals w/ 2+ axes, min. RMS <100 microradians
(12) Infrared imaging camera cores and specially designed electronics and optics
(13) Binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems or equipment
Category XII(c)
IRFPAs, Night Vision, etc.

(14) Targeting systems or equipment
(15) IR search & track (IRST) systems
(16) IR imaging systems or equipment
(17) Terahertz imaging systems or equipment
(18) Near-to-eye display systems or equipment
Category XII(c)
IRFPAs, Night Vision, etc.

(19) Systems or equipment that project radiometrically calibrated scenes directly into the entrance aperture of a controlled EO/IR sensor
(20) Systems w/ IR beacon/emitter for IFF
(21) Developmental imaging systems or equipment funded by the Department of Defense
Category XII(e): Components, Parts, etc.

- Parts, components, accessories, attachments, and associated equipment
- Move from “catch all” to “Positive List”
- No longer controls generic parts, components, accessories, & attachments
- 15 types of parts & components specified
- Will control “specially designed” parts & components
Category XII(e):
Components, Parts, etc.

Parts, components, etc. w/ parameters:
(1) Optical sensors
(2) Image intensifier tube parts
(3) Wafers incorporating structures for controlled ROICs or IRFPAs
(4) ROICs spec. designed for IRFPAs
Category XII(e): Components, Parts, etc.

(5) ROICs spec. des. for camera/core/packaged IRFPA
(6) Vacuum packages for IRFPA or IIT
(7) Integrated IRFPA dewar cooler assembly
(8) IRFPA Joul-Thompson self-regulating cryostats
Category XII(e): Components, Parts, etc.

(9) IR lenses, mirrors, beam splitters or combiners, filters, treatments, coatings
(10) Drive, control, signal or image processing electronics
(11) Signal processing electronics, attachments or accessories
(12) Near-to-eye displays
Category XII(e):
Components, Parts, etc.

(13) Resonators, receivers, transmitters, modulators, gain media, and drive electronics or frequency converters.

(14) Two-dimensional infrared scene projector emitter arrays.

(15) Classified parts, components, software, etc.
“Specially Designed”

§120.41(a) (1) Commodities or software with properties “peculiarly responsible” for achieving controlled performance, levels, characteristics, or functions described in the USML or (2) Parts, components, accessories, attachments, or software (PCAAS) for use in or with a defense article,

(b) PCAAS is/are not specially designed if:

- It is subject to EAR via a CJ
- Regardless of form or fit, it is a fastener, washer, spacer, insulator, grommet, bushing, spring, wire, or solder
- It has the same function, performance capabilities, & equivalent form & fit as a commodity or software used in or with a commodity in production & is not enumerated on the USML
- It was/is developed for both commodities on the USML & not on the USML
- It was/is developed as a general purpose commodity or software
Category XII(f):
Tech Data & Defense Services

- Technical data directly related to articles in Category XII(a) – (e)

- Does not include basic operating instructions, testing results, incorporating IRFPAs into higher level assemblies not covered
Other USML Categories

Category XV – Spacecraft & Related Articles

• (a)(7) Electro-optical remote sensing satellites & (e) certain components

Category XI – Military Electronics

• (a)(3) Laser radar systems
ECR Transition Rules

- Transition time period for DSP-5s
- Ability to amend license to remove transitioned items
- Or use existing authorization during transition period
Best Practices

- know your commodity jurisdiction
- know your commodity classification
- develop a transition plan
- beware modifications to product
- distinguish between military and commercial product lines
- beware of “red flags”
The Way Ahead

- Open for comment until 6 July (60 days)
- Constructive input
- Issuance of the Final Rule
- What’s next for export control reform
- Historical experience with export control reform
Public Comment Process

Federal rulemaking portal: www.regulations.gov

DoS/DDTC public comment:
   Email: DDTCPublicComments@state.gov
   with the subject line, “ITAR Amendment—Category XII”

DoC/BIS Public Comments Division:
   Email: publiccomments@bis.doc.gov
   – with the subject line, “RIN 0694-AF75”

or Mail to Regulatory Policy Division, BIS
   U.S. Department of Commerce, Room 2099B, 14th St and Pennsylvania Avenue NW., Washington DC 20230
Export Control Reform and USML Category XII

