

UPDATE 2014
CONFERENCE ON EXPORT CONTROLS AND POLICY

Aerospace: Jurisdiction and Regulatory Changes


State of play as of July 2014
Gene Christiansen
202 482 2984



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Historical Perspective

- August 2009, President Obama directed the broad based review
- April 2010 Secretary Gates described the approach
- July 15, 2011 proposed framework rule
- Nov 7, 2011 proposed aircraft rule
- Dec 6, 2011 proposed engine rule
- June 21, 2012 proposed rule “specially designed”
- Final rule April 16, 2013 (aircraft and engines) and framework, including key terms
- Effective Oct 15, 2013



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Status

USML	Description	ECCNs	Status
I	Firearms	0y601	Proposed rule TBD
II	Artillery	0y602	Proposed rule TBD
III	Ammunition	0y603	Proposed rule TBD
IV	Launch Vehicles/Missiles	0y604 9y604	Effective 7/1/14
V	Explosives/Propellants	1y608	Effective 7/1/14
VI	Vessels of War	8y609	Effective 1/6/14
VII	Tanks/Military Vehicles	0y606	Effective 1/6/14
VIII	Aircraft	9y610	Effective 10/15/13
IX	Training Equipment	0y614	Effective 7/1/14



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Status

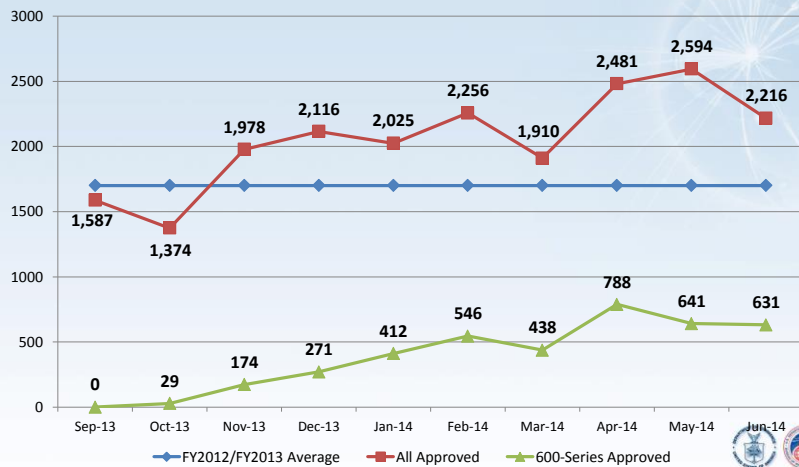
USML	Description	ECCNs	Status
X	Personal Protective Equipment	1y613	Effective 7/1/14
XI	Electronics	3y611, 9y620	Final rule 6/24/14 To be effective 12/30/14
XII	Fire Control/Sensors/Night Vision	TBD	Proposed rule TBD
XIII	Miscellaneous	0y617	Effective 1/6/14
XIV	Toxicological Agents	1y607	Proposed rule TBD
XV	*Spacecraft/Satellites	9y515	Interim final rule 5/13/14 Certain provisions effective 6/27/14 or 7/1/14, *other provisions effective 11/10/14.
XVI	Nuclear	N/A	Effective 7/1/14
XVIII	Directed Energy Weapons	TBD	Proposed rule TBD
XIX	Gas Turbine Engines	9y619	Effective 10/15/13
XX	Submersible Vessels	8y620	Effective 1/6/14

