



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

Implementation of Export Control Reform

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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 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.

Date of Last Revision: Sept 17, 2014

Topics



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ECR Background



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- 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



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- 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



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- 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



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- 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.

ECR Background



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- 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 continue to publish 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.)

Status



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USML Category	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	Final rule Jan. 2, 2014; Effective July 1, 2014
V: Explosives/Propellants	1Y608	Final rule Jan. 2, 2014; Effective July 1, 2014
VI: Vessels of War	8Y609	Final rule July 8, 2013; Effective Jan. 6, 2014
VII: Tanks/Military Vehicles	0Y606	Final Rule July 8, 2013; Effective Jan. 6, 2014
VIII: Aircraft	9Y610	Final rule Apr. 16, 2013; Effective Oct 15, 2013
IX: Training Equipment	0Y614	Final rule Jan. 2, 2014; Effective July 1, 2014
X: Personal Protective Equip.	1Y613	Final rule Jan. 2, 2014; Effective July 1, 2014
XI: Electronics	3Y611 9Y620	Final rule July 1, 2014; Effective Dec. 30, 2014

Status



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USML Category	ECCNs	Status
XII: Sensors/Night Vision	TBD	Proposed rule TBD
XIII: Miscellaneous	0Y617	Final rule July 8, 2013; Effective Jan. 6, 2014
XIV: Toxicological Agents	1Y607	Proposed rule TBD
XV: Spacecraft/Satellites	9Y515	Interim final rule May 13, 2014 Effective June 27, 2014 (for rad-hard ICs) Effective Nov. 10, 2014 (for all other items)
XVI: Nuclear	N/A	Final rule Jan. 2, 2014; Effective July 1, 2014
XVII: Classified	N/A	Final rule Apr. 16, 2013; Effective Oct 15, 2013
XVIII: Directed Energy Weapons	TBD	Proposed rule TBD
XIX: Gas Turbine Engines	9Y619	Final rule Apr. 16, 2013; Effective Oct 15, 2013
XX: Submersible Vessels	8Y620	Final rule July 8, 2013; Effective Jan. 6, 2014
XXI: Not Otherwise Enumerated	N/A	Final rule Apr. 16, 2013; Effective Oct 15, 2013

Order of Review

(Supp. No. 4 to part 774)



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- Review the USML
 - Specifically enumerated items
 - “Catch-all” controls and ITAR definition of “specially designed”
- If not on the USML, review the CCL
 - Review characteristics of item to determine applicable CCL category and product group
 - Review applicable 600 series ECCNs
 - Specifically enumerated items
 - “Catch-all” controls and EAR definition of “specially designed”
 - Review applicable non-600 series ECCNs

USML Framework



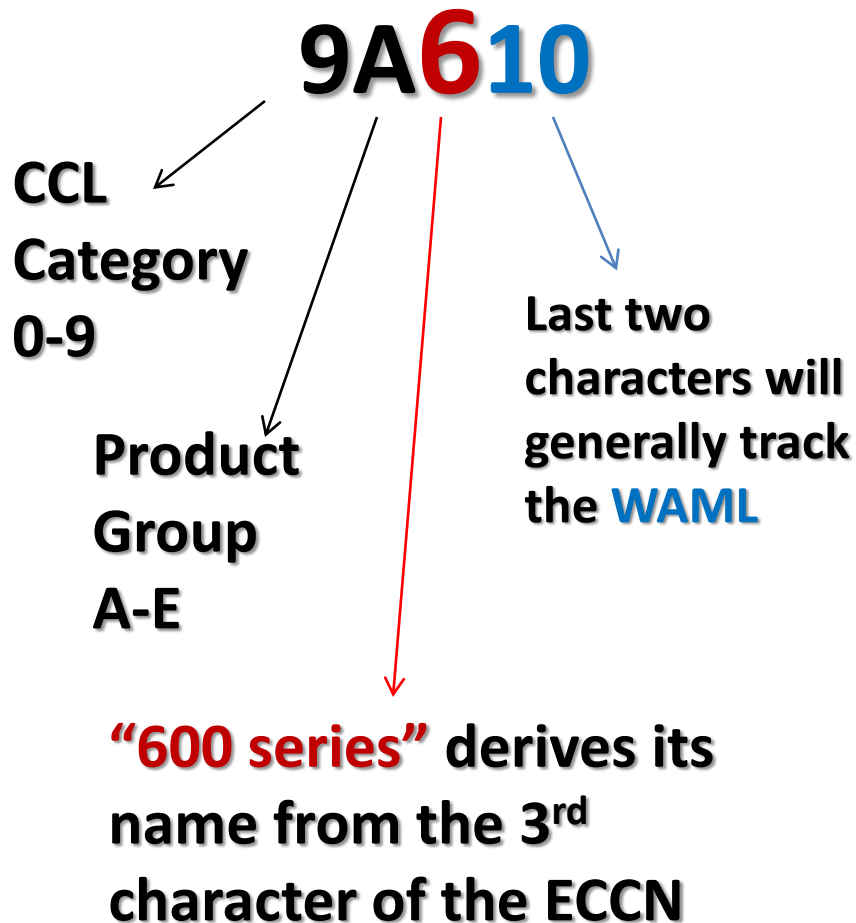
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- Control text for:
 - End platforms and major systems
 - Parts, components, accessories, and attachments
 - Classified articles
- Technical data (including software) and defense services
- Items subject to the EAR – new “(x)” paragraph