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Bureau of Industry and Security
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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 and 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

• Background on Export Controls
  • Primary Licensing Agencies
  • Export Control Reform (ECR)
• Proposed Changes to the EAR
• Potential Issues for Consideration
• Submitting Public Comments
• Resources/Contact Information
Primary Export Control Licensing Agencies

Department of Commerce
Bureau of Industry and Security (BIS)

- Export Administration Regulations (EAR) (15 CFR Parts 730-774)
- Commerce Control List (CCL)
- Jurisdiction over:
  - Dual-use items
  - Purely commercial items
  - Less-sensitive military items (i.e., the “600 series” as a result of ECR)

Department of State
Directorate of Defense Trade Controls (DDTC)

- International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130)
- U.S. Munitions List (USML)
- Jurisdiction over:
  - Defense articles (under ECR, primarily those military items having a significant military or intelligence capability)
  - Defense services
ECR Background

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

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

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

Framework:
• Items providing a significant military or intelligence capability are listed on the USML, which is now a more “positive” list. Items no longer listed on the USML are subject to the EAR’s “600 series.”
• 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 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.

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

<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>
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<tr>
<td></td>
<td>9Y620</td>
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</table>
## ECR Status

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<th>USML Category</th>
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<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7Y611</td>
<td>Comments due July 6, 2015</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</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Effective June 27, 2014 (for rad-hard ICs)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>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 Enumerated</td>
<td>N/A</td>
<td>Final rule Apr. 16, 2013; Effective Oct 15, 2013</td>
</tr>
</tbody>
</table>
ECR Status

• From October 2013 through March 2015:
  – 56% reduction in license volume at the Department of State for the newly implemented USML categories
  – Over 12,000 license applications submitted to BIS for items that have moved from the USML to the CCL
  – Over 92,000 shipments valued at $3.2 billion in exports have been shipped under BIS authorizations
    • Top items: 9A610 (aircraft items), 9A619 (gas turbine engine items), 0A606 (ground vehicle items)
    • Top destinations (by value): Japan, Canada, South Korea, United Kingdom, Israel, Germany, Singapore
Proposed Changes to the EAR

• Jurisdiction of infrared focal plane arrays (FPAs)
  – Proposed rules would delineate jurisdiction as follows:
    • FPAs described in 6A002.a.3 that are in a “permanent encapsulated sensor assembly” (as proposed to be defined in part 772) are subject to the EAR
    • FPAs described in 6A002.a.3 that are not in a “permanent encapsulated sensor assembly” are subject to the ITAR
    • Note: certain FPAs that are in a “permanent encapsulated sensor assembly” are proposed to be subject to the ITAR
Proposed Changes to the EAR

• Jurisdiction of image intensifier tubes (IITs)
  – Proposed rules would delineate jurisdiction as follows:
    • IITs described in 6A002.a.2 having a luminous sensitivity of 500 microamps per lumen or less would be subject to the EAR
    • IITs described in 6A002.a.2 having a luminous sensitivity of more than 500 microamps per lumen would be subject to the ITAR
Proposed Changes to the EAR

• Expanded scope of controls on read-out integrated circuits (ROICs)
  – Currently, ECCN 6A990 controls certain ROICs for automotive imaging and ranging
  – Proposed rule would expand scope to control ROICs specially designed for 6A002.a.3 focal plane arrays
  – Proposal also results in increase in scope of software and technology for ROICs controlled under 6D991 and 6E990
  – Impact: would make many ROICs (i.e., those that are not currently described in 6A990 and that are not specifically designed or modified for defense articles in USML Cat XII) subject to strict export controls that do not exist today
Proposed Changes to the EAR

- Expanded scope of controls on software and technology related to infrared detection
  - Current software controls:
    - 6D002 software for the “use” of 6A002.b imaging sensors
    - 6D003.c software designed or modified for cameras incorporating “focal plane arrays” specified by 6A002.a.3.f and designed or modified to remove a frame rate restriction and allow the camera to exceed the frame rate specified in 6A003.b.4 Note 3.a
    - 6D991 software specially designed for the development, production, or use of 6A002.a.1.d FPAs or 6A990 ROICs
Proposed Changes to the EAR

