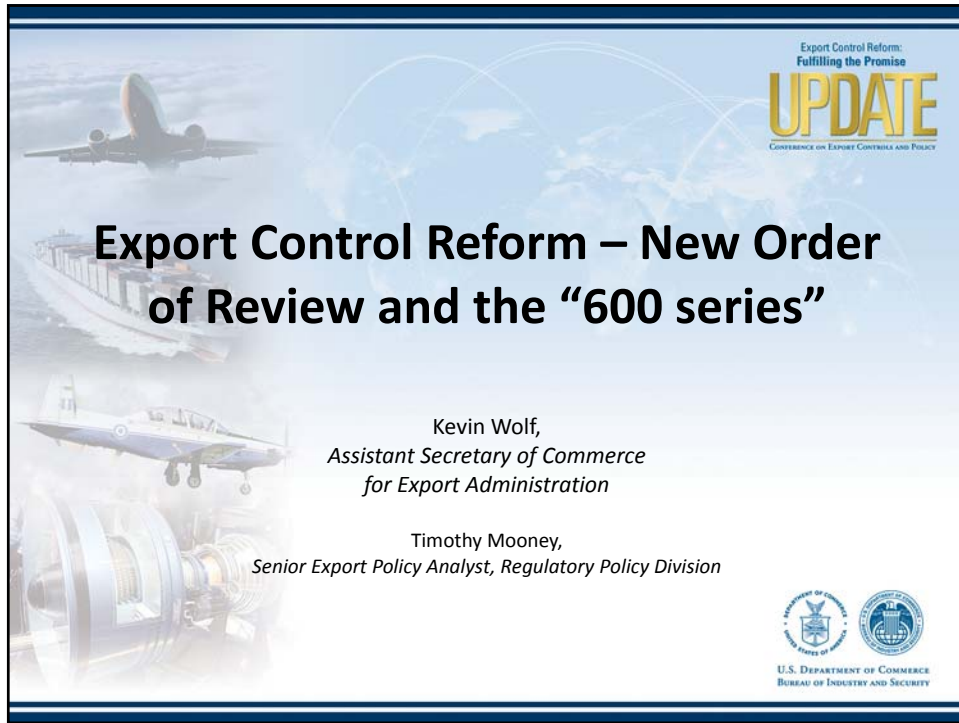




Export Control Reform:
Fulfilling the Promise
UPDATE
CONFERENCE ON EXPORT CONTROLS AND POLICY

Export Control Reform – New Order of Review and the “600 series”

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U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

Topics

- ECR background
- Introduction and overview of the “600 series”
- Understanding new CCL Order of Review:
 - Guidance for reviewing CCL in light of new “600 series.”
 - Guidance for reviewing CCL in light of new “specially designed” definition.
 - Overview of two new web-based decision tools.



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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 Administration 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.



Summary

- Items that are now defense articles but that are no longer listed on the revised USML categories will become subject to the EAR's "600 series" ECCNs.
- Licenses from Commerce will still be required to export and reexport most 600 series items worldwide (minus Canada), unless an EAR license exception is available.
- New license exception STA will be available to authorize 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.
- Will make defense trade in the supply chain for NATO and other allies more efficient.
- Will have compliance obligations.
- Final rules available at www.bis.doc.gov.



Take a Breath

- The flurry of new rules and descriptions will make the proposed changes seem far more complex than they really are.
- We realize it will take some time to get familiar with the details behind the essence of the effort summarized on the previous slide, hence the delay in the effective date and the training efforts.
- Said one exporter: “The current system is sometimes arbitrary, dumb, and over-controls things, but I understand it. The future system is intelligent, tailored, and will help my exports to allied countries, but I don’t understand it -- yet.”



ECR Background

- The Departments of Commerce and State have published proposed or final rules on the following aspects of ECR:

Framework: more “positive” USML and establishment of “600 series” structure

Revised USML categories: will publish over 2013 proposed and final revisions to USML categories and corresponding “600 series” ECCNs

“Specially Designed”: definition of the term for both the ITAR and EAR

Transition/Implementation: grandfathering, changes to license exceptions and license structure

- All changes in the jurisdictional status of items will need to comply with the congressional notification requirements of § 38(f) of the AECA.
- Executive Order 13637 sets out the new delegations of authority for the administration of the new rules.
- Final rules will have a six-month delay in implementation after publication (in addition to a two-year optional grandfathering period for existing USML authorizations.)



