

Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

July 9-11 | Washington, D.C.



“600 series” Licensing, Compliance & Foreign Policy Impacts

Office of Strategic Industries and Economic Security
Bureau of Industry and Security
Munitions Control Division

1



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

Overview

- Munitions Control Division (MCD) Licensing Statistics
- Licensing Overview & Best Practices
- State Department, Bureau of International Security and Nonproliferation, Office of Conventional Arms Threat Reduction (ISN/ CATR) Foreign Policy Impacts on Licensing
- “600 series” Compliance Reviews & Observations
- Q&A

2

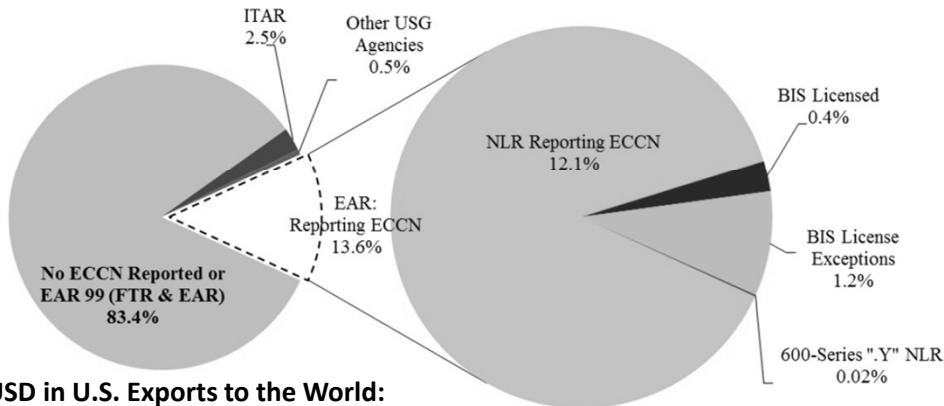


Bureau of Industry and Security

BIS 2019

ANNUAL CONFERENCE
ON EXPORT CONTROLS

2018 U.S. Exports to the World: Export Authorizations by Regulatory Authority



\$1.7 Trillion USD in U.S. Exports to the World:

- **1.6% subject to BIS licensing requirement**
 - **0.4% exported under BIS license**
 - **1.2% exported under BIS license exception**

Source: U.S. Customs & Border Protection, Electronic Export Information Filing, March 27, 2019

3

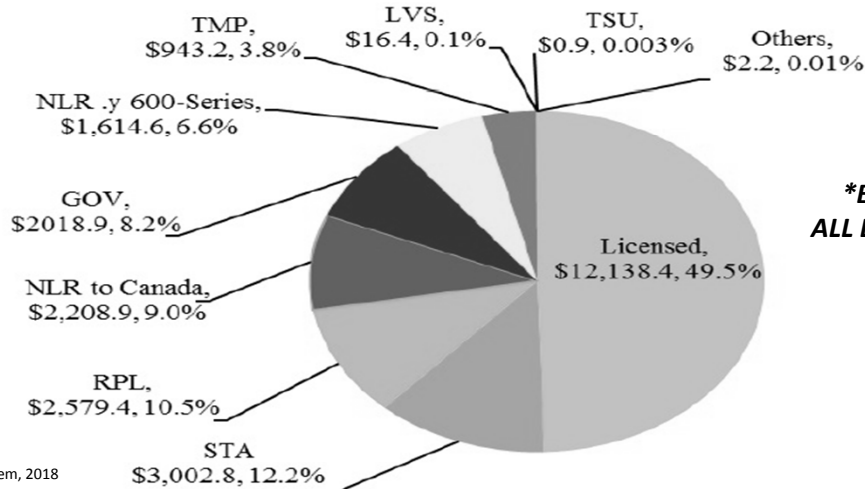


Bureau of Industry and Security

BIS 2019

ANNUAL CONFERENCE
ON EXPORT CONTROLS

**U.S. Exports of "600 series" Items by License Type - \$USD million
(October 15, 2013 to December 31, 2018)**



***EXPORTS TO
ALL DESTINATIONS**

Source: Automated Export System, 2018

4



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

"600 series" License Processing

October 2013 through December 2018:

- 52% reduction in license volume at the Department of State for the 17 revised USML categories
 - o Aircraft/gas turbine engines: 67% reduction
 - o Military electronics: 56% reduction
- Over 65,000 license applications submitted to BIS for military items that have moved from the USML to the CCL
- MCD processed approximately 14,500 "600 series" licenses per year (~1,200 monthly) with average processing time of 15 days
- 482,000 shipments valued over \$26.8 billion in exports of "600 series"
 - \$24.5 billion (91.2% of total) was shipped under a BIS authorization
 - \$2.4 billion (8.8% of total) was shipped under a DDTC authorization

5

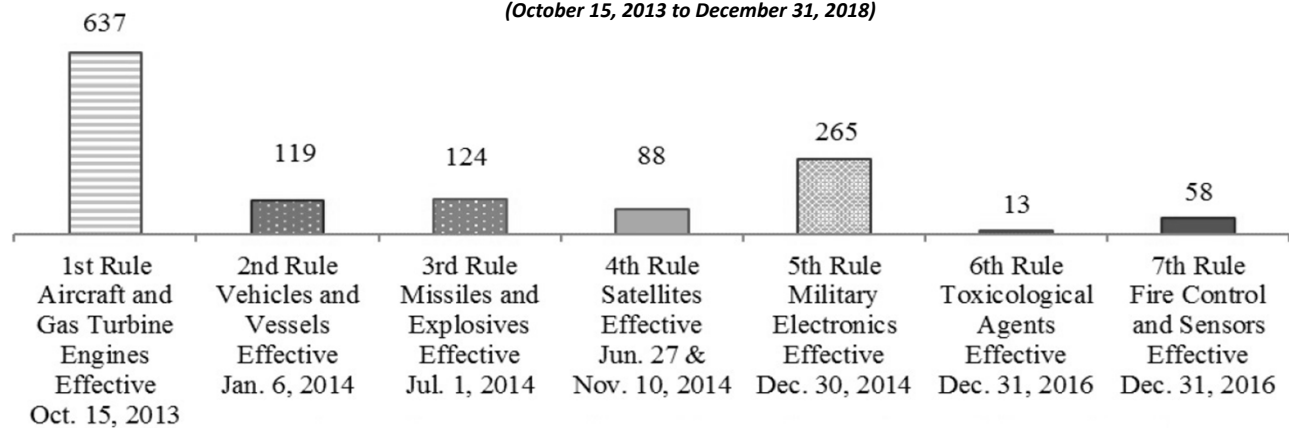


Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

BIS Average Monthly License Applications USML to CCL Regulatory Changes

(October 15, 2013 to December 31, 2018)



Source: Commerce U.S. Exports Exporter Support System, February 4, 2019

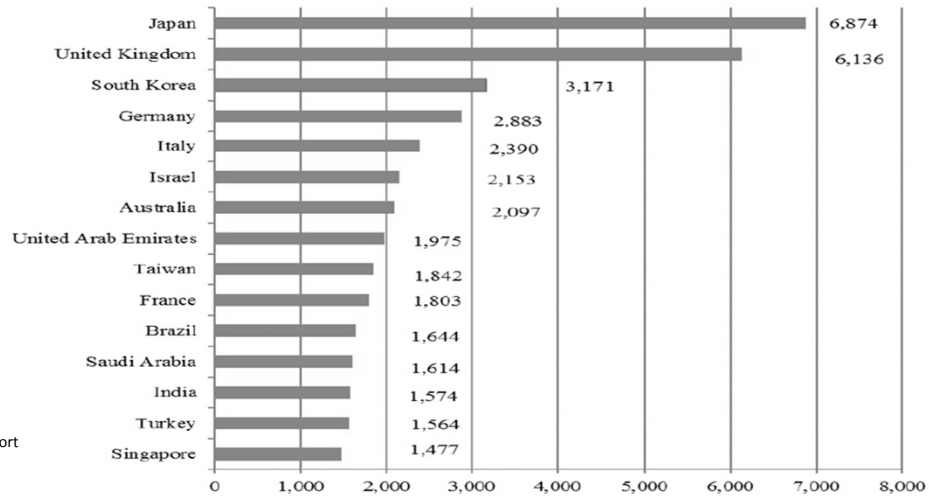
6



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

**Top Fifteen Destinations of BIS Approved Licenses
for 600-Series Items by License Count**
October 15, 2013 to December 31, 2018