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BIS Licenses

Approved BIS License Application Benchmark



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BIS Licenses

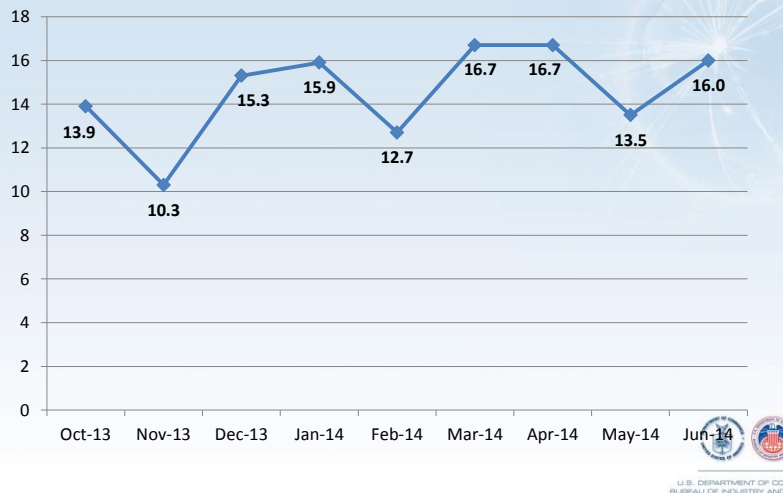
- BIS has processed 4,200 license applications for 600-series items.
- The average processing time for 600-series licenses is 15.5 days.
- Top ECCNs – 9A610, 9A619 (aircraft parts and engine parts)
- Top destinations – Japan, United Kingdom, South Korea

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Average Processing Time (APT)

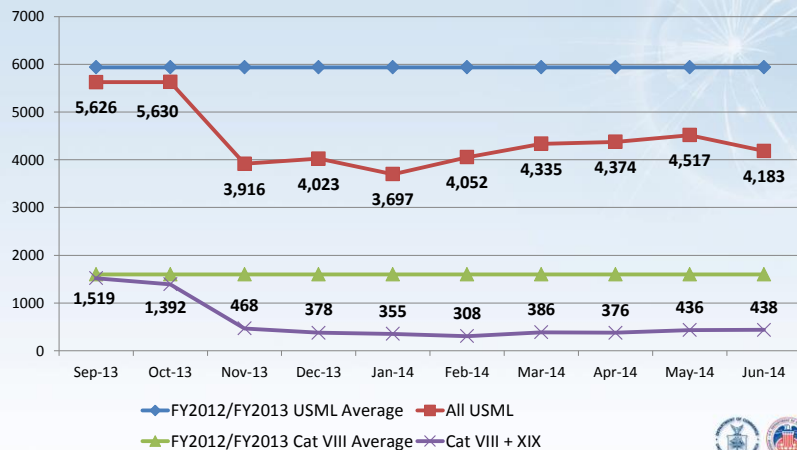
APT for 600-Series License Applications



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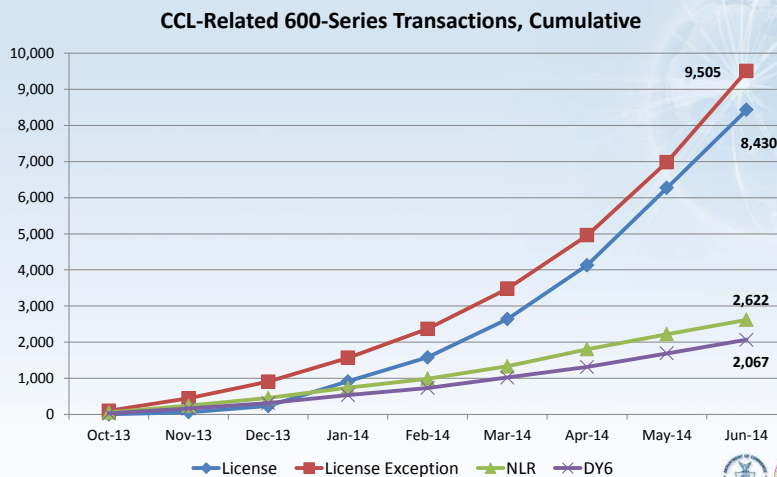
DDTC Licenses

Approved USML License Application Benchmark



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CCL-Related 600-Series Exports



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Areas where additional work needed

- For EAR users
 - Order of review
 - Application of “specially designed”
 - (b)(2) bolts are bolts but O-rings are not spacers
 - (b)(3) B737 and P-8 common parts are 9A991.d
 - (b)(3) ‘equivalent’ means its form has been modified solely for fit purposes
 - Use notes to the definition to help your understanding
- For government
 - Positive lists need ongoing reviews.