• Expanded scope of controls on software and technology related to infrared detection
  – Proposed expansion of software controls
    • 6D991: proposed to control software for the development, production, or use of all items in 6A002, 6A003, or 6A990
    • New ECCN 6D994: proposed to control software specially designed for the maintenance, repair, or overhaul of all items in 6A002, 6A003, or 6A990
Proposed Changes to the EAR

- Expanded scope of controls on software and technology related to infrared detection
  - Current technology controls
    - 6E001 technology for the development of 6A002 or 6A003 commodities
    - 6E002 technology for the production of 6A002 or 6A003 commodities
  - Proposed expansion of technology controls:
    - New ECCN 0E987: proposed to control technology required for the development or production of certain rifle sights in ECCN 0A987 that incorporate a focal plane array or image intensifier tube
    - New ECCN 6E994: proposed to control technology required for the maintenance, repair, or overhaul of 6A002, 6A003, or 6A990 commodities
Proposed Changes to the EAR

- Imposition of Regional Stability (RS) worldwide license requirement for:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>All items in ECCN 6A002</td>
<td>certain optical sensors and equipment, including infrared focal plane arrays and image intensifier tubes</td>
</tr>
<tr>
<td>All items in ECCN 6A990</td>
<td>certain read-out integrated circuits</td>
</tr>
<tr>
<td>Some software in ECCN 6D002</td>
<td>software for the “use” of 6A002.b imaging sensors</td>
</tr>
<tr>
<td>All software in 6D003.c</td>
<td>software designed or modified for cameras incorporating focal plane arrays in 6A002.a.3.f and designed or modified to remove 9 Hz frame rate restriction</td>
</tr>
<tr>
<td>Some software in 6D991</td>
<td>software for the “development,” “production,” or “use” of commodities in 6A002, 6A003 (certain cameras), or 6A990</td>
</tr>
<tr>
<td>All software in newly proposed ECCN 6D994</td>
<td>software for the maintenance, repair, or overhaul of all items in 6A002, 6A003, or 6A990</td>
</tr>
</tbody>
</table>
Proposed Changes to the EAR

• Imposition of Regional Stability (RS) worldwide license requirement for:

  **Some technology in 6E001**: technology for the “development” of 6A002 or 6A003 commodities

  **Some technology in 6E002**: technology for the “production” of 6A002 or 6A003 commodities

  **All technology in 6E990**: technology for the “development” or “production” of 6A990 commodities

  **All technology in new 6E994**: technology for the maintenance, repair, or overhaul of 6A002, 6A003, or 6A990 commodities
Proposed Changes to the EAR

• Imposition of Regional Stability (RS) worldwide license requirement:
  – All items described in prior two slides do not currently require a license to Canada
  – Some of the items described above do not currently require a license to other allied countries, such as certain EU countries, Australia, Japan, South Korea, and New Zealand
  – Proposals could impact current business processes for exports and reexports to such countries
Proposed Changes to the EAR

• Expansion of scope of ECCN 0A919
  – ECCN 0A919 applies to military commodities located and produced outside of the U.S. that incorporate certain U.S. content
  – If a 0A919 military commodity incorporates any U.S.-origin 6A002 items, 6A003 items, 6A990 items, or 9Hz cameras in 6A993.a (meeting the criterion of Note 3.a to 6A003.b.4), regardless of value, then such foreign-made military commodities would be subject to the EAR and be subject to a reexport license requirement, unless destined for Canada
  – Would amend de minimis provisions in § 734.4 to reflect proposed changes to 0A919
Proposed Changes to the EAR

• Proposed expansion of end-use/end-user license requirement in § 744.9
  – Currently applies to exports or reexports of certain 6A003 cameras if, at the time of the transaction, the exporter or reexporter knows or is informed that the cameras will be used by a military end user or incorporated into a 0A919 military commodity
  – Proposed rule would expand the scope as follows:
    • **Items**: would include 6A002 items, 6A003 items, 6A990 items, 6A993.a 9 Hz cameras, 8A002.d.1.c and d.2 underwater camera systems
    • **Transactions**: expanded to include transactions where one is unable to determine whether such night vision items will be used by a military end user or incorporated into a 0A919 military commodity; also explicitly adds in-country transfers
    • **Destinations**: expanded to apply to all destinations, including Canada
Proposed Changes to the EAR