Source: Automated Export System, 2018

7



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

**Top Destinations of U.S. Exports of 600 Series Items
(October 2013 –December 2018)**

Country	% of Total Count	% of Total Value
Japan	8.8%	17.2%
Canada	8.8%	10.3%
United Kingdom	11.7%	10.2%
South Korea	7.1%	7.6%
Israel	4.4%	4.9%
Germany	4.2%	4.1%
United Arab Emirates	3.5%	3.4%
Saudi Arabia	1.8%	3.3%
Italy	2.9%	3.1%
Australia	3.2%	2.8%
Taiwan	2.4%	2.4%
Singapore	4.3%	2.3%
Spain	2.8%	2.2%
Mexico	4.3%	1.8%
Turkey	1.9%	1.6%
Top 15/Total	72.1%	77.2%

Source: Automated Export System, 2018

8



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

“600 series” License Processing

- Munitions Control Division
 - 12 Licensing Officers
 - Engineers, Compliance Specialists and Policy Analysts
- Review licenses for less sensitive military items that have transitioned from the USML, subject to the EAR’s “600 series” ECCNs
- Also process Licensing Determinations (LD), Commodity Classification Automated Tracking System (CCATS), and participate in Commodity Jurisdiction (CJ) process

9



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

MCD Licensing/Review

Policy Review

- Country or countries involved (including country of end use)
- Country Groups (e.g., regime membership or countries of concern)
- Risk of diversion, license exception eligibility, regional stability

Compliance Review

- Parties, *bona fides*, licensing history
- License exception eligibility

Technical Review

- End use, quantity, classification (ECCN)
- Technical documents, end-user requirements

10



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Interagency Review

Department of Defense (DoD)

- Defense Technology Security Administration (DTSA)
 - Technical Review; Assess National Security concerns

Department of State (DoS)

- Office of Conventional Arms Threat Reduction (CATR)
 - Foreign Policy/Regional Stability Review
 - Regional/Functional Bureaus
 - 22 CFR §126.1 → Supplement No. 1 to Part 740 of the EAR, D:5

Department of Energy (DoE)

- National Nuclear Security Administration (NNSA)
 - Focuses on Missile Technology and Nuclear Issues

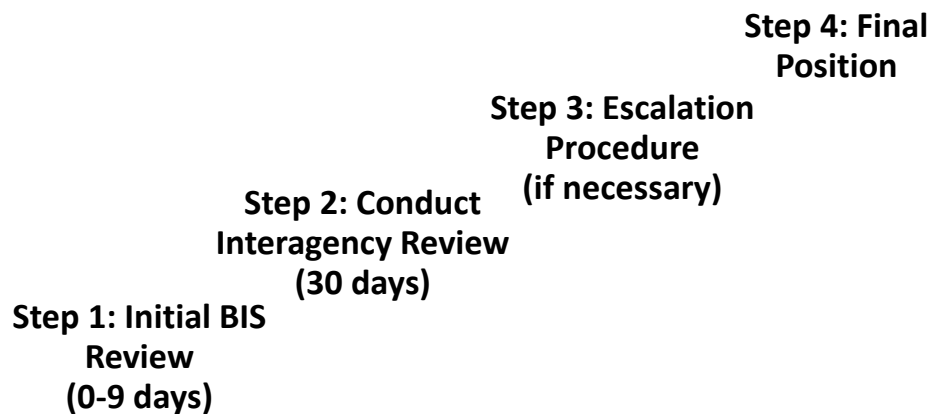
11



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

BIS License Review Process



12



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Preparing Your Application

- **Classification of the item to be exported**
 - Be prepared to answer classification reasoning (i.e., explain the Order of Review as described in Supplement No. 4 to Part 774 of EAR)
- **Description of item**
 - Define the item(s) in terms of the technical parameter(s) of the ECCN(s)
 - If technology, define what will and will not be transferred
- **Parties to the transaction and their roles**
 - Identify all parties in their respective party fields (purchaser, intermediate/ultimate consignee(s), end user(s))
 - Identify parties that were in previously approved licenses

13



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Preparing Your Application

- **End-use of the item**
 - How will each party use the items listed? (e.g., identify platform)
 - Be specific
 - Example: X component will be installed into X radar system of F-18 (*which version of the F-18?*) for end use by Government of Finland
 - Example: X parts will be used for X UAV whose purpose is X and has ___km range, ___kg payload
- **End-user(s)**
 - List all End-User(s) in End-User fields
 - List any additional consignees under End-User fields and explain their role in the Additional Information field

14



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Scope of a License

- **Bulk Licenses**
 - A license application need not be limited to a single shipment
 - Projected estimate over four year validity period
 - Representative parts list required
- **Replacement Licenses**
 - If no change in scope or parties, allow 30 days
 - If there are significant changes in scope or parties, plan for additional time.
- **Reexport Authority**
 - Requested by the U.S. exporter at the time of application for export license
 - BIS licenses authorize exports/reexports to and among the end-users listed on license, so craft the license application accordingly