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State of Play

- New categories will fill out the control picture
- We appreciate the public input to the review
- We are learning together
 - Your questions
 - Shared answers
- Aerospace has proved the benefit but not yet reached the full potential of ECR



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UPDATE 2014
CONFERENCE ON EXPORT CONTROLS AND POLICY

Commerce Export Control Regulation Changes

Affecting Military Aircraft and Military Gas Turbine Engines

Munitions Control Division

July 2014

Kris Malakie
Aerospace Engineer
Office of Strategic Industries and Security
Bureau of Industry and Security
Department of Commerce
(202) 482-0963



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Topics

- Export Control Reform
- Determining Classification
 - Order of Review
 - “Specially Designed”
 - Resources
 - Classification Requests and Advisory Opinions
- Authorizations
 - 600-Series License Exceptions
 - License Applications
 - Military Aircraft and Gas Turbine Engine Applications
 - License Processing & Observations



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Export Control Reform Status

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XIV	Toxicological Agents	1y607	Proposed rule TBD
XV	Spacecraft/Satellites	9y515	Rad Hard ICs 6/27/14 All others 11/10/14
XVI	Nuclear	1A004 2A291	Effective 7/1/14
XVIII	Directed Energy Weapons	TBD	Proposed rule TBD
XIX	Gas Turbine Engines	9y619	Effective 10/15/13
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Determining Classification Order of Review

9A610

- Order of Review – step-by-step process used to classify items subject to the Export Administration Regulations
- The Export Administration Regulations govern items “subject to the EAR”
 - The ITAR trumps the EAR; if an item is a “defense article” subject to the ITAR there is no need to review the CCL
 - The 600-series trumps the other ECCNs on the CCL



16 When classifying any item subject to the EAR, consult the Order of Review found in Supplement No. 4 to Part 774

Determining Classification “Specially Designed”

- Regulatory definition of “specially designed” is based on a catch-and-release construct
- Requires answering a series of yes/no questions that lead to an objective determination whether an item is “specially designed”
- Definition is found in § 772.1



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Consult the “specially designed” regulatory definition in §772.1

Determining Classification Resources

Bureau of Industry and Security
U.S. Department of Commerce
Where Industry and Security Intersect

Home | About BIS | Regulations | Licensing | Enforcement | Compliance & Training | Policy Guidance | Add'l Programs | Reform

Decision Tree Tools

- Decision Tree Tools
- CCL Order of Review
- Specially Designed
- STA
- Technical FAQs

Export Counselors
East Coast (202) 482-4811
West Coast (949) 660-0144

Decision Tree Tools

As part of the Bureau of Industry and Security's outreach efforts for the Initial Implementation of Export Control Reform final rule published on April 16, 2013, BIS has developed two new web-based decision tools that will assist users in understanding and applying the CCL Order of Review and "Specially Designed" Definition.

CCL Order of Review
The CCL Order of Review Decision Tool will assist users in understanding the steps to follow in reviewing the CCL.

Specially Designed
The "Specially Designed" Decision Tool will assist users in determining if an item will be "specially designed" under the Export Administration Regulations.

STA
The Strategic Trade Authorization (STA) tool will help users of the License Exception STA determine if they are eligible to use and will be in compliance with License Exception STA.