• Proposed removal of availability of license exceptions
  – Would restrict the use of any license exception under § 740.2 for 6E002 technology for the production of commodities in 6A002.a.2, 6A002.a.3, or 6A990
  – Would remove eligibility to use License Exception TSR for:
    • 6D002 software for the “use” of 6A002.b items
    • 6D003.c software
    • 6E001 technology for the “development” of 6A002 or 6A003 commodities
    • 6E002 technology for the “production” of 6A002 or 6A003 commodities
Proposed Changes to the EAR

• Proposed removal of availability of license exceptions
  – Would remove eligibility to use License Exception STA for:
    • New 0E987
    • All 6A002 items
    • All 6A990 items
    • 6D002 software for the “use” of 6A002.b imaging sensors
    • 6D003.c software
    • 6D991 software for the “development,” “production,” or “use” of commodities in 6A002, 6A003, or 6A990
    • New 6D994
    • 6E001 technology for the “development” of 6A002 or 6A003 commodities
    • 6E002 technology for the “production” of 6A002 or 6A003 commodities
    • 6E990
    • New 6E994
Proposed Changes to the EAR

• Proposed removal of availability of license exceptions
  – Would remove eligibility to use certain provisions of License Exception APR
    • Under § 740.16(a), precludes reexports of 6A002, 6A003, and 6A990 items from Country Group A:1 and cooperating countries.
    • Under § 740.16(b) precludes reexports of 6A002, 6A003, and 6A990 items to and among Country Group A:1 and cooperating countries.
    • However, the exception will still be available for countries identified in paragraph (b)(3) for reexports to certain destinations of consumer ready civil products or cameras with less than 111,000 elements to be embedded in civil products.
Proposed Changes to the EAR

• If a license is required under the new worldwide RS reason for control and no license exception is available, then license applications would be reviewed under the following licensing policies:
  – Case-by-case review for commodities (6A002, 6A990)
  – Case-by-case review for software or technology for maintenance, repair, or overhaul (6D994, 6E994)
  – Presumption of denial, generally, for all other software or technology (primarily for development, production, or use) to all destinations, including Canada:
    • 0E987; 6D002 software for the “use” of 6A002.b items; 6D003.c; 6D991 software for the “development,” “production,” or “use” of commodities in 6A002, 6A003, or 6A990; 6E001 technology for the “development” of 6A002 or 6A003 commodities; 6E002 technology for the “production” of 6A002 or 6A003 commodities; 6E990)
Proposed Changes to the EAR

• If a license is required under the new worldwide RS reason for control and no license exception is available, then license applications would be reviewed under the following licensing policies:
  – Case-by-case review for 6E002 production technology, if the technology is “build-to-print technology” that is required for the integration, mounting, inspection, testing, or quality assurance.
  – Otherwise, all other 6E002 technology is subject to a presumption of denial to all destinations, including Canada.
Proposed Changes to the EAR

• Establishment of 600 series for military fire control, range finder, and optical equipment under new ECCNs 6A615, 6B615, 6D615, and 6E615
  – Includes certain light or laser detection and ranging systems, gimbals, weapon sights, targeting systems, etc.
  – Eligible for License Exception STA for Country Group A:5
Proposed Changes to the EAR

• Establishment of “600 Series” for military guidance and control equipment under ECCNs 7A611, 7B611, 7D611, and 7E611
  – All entries in 7A611 utilize “specially designed” to avoid controlling guidance and control equipment subject to Wassenaar Dual-Use controls
  – All items STA-eligible for Country Group A:5, except for “development” or “production” software in 7D611.a and “development” or “production” technology in 7E611.a
Potential Issues for Consideration

- Do the proposed rules establish a bright line by which one can determine the proper jurisdiction?
- Are there examples of control criteria in the proposed rules that do not clearly establish a bright line in jurisdiction?
  - Are there scenarios where the same item could be controlled in multiple places in the proposed USML Cat XII or in multiple places in both the proposed USML and CCL entries?
  - Are there any control parameters that are ambiguous and thus make it difficult to determine whether a bright line has been established?
  - If these proposals are unworkable, too complex, involve parameters that manufacturers do not typically test for, or implicate some other concern, then we recommend sending us these comments on these issues.
Potential Issues for Consideration