15



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Support Documents

- Technical specifications, product brochures, drawings, manuals, publications, etc.
- Letter of Explanation (Supp. No. 2 to Part 748)
 - Required for technology applications
 - Explains who, what, where, when and how
 - Describes safeguards in place (e.g. Deemed Export applications)
 - Recommended for all license applications

16



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

How to Avoid Delays

- Return Without Action (RWA)
 - o No response to licensing officer's request within allotted timeframe
 - o Cannot verify classification, failure to address all technical parameters of the ECCN
 - o End-user(s) not provided
 - o Incorrect physical addresses for foreign party
 - o No representative parts list provided (bulk licenses)

17



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

How to Avoid Delays

- Other reasons for Return Without Action (RWA)
 - o No License Required (NLR)
 - o Not under BIS jurisdiction
 - o Addition of parties
 - o Consolidation of multiple licenses
 - o Order cancelled
 - o Decision by applicant to use License Exception

18



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Licensing Best Practices: Recap

- Good preparation leads to timely license reviews and approvals
- Stay involved in the process
- Respond quickly and completely to requests
- Conditions are imposed to protect U.S. national security or other concerns
 - Anticipate and structure the transaction to limit the risk
 - Your proprietary concerns are similar to ours
- Compliance with license conditions is one of the costs of doing international business

19

USG "600 SERIES" FOREIGN POLICY IMPACTS



Dave Aron
Office of Conventional Arms Threat Reduction
Bureau of International Security and Nonproliferation
U.S. Department of State

20



Department of State

- Bureau of International Security and Nonproliferation (ISN).
 - ISN offices have prior experience reviewing both EAR and ITAR exports.
 - ISN/CATR will continue to have the lead in the Department of State for reviews of “National Security” and “Regional Stability” dual use controlled items.
 - ISN/CATR is responsible for conducting the foreign policy review for “600 series” items, consulting other ISN offices as appropriate.
 - Regional bureaus, such as the Near Eastern Affairs (NEA) bureau, PM (Bureau of Political-Military Affairs), and DRL (Bureau of Democracy, Human Rights and Labor) will provide policy input on license requests for “600 series” items.

21



Reviewing "600 series" cases

End Use and End User need to be clearly identified and explained:

- Is the transfer appropriate for the stated end use?
- What is the end-platform; and who is the end-user of the platform that the item will be integrated into?

22



Reviewing "600 series" cases

- Interagency will continue to review background information on foreign parties.
- Examples of derogatory information:
 - o Foreign parties have history of proliferation to countries or programs of concern.
 - o The foreign party will use the item in a program that the USG does not support.
 - o End users have a history of committing human rights violations.
 - o Parties are linked to terrorist groups, countries of concern.

Beware of "Red Flags." Know your customer!

23



State Department = Foreign Policy Review

- The Department of State reviews "600 series" licenses to ensure consistency with the following:
 - o Statutory requirements (e.g., consistency with Foreign Assistance Act);
 - o President's Conventional Arms Transfer Policy and other relevant policies;
 - o Regional and country instability;
 - o Human rights;
 - o International treaties and commitments.

24



U.S. Arms Embargoes (A.K.A. Country Group D:5)

Additional information on arms transfer policies are found in ITAR section 126.1 and are detailed in DDTC's website:

http://www.pmddtc.state.gov/embargoed_countries/index.html

The policies laid out in section 126.1 apply to “600 series” items.

25



Conclusion

- o Licenses for “600 series” items will be subject to the same criteria for a foreign policy review as defense articles.
- o In order to help the licensing officers get to a decision quickly please include precedent approvals (including DDTC cases), end-platforms, and ultimate end-users of the platform in your license application.