600 Series Framework



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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 described commodities (primarily parts, components, accessories, and attachments) that are “specially designed”
- .x: “specially designed” parts, components, accessories, and attachments that are not specifically enumerated

600 Series Framework



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9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a
(see List of Items Controlled)

License Requirements

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

Control(s)	Country Chart (See Supp. No. 1 to part 738)
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

.a - .x items
controlled to all
countries except
Canada

.y items
controlled to
Country Group
E:1, China, and
Russia

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: \$1500

GBS: N/A

CIV: N/A

Special Conditions for STA

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.

Examples: USML to 600 Series



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Revised USML End-Items “A More Positive List”



- F-15, F-16
- Assembled engines
- Weapons pylons
- Mission systems
- Bomb racks
- Missile launchers
- Fire control computer
- Fire control Radar

Commerce Control List 600 Series

(“.a-w” items)

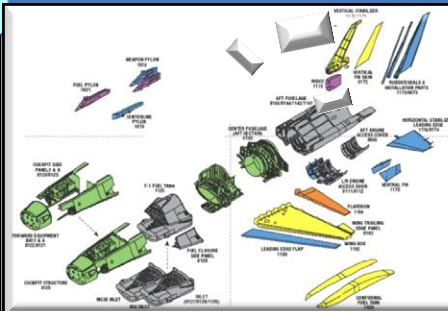
Specially enumerated end-items, “parts”, “components”, “accessories” & “attachments”.



- Aircrew life support and safety equipment
- Parachutes/paragliders
- Controlled opening equipment of automatic piloting systems, designed for parachuted loads
- T-1 Aircraft

(“.x” items)

“Specially Designed” “parts”, “components”, “accessories”, and “attachments”.



- Wings, Rudder, Fin, Panels
- Fuselage – forward, center, aft
- Cockpit structure
- Forward equipment bay
- Control surfaces, activation and control systems

(“.y” items)

Specifically enumerated “parts” “components”, “accessories”, “specially designed”...



- Aircraft tires
- Hydraulic system filters
- Hydraulic and fuel hoses, fittings, clips, couplings, brackets
- Cockpit panel knobs, switches, buttons, dials

600 Series and Restrictions in § 744.21



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- Section 744.21 currently imposes a license requirement for exports or reexports of certain items subject to the EAR when one knows such items are intended, entirely or in part, for a military end use in China or for a military end use or military end user in Russia
- All 600 series items (including .y items) will require a license when destined for China or Russia – see new § 744.21(a)(2)

Definition of “Specially Designed”



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- 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 published by BIS

<http://www.bis.doc.gov/index.php/decision-tree-tools>

Determining Changes in Jurisdiction



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- Prior commodity jurisdiction (CJ) determinations
 - 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

Options for Authorizing Items

Moving from the USML to the CCL



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- Transactions authorized prior to effective date:
 - Grandfather existing DDTC licenses, agreements, or other approvals beyond effective date of final rule per DDTC transition plan
 - Maintain DDTC approval until effective date but pre-position BIS license application or utilize license exception or NLR designation upon effective date
- Transactions after effective date
 - Obtain BIS license, use license exception, or use NLR designation when eligible
 - Obtain DDTC license, agreement, or other approval if eligible under § 120.5(b) of the ITAR