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Decision Tree Tools are available on the BIS website to assist you

Determining Classification

Classification requests and advisory opinions

- For classification assistance consult § 748.3 of the EAR
- If you have an item that is caught under paragraph (a)(1) or (2) of “specially designed” but you believe that the minor changes in form or fit would be insignificant – consult § 748.3(e)



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Consult §748.3 of the Export Administration Regulations

Authorizations

600-series License Exceptions

- 600-series may only use those license exceptions listed in § 740.2(a)(13)
- Restrictions on use of license exceptions for 600-series
 - Country Group D:5 (except § 740.11(b)(2) of GOV and personal protective equipment provisions in TMP and BAG)
 - 600-Series Major Defense Equipment sold under a contract exceeding certain values
 - Other applicable restrictions in § 740.2 (e.g., MT-controlled items) or specific text in applicable license exception



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Consult the specific license exception in §740.2 for other requirements

Authorizations

License Applications

- Complete description of item(s)
 - Use ECCN parameters
 - Provide technical specifications
- Full description of end use
- Letter of explanation (recommended)
 - Provide greater detail on proposed transaction, parties, item(s) and prior transactions (DDTC or BIS)
 - Be proactive by anticipating and answering questions in advance, as much as possible
- See §748.9 of the EAR for required support documentation



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License applications should be True, Accurate, and Complete

Authorizations

License Applications

- 600-series license applications are referred to the interagency unless otherwise agreed to via memorandum
- Technology applications
 - Letter of explanation required (see Supplement No. 2 to Part 748 Subparagraph(o))
 - Defense Services are under State Department jurisdiction
- Bulk license applications
 - Recommend including representative part list with classification to subparagraph



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License applications should be True, Accurate, and Complete

Authorizations

Military Aircraft and Gas Turbine Engine Applications

- Provide Aircraft/Engine Designations
- Applications for UAV related commodities
 - Provide technical information on the air vehicle (e.g. range, endurance, MGTOW, & payload)
- Applications for hot section parts and components
 - Review 9A619.c, 9A619.d, and 9A619.e
- Applications for unfinished commodities (forgings, castings, etc.)
 - Review Note 1 of .x paragraph
 - If the items meets Note 1, then the description should describe the finished product
- Military gyros and accelerometers are captured in USML Cat XII
- Cat VIII(h)(22) radomes have moved to Cat XI



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Exporters may benefit from more thoroughly reviewing the regulations

Authorizations

License Processing & Observations

- More communication is needed between OEM's and suppliers
- Some of the electronics items that were captured under USML Cat XI may be transitioning 30 Dec to 3y611 and 9y620; licenses may be prepositioned at this time
- Observed that some items that are presented as 600-series items on licenses appear to be releasable from the "specially designed" definition and captured elsewhere on the CCL
 - The onus is on the applicant to correctly self-classify the items / perform a thorough "specially designed" analysis



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The onus is on the exporter to correctly self-classify the items

Authorizations

License Processing & Observations

- Over 10,000 600-series license export transactions have taken place under licenses processed by BIS
- The Munitions Control Division (MCD) has changed its internal processes since last year
 - Currently working as one team
 - Tiger process now consists of 1-2 people that perform a brief review (policy & technical) and assign cases
 - One Licensing Officer (LO) performs the case review (policy/technical/compliance) once case is assigned
 - Memorandums are in place with Department of State
- MCD Compliance Team is up and running
- MCD Policy Team actively engaged with foreign embassies
- MCD Technical Team – one engineer rotates on the Tiger Team



Over 10,000 600-series license export transactions have taken place under licenses processed by BIS

Summary

- Export Control Reform
 - Background and Status
- Determining Classification
 - Order of Review
 - “Specially Designed”
 - Resources
 - Classification Requests and Advisory Opinions
- Authorizations
 - 600-Series License Exceptions
 - License Applications
 - Military Aircraft and Gas Turbine Engine Applications
 - License Processing & Observations



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Contact Information

Regulatory Interpretation and Transition Guidance:

- Regulatory Policy Division: rpd2@bis.doc.gov , 202-482-2440
- CCL Order of Review , “Specially Designed” , Decision Tools:
timothy.mooney@bis.doc.gov

600 Series Licensing and Classification Requests: Munitions Control Division

- Director: Todd Willis, todd.willis@bis.doc.gov
- Deputy Directors: Elena Love, elena.love@bis.doc.gov; Anthony Mitchell,
anthony.mitchell@bis.doc.gov

Office of Exporter Services:

Washington, D.C.

