



Update 2013

Aerospace: Jurisdiction and Regulatory Changes

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The Panel Participants

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- Juan F. Santos, Office of Conventional Arms Threat Reduction, State
- Tracy Minnifield, Defense Technology Security Administration, Defense



Since We Met Last Year

- Jan 2, 2013 NDAA for FY 2013 signed
 - Made possible return of certain satellites to Commerce
- May 24, 2013 Publication of proposed changes for spacecraft controls
- April 16, 2013 Initial Implementation of Export Control Reform
 - Categories VIII—ECCN 9A610 and XIX—9A619
 - Effective Oct 15, 2013



The Challenges

- For exporters/reexporters
 - Reclassify product line
 - Adjust compliance program
 - Train your people and your suppliers
- For government
 - Provide timely response to issues raised by exporters
 - Refine the process specific to the processing of 600 series classifications and license submissions



The Opportunities

- For Exporters with items moving to Commerce
 - No cost associated with license application
 - Greater opportunity for license exception use
 - No purchase order required before license submission
 - No large agreements to draft
- For Government
 - One step closer to fulfilling the objectives of Export Control Reform
 - Ability to focus greater attention on the exports that pose the greatest national security risk.



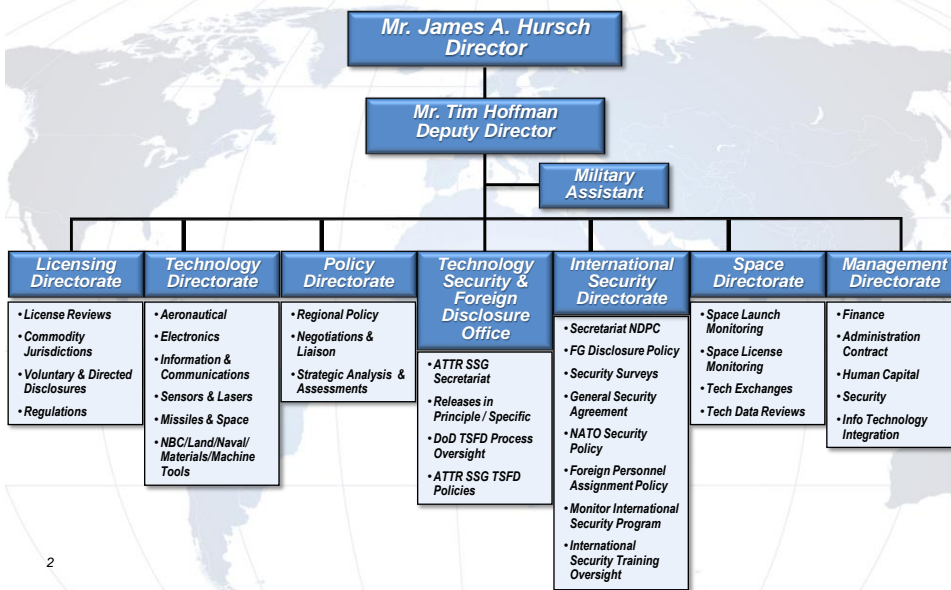
The Aerospace: Jurisdiction and Regulatory Changes (CCATS)



MR. TRACY J. MINNIFIELD
Division Chief, Dual Use Licensing
Defense Technology Security Administration



Defense Technology Security Administration (DTSA)