Authorization for Items Moving from USML to CCL: Grandfathering DDTC Approvals



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	Contains only items transitioning to CCL	Contains both transitioning and non-transitioning items
DSP-5	May use for up to 2 years after effective date of transition unless license expires or returned. May amend after effective date on case-by-case basis.	Valid for all items until expiration. May amend after effective date on case-by-case basis.
DSP-61 DSP-73	Valid until expiration. May amend after effective date on case-by-case basis.	
TAA MLA WDA	May use for up to 2 years after effective date of transition unless agreement expires. May amend after effective date on case-by-case basis. May also amend after effective date if defense services are being provided and an agreement is necessary.	May use for up to 2 years after effective date of transition unless agreement expires. Agreement may be kept valid beyond the 2-year period by submitting amendment to authorize transitioning items under § 120.5(b).

See DDTC's transition plan for full details.

License Exceptions for 600 Series



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- Restrictions on use of License Exceptions for 600 series
 - May only use those license exceptions listed in § 740.2(a)(13)
 - Generally inapplicable for Country Group D:5
 - Exception: § 740.11(b)(2) of GOV
 - Exception: personal protective equipment provisions of TMP and BAG (effective 7/1/14)
 - 9D610.b, 9D619.b, 9E610.b, 9E619.b or .c (except § 740.11(b)(2) of GOV)
 - 600 Series Major Defense Equipment sold under a contract exceeding certain values
 - Other applicable restrictions in § 740.2 or specific section of applicable license exception

License Exceptions for 600 Series



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LVS § 740.3	Low value shipments (\$1500 for most 600 series commodity ECCNs)
TMP § 740.9	Temporary exports (tools of trade, exhibition/demonstration, certain exports to U.S. person's facility abroad); certain returns of items temporarily in the U.S.; temporary exports of personal protective equipment
RPL § 740.10	One-for-one replacement parts/components; return repaired or replaced items
GOV § 740.11	Personnel and agencies of USG, including contractor support personnel; certain shipments for or on behalf of USG and DoD-directed shipments; cooperating governments; NATO agencies and Cooperating Governments
TSU § 740.13	Operation technology/software; sales technology; technology/source code in the U.S. to bona fide, full time regular employees of U.S. universities; copies of technology previously authorized
BAG § 740.14	Certain personal protective equipment with U.S. person's baggage or effects
STA § 740.20	600 series for Country Group A:5 (see restrictions on next slides)

License Exception STA

(for all items subject to the EAR)



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Requirements for all items subject to the EAR:


- ECCN must authorize
- All reasons for control that apply to the transaction must be authorized to use STA
 - NS, CB, NP, RS, CC, SI: Country Group A:5 (§ 740.20(c)(1))
 - Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and United Kingdom
 - NS only: Country Group A:6 (§ 740.20(c)(2)) [NOT available for 600 series items]
 - Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, & Taiwan

License Exception STA

(for all items subject to the EAR)



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	Exporter/Reexporter	Consignee
1	Provide ECCN(s) to Consignee	
2		Provide Consignee Statement to Exporter/Reexporter 
3	Obtain Consignee Statement	
4	Notify consignee that shipment (or specific items within a shipment) is (are) under STA	
5	Keep records showing which shipments belong to each consignee statement	Maintain Consignee Statement and records pertaining to subsequent reexport or transfer

Consignee Statement – Five Points

- Aware that items are to be shipped under STA
- Been informed of ECCN by _____.
- No subsequent License Exception APR (a) or (b) shipments
- Agrees not to ship or transfer in violation of EAR
- Agrees to provide documents to USG upon request

License Exceptions for 600 Series



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- License Exception STA: additional requirements for 600 series items only
 - For ultimate end user that is the USG or government of country in Country Group A:5 (“STA-36” countries);
 - For development, production, or servicing of an item in A:5 or the United States that is:
 - Ultimately to be used by the USG or government of country in Country Group A:5, or
 - Sent to a person in the United States; or
 - If USG has otherwise authorized its use.