Determining Changes in Jurisdiction

- Is/are my item(s) still subject to the ITAR?
 - Review the relevant revised and existing USML categories
 - Example: items previously controlled under USML Cat. VIII
 - End item: if not listed in VIII(a), (d), (e), (f), then moving to 9A610
 - Part, component, accessory, or attachment: if not “specially designed” for stealth aircraft in VIII(h)(1) or listed in VIII(h)(2)-(26), then moving to CCL’s new 9A610 (aircraft); if not listed in XIX(a)-(f), then moving to CCL’s new 9A619 (engines)
 - Software or technology (unclassified): if commodity stays on USML, then the software and technology directly related to it stay in VIII(i) or XIX(g); otherwise moving to CCL’s new 9D610/9E610 (aircraft software/technology) or 9D619/9E619 (engine software/technology)

Note: many “catch-all” controls moving from USML to CCL



Determining Changes in Jurisdiction

- What if I have a prior commodity jurisdiction (CJ) determination?
 - **CJs that determined item was subject to the ITAR**
 - If item is moving from the USML to the CCL, then CJ superseded. No need for additional CJ unless there is doubt.
 - **CJs that determined item was subject to the EAR**
 - If item was not classified in an existing “-018” ECCN at the time of determination, the item will not be controlled under the 600 series
 - If item was not listed on the CCL at the time of determination (i.e., designated EAR99), the item will remain EAR99, unless later enumerated in an entry on the USML or CCL

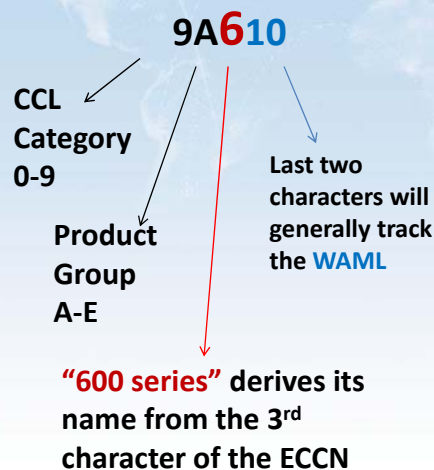


Determining Changes in Jurisdiction

- For items moving from the USML to the CCL, the next step is to determine the item's classification under the EAR to determine whether a license is required, and if so, what license exceptions may be available
 - 600 series framework
 - Definition of “specially designed”



Determining Changes in Jurisdiction: 600 Series Framework



Order of review – former USML items (and -018 items) listed in the “Items” paragraph:

- .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.

Reasons for Control

- 0 – National Security
- 1 – Missile Technology
- 2 – Nuclear Nonproliferation
- 3 – Chemical and Biological
- 5 – National Security or Foreign Policy
- **6 – Wassenaar Arrangement Munitions List (WAML) or former US Munitions List (USML)**
- 9 – Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.



“600 series” Example: 9A610

Example effective for exports on or after October 15, 2013

9A610 Military aircraft and related commodities

Reason for Control: NS, RS, MT, AT, UN

Control(s)	Country chart
NS applies to entire entry except 9A610.u, v, w, and y.	NS Column 1
RS applies to entire entry except 9A610.y.	RS Column 1
MT applies to 9A610.u, .v, and .w	MT Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 9A610.y	See §746.1(b) for UN controls