• Are the jurisdictional lines in the right place?
  – If the public believes that there are items currently in production that are in normal commercial use and captured in the proposed Cat XII, then we highly recommend that the public submit examples of such items.
  – It would be very helpful for the agencies if the comments demonstrate actual commercial use as well as foreign availability of such items.
  – Submitting supporting documentation demonstrating such information will be crucial to the agency’s review of these comments.
Potential Issues for Consideration

• Are the jurisdictional lines in the right place?
  – Proposed USML Cat XII(b) would control certain lasers and laser systems
    • Some of the controls identified in XII(b) utilize parameters used in the Wassenaar Arrangement Dual-Use List. The Wassenaar Dual-Use List often establishes a baseline of controls with no upper limit to designate those lasers that are inherently military.
    • Many proposed controls in XII(b) attempt to identify an upper limit above which all items would be inherently military.
    • if any items in normal commercial use are above the identified thresholds, then we would encourage the public to submit comments on such items.
Potential Issues for Consideration

• Impacts to the U.S. industrial base
  – It is possible, and even likely, that the proposed Cat XII includes items that are controlled on the Wassenaar Arrangement Dual-Use List and described in Category 6 of the CCL.
  – What would the impact be to U.S. companies from the increase in license requirements, reductions in the availability of license exceptions, and heightened license review standards proposed in the BIS rule?
  – What is the impact to U.S. companies vis-à-vis their foreign competitors?
Potential Issues for Consideration

- The jurisdictional split for focal plane arrays
  - Is the distinction using permanent encapsulated sensor assemblies workable?
  - Will this be acceptable for business processes, including releases of technology associated with FPAs and incorporation into encapsulated sensor assemblies?
  - Is the definition of permanent encapsulated sensor assemblies proposed in part 772 of the EAR acceptable?
Potential Issues for Consideration

• The ITAR’s see-through rule
  – Have U.S. companies historically faced obstacles in selling parts and components, potentially identified in the proposed Cat XII, for incorporation into foreign commercial products?
  – If yes, do the proposed rules help address these concerns? Or do they make the status quo worse?
  – DDTC’s proposed rule has notes in XII(c) and (e) addressing the ITAR’s see-through rule when certain parts and components are incorporated into an item subject to the EAR
    • Note: the proposed notes in XII(c) and (e) use different language than see-through notes in other USML categories ("...and cannot be removed without destruction or damage to the article or render the item inoperable.")
    • Note: the proposed note in XII(c) only covers certain items in XII(c)
Potential Issues for Consideration

• Movement of items from the USML to the CCL
  – One of the rationales for increasing controls related to thermal imaging/night vision items was to ensure interagency review of license applications for such items moving to the CCL.
  – Will such items be moving from the USML to the CCL?

• The objectives of ECR
  – Do the proposed rules further the objectives of ECR?
    • Improve interoperability with NATO and other allies?
    • Reduce incentive for foreign companies to design out U.S. content?
    • Allow USG to focus on transactions of greater concern?
Potential Issues for Consideration

• Issues the agencies believe would strongly benefit from public comments:
    • See pp. 25799-25800 in the Federal Register
    • See pp. 25823-25824 in the Federal Register
Submitting Public Comments

• Must be submitted by Monday, July 6 (60-day comment period)

• Options for submitting comments electronically:
  – www.regulations.gov (for either rule)
  – publiccomments@bis.doc.gov (for BIS rule)
  – DDTCPublicComments@state.gov (for DDTC rule)

• May combine comments on both rules into one document submitted to both agencies
Submitting Public Comments

• Public comments sent to BIS are posted at: http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents

• Examples of prior public comments under ECR:
  – Record of Public Comments for Revisions to the EAR: Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the USML
  – Record of Public Comments for Civil Uses of Certain Microwave Monolithic Integrated Circuit (MMIC) Power Amplifiers, Discrete Microwave Transistors and Bi-Static and Multi-Static Radar
Resources