Counseling: (202) 482-4811
e-mail: ECDOEXS@bis.doc.gov

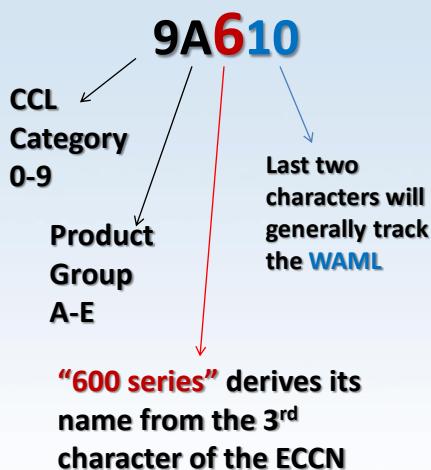
Western Regional Office, Newport Beach, CA

Counseling: (949) 660-0144
Northern California Branch, San Jose, CA
Counseling: (408) 998-8806

Web: www.bis.doc.gov www.export.gov/ecr

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Determining Changes in Jurisdiction: 600 Series Framework



Former USML items (and -018 items) listed in the "Items" paragraph.

Order of review:

- **.a - .w**: specifically enumerated end items, materials, parts, components, accessories, and attachments
 - Some items may be "specially designed"
- **.y**: specifically enumerated parts, components, accessories, and attachments that are "specially designed"
- **.x**: "specially designed" parts, components, accessories, and attachments that are not specifically enumerated

Note: When classifying any item subject to the EAR, consult Supp. No. 4 to Part 774

"Specially Designed"

Paragraph (b)(1) - *the 'release'*

Paragraph (b)(1) criteria	Meets (b)(1) criteria	Does not meet (b)(1) criteria
CJs. Has it been identified in an ECCN paragraph that does not contain "specially designed" or as an EAR99 item in a CJ determination?	Yes. NOT "specially designed."	No. NOT 'released' under (b)(1). Review other (b) 'releases.'
748.3(e). Has it been identified in an ECCN paragraph that does not contain "specially designed" or as an EAR99 item in an interagency-cleared CCATS pursuant to §748.3(e)?	Yes. NOT "specially designed."	No. NOT 'released' under (b)(1). Review other (b) 'releases.'

“Specially Designed”

Paragraph (b)(2) - *the ‘release’*

Paragraph (b)(2) criteria	Meets (b)(2) criteria	Does not meet (b)(2) criteria
Is the “part” or minor component, 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, or solder?	Yes. <u>NOT</u> “specially designed.”	No. <u>NOT</u> ‘released’ under (b)(2). Review other (b) ‘releases.’



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Review the “specially designed” definition in §772.1

“Specially Designed”

Paragraph (b)(3) - *the ‘release’*

Paragraph (b)(3) criteria	Meets (b)(3) criteria	Does not meet (b)(3) criteria
Does the “part,” “component,” “accessory,” “attachment,” or “software” have same function, performance capabilities, and 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”); <u>and</u> (ii) is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons?	Yes. <u>NOT</u> “specially designed.”	No. <u>NOT</u> ‘released’ under (b)(3). Review other (b) ‘releases.’



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Review the “specially designed” definition in §772.1

“Specially Designed”

Paragraph (b)(4) - *the ‘release’*

Paragraph (b)(4) criteria	Meets (b)(4) criteria	Does not meet (b)(4) criteria
<p>Was or is “part,” “component,” “accessory,” “attachment,” or “software” developed with “knowledge” it would be for use in or with commodities or software:</p> <p>(i) described in ECCN <u>and</u></p> <p>(ii) also commodities or software either not-‘enumerated’ on CCL or USML (e.g., EAR99 commodity or software) or commodity or software described in ECCN controlled only for AT?</p>	<p>Yes.</p> <p><u>NOT</u> “specially designed.”</p>	<p>No.</p> <p><u>NOT</u> ‘released’ under (b)(4). Review other (b) ‘releases.’</p>