26



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

"600 series" Compliance Overview & Best Practices

27



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

"600 series" Compliance Overview: Review Process

- MCD compliance team performs compliance reviews of Automated Export System (AES) records to confirm appropriate use of BIS export authorizations when exporting items subject to the EAR
- Desktop reviews and on-site reviews
- Compliance reviews are conducted to provide one-on-one counseling with exporters
- After a review is completed, feedback is provided to the exporter and recommendations for improvement are suggested

28



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Review Process

- Compare the export authorization as filed in AES with the actual transaction
- Verify that License Exception exports in AES are reported in accordance with the EAR for "600 series" items
 - License Exceptions: STA, GOV, RPL, TMP, BAG, LVS, TSU
- Verify that "No License Required" (NLR) exports in AES are designated properly (e.g., "C60" for .y items)

29



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Review Process

For example, reviews of "600 series" STA exports require the following:

- Prior Consignee Statement (PCS)
- Written notification to consignee of STA shipment
- Name of ultimate end user and country of destination
- Full ECCN with subparagraph
- Description of how prior authorization approval verification check was performed
- Confirmation as to whether any item is "600 series Major Defense Equipment"

30



Bureau of Industry and Security

BIS 2019ANNUAL CONFERENCE
ON EXPORT CONTROLS

"600 series" Compliance Overview: Observations

- Majority of reviews are compliant
- Most common mistake found is AES misfiling; common examples include:
 - o ECCN Error (EAR99/9A991 item filed as "600 series")
 - o License Type/Export Authorization Error (should have been filed as a different license or license exception)
 - o Country Code Error

31



Bureau of Industry and Security

BIS 2019ANNUAL CONFERENCE
ON EXPORT CONTROLS

Observations, Cont.

- Unresponsiveness/failure to respond to USG
- Missing documentation required for License Exception
- ECCN is ineligible for a License Exception
 - o Example: ECCNs 9D610.b, 9D619.b, 9E610.b, 9E619.b or .c are NOT eligible for LE STA
- Country is not eligible for License Exception
 - o Example: Ineligible use of certain license exceptions for "600 series" items destined to, or in, Country Group D:5
 - o Example: STA export of "600 series" item to a destination outside of Country Group A:5

32



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Best Practices Specific to STA

- Make sure your consignee is aware of License Exception STA and its respective requirements
- All parties must be previously approved on USG license or other approval
 - Know the differences between the Entity List and previous USG authorization requirements
- All STA exports of “600 series” items require a Prior Consignee Statement and written notification to your consignee of the STA shipment

33



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Best Practices, Cont.

- Create internal company checklists for license exceptions and conduct training on use of license exceptions to ensure compliance with the individual requirements of each exception
- 7 license exceptions available for “600 series” items on the EAR
 - LVS (740.3), TMP (740.9), RPL (740.10), GOV (740.11), TSU (740.13), BAG (740.14), STA (740.20)
- **Always check the general restrictions in § 740.2 first, and make sure you meet *ALL* the conditions of the applicable license exception**

34



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Best Practices, Cont.

Be aware of restrictions of license exceptions for "600 series" to D:5, except that:

- 9x515 or "600 series" items destined to, or in, Country Group D:5 are eligible for License Exception GOV (740.11(b)(2) of the EAR); and
- 1A613.c or .d items destined to, or in, Country Group D:5 are eligible for License Exception TMP (740.9(a)(11)(ii) of the EAR) or License Exception BAG (740.14(h)(2) of the EAR).

35



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS

Best Practices, Cont.

- Conduct self-audits of Electronic Export Information (EEI) filings at least on a quarterly basis and make necessary corrections in AES when you first learn of a filing error.
- C60 for "600 series" .y items
 - o Exports of "600 series" .y paragraph items only (see AESTIR, Appendix F at cbp.gov for eligible ECCNs). 'DY6' is required in the 'License Number' field.
 - o C33 is for exports of items not subject to a license requirement. Reporting the ECCN in AES is mandatory for items with a reason for control other than or in addition to Anti-Terrorism (e.g., EAR99, 9A991).

36



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

Questions???

Licensing Officer: Dimitri Smith

Dimitri.Smith@bis.doc.gov

(202) 482-3877

Licensing Officer: Ashley Conboy

Ashley.conboy@bis.doc.gov

(202) 482-1251

37



Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE ON EXPORT CONTROLS

"600 series" Licensing Resources

Regulatory Guidance:

- Supplements No. 1 and 2 to Part 748 of the EAR

SNAP-R Resources:

- SNAP-R Help Desk: snapr@bis.doc.gov, (202) 482-2227
- Online SNAP-R FAQ: <https://snapr.bis.doc.gov/snapr/docs/snaprFAQ.htm>

"600 series" Licensing: Munitions Control Division

- Acting Director: Thomas Defee, Thomas.defee@bis.doc.gov

Outreach and Educational Services Division:

- Washington, D.C.: ECDOEXS@bis.doc.gov, 202-482-4811
- Western Regional Office: 940-660-0144 or 408-998-8806

38