• Agencies
  – BIS: www.bis.doc.gov
  – DDTC: www.pmddtc.state.gov

• Export Control Reform
  – www.export.gov/ecr
  – http://www.bis.doc.gov/index.php/2012-03-30-17-54-11

• BIS Weekly Teleconference on ECR
  – Every Wednesday at 2:30pm EDT; 1-888-455-8218 (participant code 6514196)
  – To submit questions: ECRWeekly@bis.doc.gov
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.opes@bis.doc.gov; Jeff Leitz, jeffrey.leitz@bis.doc.gov
•  Materials, 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
•  Guidance and control equipment: Dennis Krepp, dennis.krepp@bis.doc.gov
•  Sensors, optics, and infrared detection: Chris Costanzo, christopher.costanzo@bis.doc.gov; John Varesi, john.varesi@bis.doc.gov
•  Lasers/laser systems: 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

Exporter Hotline: 1-202-482-4811
How to Respond Effectively to Proposed Rule Changes

• How to Submit Responses
  • Submission Format
    • Key Themes
  • Agency Interest Areas
  • Materials to Include/Focus Areas
• Tips for Strong Comment Submissions
  • Congressional Outreach
How to Submit Public Comments

• 4 channels for submission
  1. Email: DDTCPublicComments@state.gov – with the subject line, “ITAR Amendment—Category XII”
  2. Email: publiccomments@bis.doc.gov – with the subject line, “RIN 0694-AF75”
  3. Internet: www.regulations.gov – search for the notice using its docket number,
     • For BIS submissions (regarding CCL): BIS-2015-0016
     • For DoS submissions (regarding USML): DOS_FRDOC_0001-3226
  4. By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th St and Pennsylvania Avenue NW., Washington DC 20230

• It is recommended that comments be submitted to both the State and Commerce Department email contacts, as well as via regulations.gov forum

• Comments are visible to the public on regulations.gov directly after submission
  • Comments submitted via agency email contacts or via hard copy are also posted to regulations.gov

• Deadline for comment submissions is July 6, 2015
Submission Format

• Formal letters on company letterhead are suggested but not required

• Responses are not limited to a specific length or format
  • 5000 character limit for responses on regulations.gov (additional documents that exceed this length can be uploaded)

• No limitation on number of documents that can be uploaded
  • Documents can be up to 10MB each

• If you are uploading more than one attachment to the comment web form, it is recommend that you use the following file titles:
  • Attachment1_<insert title of document>
  • Attachment2_<insert title of document>
  • Attachment3_<insert title of document>

• Do not include:
  • Proprietary information in comment submissions
  • General comments on the overall Export Control Reform initiative or other aspects of the ITAR not related to Category XII
Key Themes to Make in Your Public Comment Response

Dual Use
(Provide detailed examples)

Foreign Availability
(Provide detailed examples)

“Bright Line” between USML and CCL

Attach/upload supporting documents (up to 10 MB each)

Financial data and reports
Brochures
Inquiries
Competitor customer bases
USML Related Comment Submissions (Agency Interest Areas – DoS)

The State Department is welcoming comments and seeking assistance on the following:

1) Identifying any potential lack of coverage brought about by the proposed rules for Category XII and revised ECCN’s on the CCL when reviewed together

2) Identifying items proposed for control on the USML or the CCL that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List

3) The public is asked to provide specific examples of control criteria that do not clearly describe items that would be defense articles and thus do not establish a “bright line” between the USML and the CCL

4) The public is asked to provide specific examples of items, if any, that would be controlled by the revised USML Category XII that are now in normal commercial use. The examples should demonstrate actual commercial use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items
USML Related Comment Submissions (Agency Interest Areas – DoS)

The State Department is welcoming comments and seeking assistance on the following:

5) For any criteria the public believes control items in normal commercial use, the public is asked to identify parameters or characteristics that cover items exclusively or primarily in military use.

6) For any criteria the public believes control items in normal commercial use, the public is asked to identify the multilateral controls (such as the Wassenaar Arrangement’s Dual Use List), if any, for such items, and the consequences of such items being controlled on the USML.