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Review the “specially designed” definition in Part 772.1

“Specially Designed”

Paragraph (b)(5) - *the ‘release’*

Paragraph (b)(5) criteria	Meets (b)(5) criteria	Does not meet (b)(5) criteria
<p>Was or is the “part,” “component,” “accessory,” “attachment” or “software” developed as a general purpose commodity or software, i.e., with <u>no “knowledge” for use in or with:</u></p> <p>particular commodity (e.g., an F/A-18 or HMMWV) <u>or</u></p> <p>type of commodity (e.g., an aircraft or machine tool)?</p>	<p>Yes.</p> <p><u>NOT</u> “specially designed.”</p>	<p>No.</p> <p><u>NOT</u> ‘released’ under (b)(5). Review other (b) ‘releases.’</p>



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Review the “specially designed” definition in Part 772.1

“Specially Designed” Paragraph (b)(6) - *the ‘release’*

Paragraph (b)(6) criteria	Meets (b)(6) criteria	Does not meet (b)(6) criteria
<p>Was or is the “part,” “component,” “accessory,” “attachment,” or “software” being developed with “knowledge” that it would be for use in or with commodities or software:</p> <p>(i) described in ECCN controlled for AT-only reasons and also for EAR99 commodities or software, <u>or</u></p> <p>(ii) exclusively for use in or with EAR99 commodities or software?</p>	<p>Yes.</p> <p><u>NOT</u> “specially designed.”</p>	<p>No.</p> <p><u>NOT</u> ‘released’ under (b)(6). Review other (b) ‘releases.’</p>



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Review the “specially designed” definition in Part 772.1



Export Control Reform Overview

July 30, 2014

James (Jim) Hatfield

DTSA 



USML to CCL 600 Series Examples

Revised USML End-Items "A More Positive List"	Commerce Control List 600 Series		
	("a-w" items) Specially enumerated end-items, "parts", "components", "accessories" & "attachments".	("x" items) "Specially Designed" "parts", "components", "accessories", and "attachments".	("y" items) Specifically enumerated "parts" "components", "accessories", "specially designed"...
  <ul style="list-style-type: none"> • F-15, F-16 • Assembled engines • Weapons pylons • Mission systems • Bomb racks • Missile launchers • Fire control computer • Fire control Radar 	  <ul style="list-style-type: none"> • Aircrew life support and safety equipment • Parachutes/paragliders • Controlled opening equipment of automatic piloting systems, designed for parachuted loads • T-1 Aircraft 	  <ul style="list-style-type: none"> • Wings, Rudder, Fin, Panels • Fuselage – forward, center, aft • Cockpit structure • Forward equipment bay • Control surfaces, activation and control systems 	  <ul style="list-style-type: none"> • Aircraft tires • Hydraulic system filters • Hydraulic and fuel hoses, fittings, clips, couplings, brackets • Cockpit panel knobs, switches, buttons, dials

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Licensing Policies for "600" Series

- Includes items that are "specially designed" for a military application or specifically enumerated defense end-items that do not warrant the stringent controls of the USML
- Three basic parts
 - Enumerated items can be "end-items" or parts/components ("a-w")
 - License required to all countries, except Canada
 - Most parts/components eligible for license exception STA if for government end-use in 36 countries.
 - Policy of denial for exports to arms embargoed countries, to include China
 - "Specially designed" "parts," "components," "accessories," and "attachments" not enumerated elsewhere ("x" items)
 - License required to all countries, except Canada
 - Most eligible for license exception STA if for government end-use in 36 countries
 - Policy of denial for exports to arms embargoed countries, to include China
 - Specific "parts," "components," "accessories," and "attachments" of limited technology security concern or significance ("y" items)
 - License required only to China and terrorist supporting countries

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Back-up Slides

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USML F-16 Systems/Components/Parts