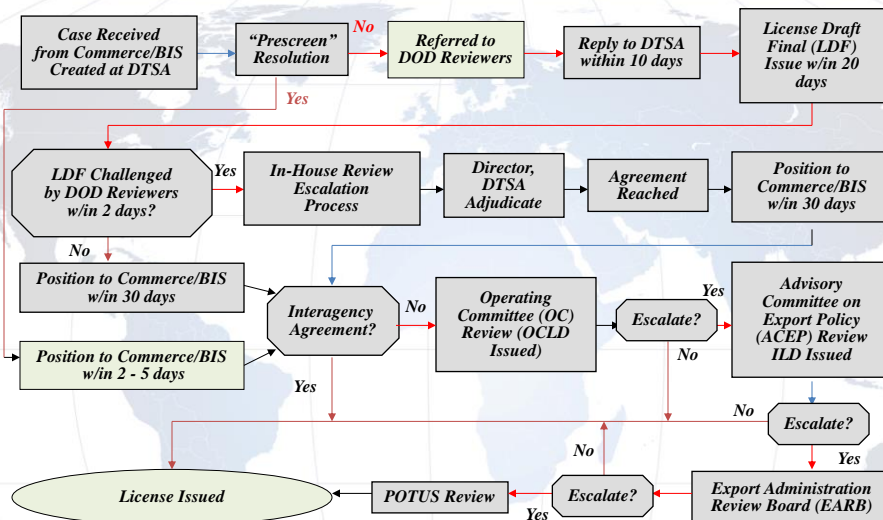


Licensing Directorate Mission

- ***Expediently coordinate, develop and adjudicate the DoD position on licenses, regulations and other actions received from the licensing regulatory authority for review***
- ***Ensure recommendations fully address DoD technology security policies, support and protect the warfighter, and prevent the diversion and proliferation to programs or entities of national security concern***



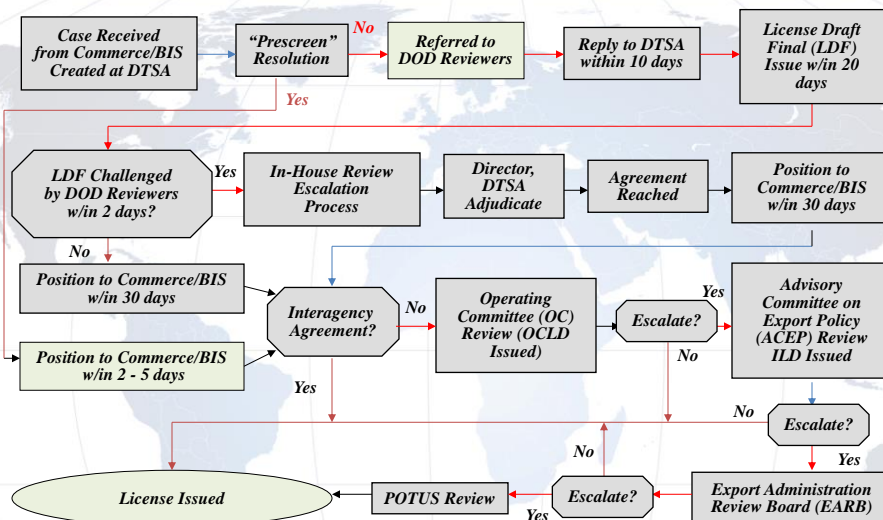
DoD Dual-Use License Review Timeline (30 Calendar Days)



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DoD 600-Series License Review Timeline (30 Calendar Days)



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Established Process...

No significant changes in how we review 600-series and non 600-series license applications

- *Extent of external DTSA staffing is TBD, but we anticipate few applications will be affected*
- *Tiger Team Process remains key!*
 - *Daily*
 - *Technical, Policy, and regulatory experts*
 - *~2/3 of licenses returned to Commerce*
 - *Vast majority approved with provisos/conditions*
- *Commerce/Defense licensing analysts have strong rapport...helps move transactions!*

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National Security Focus

Factors Considered:

- *Level of Technology*
- *Scope of Transaction*
- *Precedents*
- *End-user and End-use History*
- *Military Operational Impact*
- *Inter-operability Requirements*
- *Bilateral, Multilateral and International Agreements*

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Helpful Information--Tips

Tell us in clear terms:

- *What you are doing*
- *What you will not do (equally, if not more important); for example...not releasing any source code...*
- *Review prior license conditions/provisos*
- *Government POC (identify any other DoD offices you are working with and ensure contact information is current); if none, consider stating what Service **may** be interested*

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Your Role...