License Exceptions

LVS: \$1500

GBS: N/A

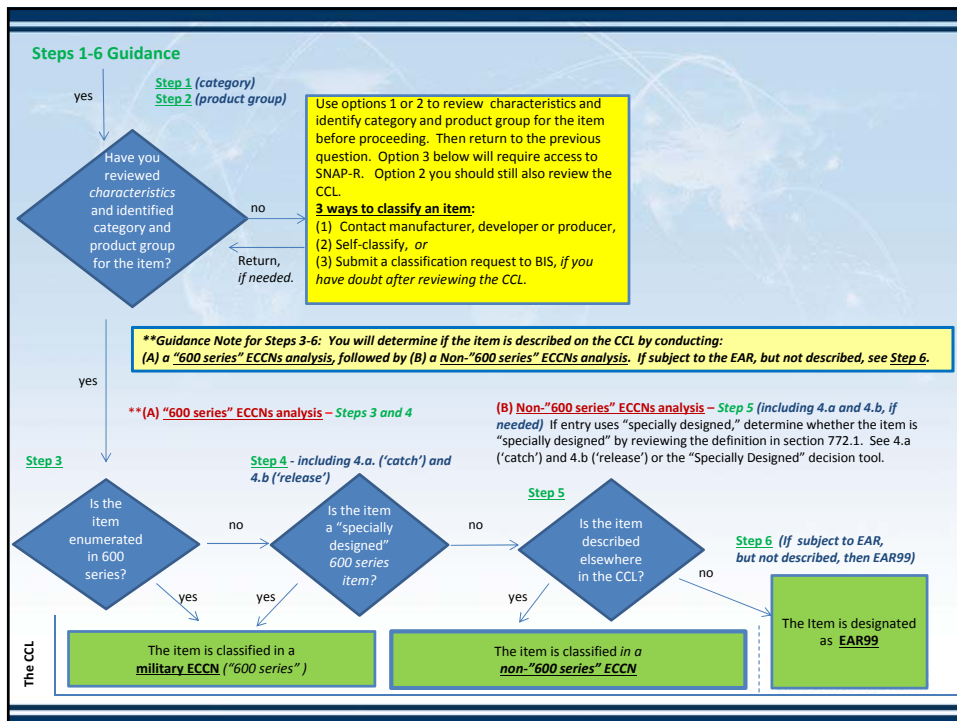
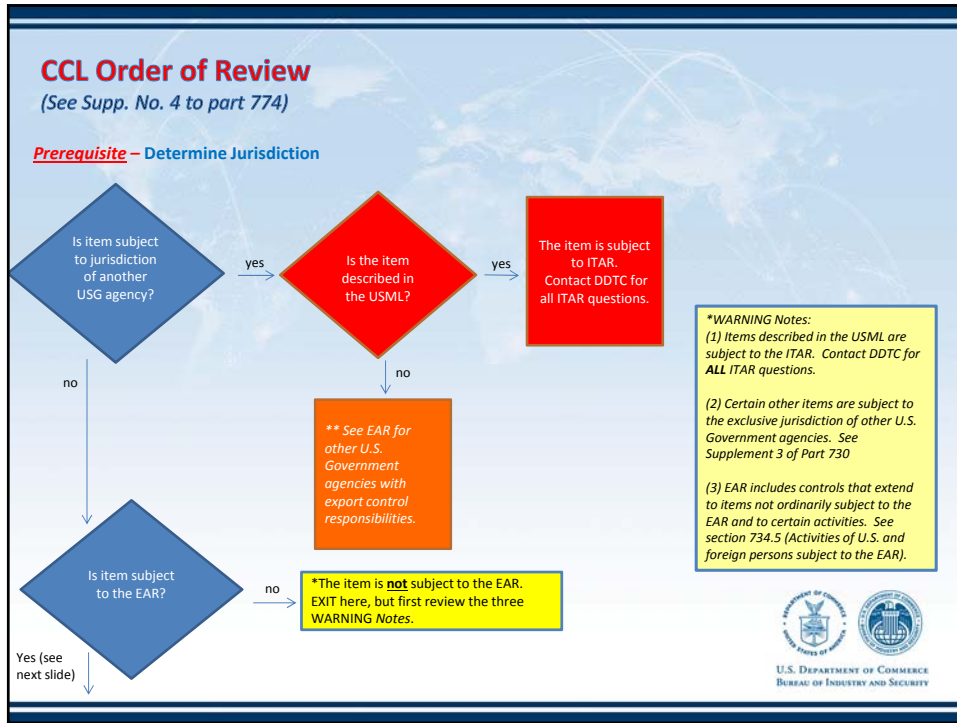
CIV: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (i.e., “end item” military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.

[“Items” paragraph a-w](#)

[“Items” paragraph x-y](#)





CCL Categories – Step 1 in the *CCL Order of Review*

- 0 - Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1 - Materials, Chemicals, “Microorganisms,” and Toxins
- 2 – Material Processing
- 3 – Electronics
- 4 – Computers
- 5 - Telecommunications and Information Security
- 6 – Lasers and Sensors
- 7 – Navigation and Avionics
- 8 – Marine
- 9 – Propulsion Systems, Space Vehicles and Related Equipment



Product Group – Step 2 in the *CCL Order of Review*

- Each category has the same five product groups:
 - A – “End Items,” “Equipment,” “Accessories” and “Attachments,” “Parts,” “Components,” and “Systems”
 - B - Test, Inspection and “Production Equipment”
 - C – “Materials”
 - D – “Software”
 - E – “Technology”
- Terms are defined in part 772



Determining Changes in Jurisdiction: “Specially Designed” – Step 4 (4.a and 4.b) in the CCL Order of Review

- New 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 Part 772 and is described in an online decision tree tool on BIS website



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Overview of the Two New Web-based Decision Tools

- New decision tools are part of BIS's outreach efforts for Initial Implementation of ECR final rule.
- FREE for public to use.
- Two separate tools, but include software links between the two tools to provide additional support if needed.