7) Public comments on each paragraph of the proposed USML – specifically on the following concepts that are introduced in proposed USML Category XII: A) Using integration of an IRFPA into a permanent encapsulated sensor assembly as a control parameter; B) using the incorporation of an IRFPA into an infrared imaging camera core as a control parameter and the definition of camera cores in the note to XII(c)(12); C) the weapon shock load control criterion in XII(c)(12)(ii); and D) proposed controls on specific technical data in XII(f).
BIS is welcoming comments and seeking assistance on the following:

1) Identifying any potential lack of coverage brought about by the proposed rules for Category XII and revised ECCN’s on the CCL when reviewed together

2) Identifying items proposed for control on the USML or the CCL that are not controlled on the Wassenaar Arrangement’s Munitions or Dual Use List

3) The public is asked to provide specific examples of control criteria that do not clearly describe items that would be defense articles and thus do not establish a “bright line” between the USML and the CCL

4) The public is asked to provide specific examples of items, if any, that would be controlled by the revised USML Category XII that are now in normal commercial use. The examples should demonstrate actual commercial use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items
BIS is welcoming comments and seeking assistance on the following:

5) For any criteria the public believes control items in normal commercial use, the public is asked to identify parameters or characteristics that cover items exclusively or primarily in military use.

6) For any criteria the public believes control items in normal commercial use, the public is asked to identify the multilateral controls (such as the Wassenaar Arrangement’s Dual Use List), if any, for such items, and the consequences of such items being controlled on the USML or the 600 series entries.

7) Comments on the use of the phrase “permanent encapsulated sensor assembly” in this proposed rule.

8) Comments on the proposed expansion of license requirements and removal of license exception availability on items, as described in this rule, that are currently exportable without a license or under a license exception.

9) Comments on the impact of the proposed new license requirements for the export to Canada of items described in this rule.
Focus Areas/Items to Include in Submission (USML and CCL)

• Must provide evidence supportive of your claims
• Areas to strongly consider –
  • Additional Clarity is needed
    • Items are not defined clearly, specifically with respect to technical parameters
    • If there is a potential lack of coverage brought about by the proposed rules for Category 12 and revised CCL when reviewed together
• Item(s) have Dual Use
  • Item has both military and commercial applications
• Foreign Availability
  • Item is widely available in foreign markets
• Specific items listed under agency interest areas (DoS and BIS)
• Attach/upload supporting documents (up to 10 MB each)
  • Financial data and reports
  • Brochures
  • Inquiries
  • Competitor customer bases
Tips for Submitting a Strong Response

• Clearly identify the issues within the regulatory action on which you are commenting. If you are commenting on a particular word, phrase or sentence, provide the page number, column, and paragraph citation from the federal register document.
  • If you choose to comment on the comments of others, identify such comments using their comment ID’s before you respond to them.
• If a rule raises many issues, do not feel obligated to comment on every one – select those issues that concern and affect you the most and/or you understand the best.
• Direct comments toward agency interest areas listed
• If you disagree with a proposed action, suggest an alternative (including not regulating at all) and include an explanation and/or analysis of how the alternative might meet the same objective or be more effective.
• Identify credentials and experience that may distinguish your comments from others. If you are commenting in an area in which you have relevant personal or professional experience (i.e., scientist, attorney, businessman, etc.) say so
• When possible, support your comment with substantive data, facts, and/or expert opinions. You may also provide personal experience in your comment, as may be appropriate. By supporting your arguments well you are more likely to influence the agency decision making.
• Comment on the economic effects of rules that include quantitative and qualitative data are especially helpful.
Congressional Outreach: Working with OSA

• If you are concerned about the proposed rules’ impact on your company or organization, there is opportunity for Congress to intervene
• Congress can interact with the Administration, Department of Commerce, Department of State, Department of Defense
• Congress has authority over final authorization, which will finalize a long term vision of a single export control list combining USML and CCL (requires Congressional approval)
• Congress also possesses authorization vehicles to direct or suggest agencies implement specific policy
For Additional Assistance Contact

Laura Kolton
Director of Government Relations, OSA
(202) 416-1499
lkolto@osa.org

Chris Fish
Vice President, McAllister & Quinn
(202) 296-2741 x1005
cfish@jm-aq.com