License Exceptions for 600 Series



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- License Exception STA: additional requirements for 600 series items only
 - Non-U.S. parties must have been previously approved on a State approval or Commerce license
 - Consignee statement must also address ultimate end user restrictions for 600 series items and agree to end use check
 - Eligibility request required for end items in 0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a

ITAR Exemptions and EAR Exceptions



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ITAR Exemption	EAR License Exception
§ 123.4	RPL § 740.10; TMP § 740.9(b)(2) and (b)(4)
§ 123.16(b)(2)	LVS § 740.3
§ 123.16(b)(5)	TMP § 740.9(a)(5)
§ 123.16(b)(9)	TMP § 740.9(b)(10)
§ 123.17(f)-(i)	TMP § 740.9(a)(11); BAG § 740.14(h)(2)
§ 123.19	TMP § 740.9(b)(1)
§ 125.4(b)(1)	GOV § 740.11(b)(2)
§ 125.4(b)(3)	GOV § 740.11(b)(2)
§ 125.4(b)(4)	TSU § 740.13(g)
§ 125.4(b)(5)	TSU § 740.13(a)
§ 125.4(b)(10)	TSU § 740.13(f)
§ 126.4	GOV § 740.11(b)(2)
§ 126.6(a)	GOV § 740.11(b)(2)

BIS Licenses



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- Free online submission system (SNAP-R); no cost associated with license application
- Default four-year validity period
- May export or reexport to *and* among end users listed on license
- No purchase order required
- No large agreements to draft or lengthy agreement guidelines to follow
- May pre-position applications prior to effective date of applicable final rule

DDTC § 120.5(b) Approvals



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- DDTC may license items subject to the EAR pursuant to Executive Order 13637
 - § 734.3(e) of the EAR
 - §§ 120.5(b), 120.42, 123.1(b), and 123.9(b) of the ITAR
- Items subject to the EAR must be used in or with items subject to the ITAR
- Items subject to the EAR that are licensed under § 120.5(b) remain subject to the EAR
- Future transfers not covered by the ITAR approval will require BIS authorization for items subject to the EAR
- Potential violations pertaining to the use of § 120.5(b) may result in voluntary disclosures to both DDTC and BIS

Export Clearance



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- Furnishing Classification to Consignees
 - Exports under EAR: must supply 600 series ECCN on export control documents
 - Exports under DDTC § 120.5(b) Approval: must supply EAR classification (§ 123.9(b)(2))
- Automated Export System
 - BIS Authorizations
 - All exports of 600 series items (except .y items) require AES filing, regardless of value or destination
 - Exports of .y items exempt from AES filing when value is \$2500 or less or when destined for Canada
 - All exports authorized under STA require AES filing
 - DDTC § 120.5(b) Approval
 - For items subject to the EAR, report the ECCN or EAR99 designation in "ECCN" field
 - For items subject to the ITAR, report USML category code

Reexport Considerations



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- *De minimis*: foreign-made items incorporating below *de minimis* levels of controlled U.S. content are generally not subject to the EAR
 - Foreign-made items incorporating U.S.-origin 600 series content (described in paragraphs .a through .x) will not be subject to the EAR so long as: (1) the value of the controlled U.S. content comprises 25% or less of the total value of the foreign item; and (2) the foreign-made item will not be destined to countries in Country Group D:5
 - If the foreign-made item incorporates any amount of U.S.-origin 600 series .y items only, then reexports of the foreign-made item will not be subject to the EAR, unless it is destined for Cuba, China, Iran, North Korea, Sudan, or Syria
 - If the foreign-made item incorporates any amount of U.S.-origin 600 series content (other than .y items) and is destined to a country subject to a U.S. arms embargo, then reexports of the foreign-made item will be subject to the EAR

Reexport Considerations



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- **Direct product rule:** certain foreign-made items that are the direct product of certain U.S. origin technology or software are subject to the EAR when reexported to certain destinations
 - Foreign-made 600 series items that are the direct product of U.S.-origin 600 series technology or software require authorization under the EAR when reexported to countries in Country Groups D:1, D:3, D:4, D:5, or E:1

Contact Information



U.S. DEPARTMENT OF COMMERCE
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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.lopes@bis.doc.gov; Jeff Leitz, jeffrey.leitz@bis.doc.gov
- Materials, miscellaneous items, 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

Regulatory Interpretation and Transition Guidance

- Regulatory Policy Division: rp2@bis.doc.gov , 1-202-482-2440
- Office of the Assistant Secretary for Export Administration: steven.emme@bis.doc.gov

Outreach Assistance: Outreach and Educational Services Division

- Director: Rebecca Joyce, OESDseminar@bis.doc.gov, 1-202-482-4811
- Western Regional Office Director: Michael Hoffman, 1-949-660-0144