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Effective Date and How the New Decision Tools Can Help You?

- Effective for exports on or after October 15, 2013.
- However, as you reclassify items during the transition period, these tools will be helpful.
- Two decision tools **will assist you**:
 - as you review the CCL, and
 - when, as part of your review of the CCL, you need to **determine if an item is "specially designed"**



Where to Find the Two New Decision Tools?

- Decision tools are posted on BIS website www.bis.doc.gov
- Click on "Exporter Portal" link.
- Then click on "Decision Tools" icon.
- BIS will be adding additional decision tools, as we develop an *EAR Decision Tool Suite* to assist the public in understanding and complying with the EAR.



Other Information that will Assist Your Understanding

- Can print out a summary of your responses and decision tool result at the end of each decision tool. You may print a copy of this summary screen for your records.
- Both tools include “**Key Terms**” and other “**Additional Information**” to assist your understanding.
- “Specially Designed” Decision Tool includes an optional feature where you can insert the name of the item you are reviewing for “specially designed.”



Two New Decision Tools

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

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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Two Tools, *but* Linked Together at Various Places

Export Control Classification Interactive Tool [Reset](#) [Key Terms List](#)



Commerce Control List (CCL) Order of Review Decision Tool
(The tool is effective for exports on or after October 15, 2013)

[Begin >>](#)

Specially Designed Decision Tool [Reset](#) [Key Terms List](#)



"Specially Designed" Decision Tool
(The tool is effective for exports on or after October 15, 2013)

[Begin >>](#)


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CCL Order of Review Decision Tool

Export Control Classification Interactive Tool [Reset](#) [Key Terms List](#)



Commerce Control List (CCL) Order of Review Decision Tool
(The tool is effective for exports on or after October 15, 2013)

[Begin >>](#)

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CCL Order of Review Decision Tool

- Guides public through steps to take in reviewing CCL, in light of addition of "600 series" and new "specially designed" definition.
- Includes questions under Step 4:
 - to determine if an item is "specially designed" for "600 series," and then, as needed,
 - to determine if an item is "specially designed" for non-"600 series."



Specially Designed Decision Tool

Specially Designed Decision Tool
Reset
Key Terms List



"Specially Designed" Decision Tool

(The tool is effective for exports on or after October 15, 2013)

Begin >>

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Specially Designed Decision Tool

- New “Specially Designed” Decision Tool will assist you in determining if an item will be “specially designed” under the EAR.
- Tool will ask you a series of questions that are answered with either “yes,” “no” or “I don’t know.”
- Based on your responses, the tool guides you through making a determination whether an item is “specially designed.”



"Specially Designed" Decision Tool Guides You to One of Three Results

- The item is "specially designed" on the CCL;
- The item is not "specially designed" on the CCL;
or
- Obtain guidance on next steps to take if you have difficulty in answering whether an item is 'caught' or 'released' under "specially designed."



ECR Weekly Teleconferences

- Assistant Secretary for Export Administration Kevin Wolf conducts weekly conference calls on Wednesdays at 2:30 pm (Eastern) to answer questions about Commerce's proposed and final ECR rules that have been published.
- BIS has recently expanded these teleconference calls to include special topics related to ECR implementation, as part of our outreach efforts.
- Assistant Secretary Wolf will respond to questions submitted in advance of each week's call:
 - Questions should be sent to oesdseminar@bis.doc.gov with the subject line of "teleconference questions."
 - The dial-in number for the conference calls is: 1-888-455-8218 and the participant code: 6514196. Callers should dial in 10 minutes early.



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
- Deputy Director: Anthony Mitchell, anthony.mitchell@bis.doc.gov

Technical Product Questions on Aircraft and Gas Turbine Engines

- Office of National Security and Technology Transfer Controls: Gene Christiansen, gene.christiansen@bis.doc.gov
- Munitions Control Division: Jeff Leitz, jeffrey.leitz@bis.doc.gov

Outreach Assistance: Outreach and Educational Services Division

- Director: Rebecca Joyce, OESDseminar@bis.doc.gov, 202-482-4811
- Western Regional Office Director: Michael Hoffman, 949-660-0144

Regulatory Interpretation and Transition Guidance

- Regulatory Policy Division: rp2@bis.doc.gov, 202-482-2440
- Office of the Assistant Secretary for Export Administration: steven.emme@bis.doc.gov

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