- *Do not assume...*
 - *Provide the information the USG needs to assess the technology*
- *“Draw the box” for your export request*
 - *Watch scope changes...prior DoS license, but DoC license submitted with subtle, but important changes*
- *Adequately describe the export*
- *Provide clear unambiguous end-use*
- *Provide complete and legible attachments/drawings*

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DoD CCAT Review Process

Case referred to DoD/DTSA:

- *The Clock...5-Day Review Period for DoD*
- *Internal DTSA staffing for regulatory and technical assessment*
- *DoD/DTSA & BIS/MCD, consult when appropriate*
- *Goal: Resolve all issues at the lowest possible level (Office Director/Deputy Directors)*

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DoD Technology Transfer & Export Licensing Community

U.S. Military Services:

- *U.S. Air Force - International Affairs Division (SAF/IA)*
- *U.S. Army – Deputy Assistant Secretary of the Army, Defense Exports & Cooperation (DASA (DE&C))*
- *U.S. Navy and U.S. Marine Corps - Navy International Programs Office (Navy-IPO)*

DoD:

- *Defense Security Cooperation Agency (DSCA)*
- *Joint Chiefs of Staff (JCS/J5)*
- *Under Secretary for Policy*
- *Under Secretary for Acquisition, Technology and Logistics*
- *National Security Agency (NSA)*
- *Other DOD Agencies (DIA, DISA, DLA, NGA, NRO, etc.)*

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QUESTIONS ?

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

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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 will now be responsible for responding to Commerce Department referrals to the Department of State for review of exports of “600 series” items.
 - Internally, regional bureaus, PM (Bureau of Political-Military Affairs) and DRL (Bureau of Democracy, Human Rights and Labor) will review applications for exports of “600 series” items.

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Reviewing 600 series cases

Many of the same rules that lead to successful dual use license applications will continue to apply:

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

- Is the transfer appropriate for the stated end use?
- Does the transaction further a legitimate national or international security need?

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Reviewing 600 series cases

- Interagency will continue to review background information on foreign parties.
- Examples of derogatory information:
 - Foreign parties have history of proliferation to countries or programs of concern.
 - End users have a history of committing human rights violations.
 - Parties are linked to terrorist groups, countries of concern.

Beware of “Red Flags.” Know your customer!

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ITAR or EAR?

ITAR and 600 series rewrite is meant to clearly delineate jurisdiction,

HOWEVER:

- ▣ Clarify classification issues! If in doubt, submit a Commodity Jurisdiction request.
- ▣ Interagency review of 600 series CCATS should also help the USG provide a more coordinated response.

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State Department = Foreign Policy Review

- The Department of State reviews “600 series” licenses to ensure consistency with the following:
 - International treaties and commitments;
 - Statutory requirements (consistency with Foreign Assistance Act);
 - President’s Conventional Arms Transfer Policy;
 - Regional and country instability;
 - Human rights;

National security concerns remain very important;
DOD input on operational and technology security issues will continue to be important.

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Conventional Arms Transfer (CAT) Policy

Interagency case-by-case review will be consistent with U.S. CAT policy. CAT Policy criteria include a review of the human rights, terrorism and proliferation record of the recipient and the potential for misuse of the export in question.

Criteria were first laid out by Presidential Decision Directive 34 (PDD-34, February 17, 1995) and are found at:

<http://www.state.gov/t/pm/rsat/c14023.htm>

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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

Note: Not all arms embargoes are comprehensive.

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Conclusion

- There will be no substantive policy changes. If your transactions were approved before they should still be approved.
- The transfer from the USML to 600-series will not result in a substantive shift in Department of State policy. Licenses will be subject to the same criteria for review.
- In order to help the licensing officers get to a decision quickly please continue to include precedent approvals (including DDTC cases) as well as information on any USG POC familiar with the program your export is supporting (when applicable).

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Questions?



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