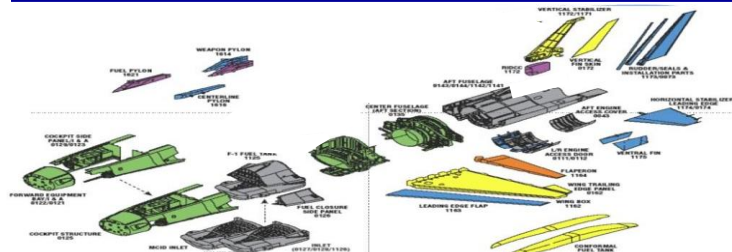
F-16 Specific USML Items	Other Aircraft USML Items
<ul style="list-style-type: none">• Assembled engines• Weapons pylons• Mission systems• Bomb racks• Missile launchers• Fire control computer• Radar• Radar warning receiver• Radar jammer• Laser/Missile warning system• Countermeasures dispensing system• Aerial refueling receptacle	<ul style="list-style-type: none">• Helmet mounted displays/sights• Aircraft wing folding systems, parts, and components• Tail hooks and arresting gear, and parts and components• Missile rails, weapon pylons, pylon-to launcher adapters, UAV launching systems, and external stores support systems and parts and components• Damage/failure-adaptive flight control systems• Threat-adaptive autonomous flight control systems• Air-to-air refueling systems and hover-in-flight refueling (HIFR) systems and parts and components• UAV flight control systems and vehicle management systems with swarming capability

Illustrative list only
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Commerce “600” Series

Enumerated and .X - Systems/Components/Parts for the F-16



.x examples

- Wings, Rudder, Fin, Panels
- Fuselage – forward, center, aft
- Cockpit structure
- Forward equipment bay
- Horizontal stabilizer
- Conformal fuel tank
- Control surfaces, activation and control systems
- Internal and exterior fuel tanks
- Engine inlets and ducting

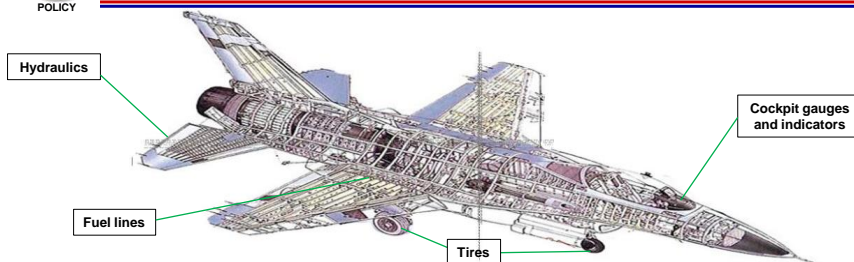
Illustrative list only

- Wing box
 - Flaperon
 - Static structural members
 - Exterior skins, fairings, radomes, access doors, leading edge flap
 - Landing gear
 - Technology associated with above items
- Enumerated (systems/parts) examples
- Cartridge Actuated Device, Propellant Actuated Device (CAD / PAD)
 - Ejection Seat
 - Oxygen Supply System

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“600 Series” “.y” Parts for F-16



F-16 Specific .y Items

- Aircraft tires
- Analog cockpit gauges and indicators
- Hydraulic System Filters
- Check valves
- Hydraulic and Fuel hoses, Fittings, Clips, Couplings, Nut plates, Brackets
- Cockpit mirrors
- Beacons
- Urine collection systems
- Cockpit panel knobs, Switches, Buttons, Dials

Other Aircraft .y Items

- Audio selector panels
- Check valves for hydraulic and pneumatic systems
- Crew rest equipment
- Ejection seat mounted survival aids
- Energy dissipating pads for cargo (for pads made from paper or cardboard)
- Filters and filter assemblies for hydraulic, oil, and fuel systems
- Steel brake wear pads (does not include sintered mix)
- Propellers, propeller systems, and propeller blades used with reciprocating engines

Illustrative list only

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