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FAQs for the Commerce Categories I-III (final rule)

Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)(85 FR 4136)¹

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¹ The FAQs included in this document are part of the extensive public outreach BIS is conducting on the Commerce final rule issued on January 23, 2020. These FAQs are intended to assist your understanding of the changes, but are *not* intended to supplant the Commerce final rule or other existing EAR provisions, as applicable, in making a determination regarding your regulatory requirements under the Export Administration Regulations (EAR) (15 CFR 730-774).

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Publication and Effective Date

Q.1: When were the Commerce and State Category I-III (firearms) final rules published?

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A.1: The final rules were published on January 23, 2020.

[Click here for the Commerce rule \(85 FR 4136\).](#)

[Click here for the State rule \(85 FR 3819\).](#)²

Q.2: When are the Commerce and State Categories I-III (firearms) final rules effective?

A.2: The rules became effective on March 9, 2020.

However, prior to their effective date, on March 6, 2020, the Honorable Richard A. Jones, District Judge of the U.S. District Court for the Western District of Washington issued an order enjoining the State from implementing or enforcing the regulation entitled International Traffic In Arms Regulations: U.S. Munitions List Categories I, II, and III, 85 Fed. Reg. 3819 (Jan. 23, 2020) “insofar as it alters the status quo restrictions on technical data and software directly related to the production of firearms or firearm parts using a 3D-printer or similar equipment.” (Case No. 2:20-cv-00111-RAJ). Requests for export licenses concerning these items should be directed to the State Department Directorate of Defense Trade Controls (DDTC) until further notice.

For additional information about the court ordered injunction pertaining to revisions to the U.S. Munitions List, see

https://www.pmdtcc.state.gov/ddtc_public?id=ddtc_public_portal_news_and_events&timeframe=week.

Transition and Grandfathering

Q.3: Are there provisions to ease the transition from the United States Munitions List (USML) to the Commerce Control List (CCL)? For example, are there grandfathering provisions to allow for continued use of State licenses or other approvals during a specified grandfathering period?

A.3: Yes, the Export Administration Regulations (EAR) include provisions to ease the transition from the USML to the CCL, including grandfathering provisions. The EAR transition provisions are in General Order No. 5, under paragraph (e) in Supplement No. 1 to part 736. The Commerce final rule added 0x5zz ECCNs to General Order No. 5, so the transition provisions apply to “600 series,” 9x515 items, and 0x5zz items. Other FAQs on the BIS website, such as

² This document includes references to the Department of State, Directorate of Defense Trade Controls (DDTC), the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130), the United States Munitions List (USML), and the State Category I-III (final rule), *International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, III, published 1/23/20 (85 FR 3819), effective 3/9/20*. The Department of State has posted various FAQs on its website regarding the State final rule. Questions on the ITAR should be directed to the Department of State.

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those on the “600 series” (for the items that transitioned from USML Category II), Commerce Control List (CCL) Order of Review, and Specially Designed will assist your understanding of the EAR control structure. [Click here for these other Commerce FAQs](#)

The transition related provisions under the International Traffic in Arms Regulations (ITAR) were established in the Department of State final rule published on April 16, 2013 and are supplemented by various transition related FAQs on the DDTC website, including FAQs addressing Grandfathering/Legacy Issues. [Click here for these State FAQs](#) In addition, the Department of State has posted its [State Transition Guidance for Revisions to Categories I, II, and III](#) to provide additional transition guidance for the State final rule.

Q.4: My company received a Commodity Jurisdiction (CJ) determination from DDTC that said my product is ITAR controlled under USML Category I (or II or III). Does that CJ still apply now that firearms and ammunition have transitioned to EAR control, or should we apply for a new commodity classification under BIS?

A.4: Paragraph (e)(3) (Prior commodity jurisdiction determinations) in General Order No. 5 in Supplement No. 1 to part 736 addresses prior commodity jurisdiction determinations, including those for CJs issued prior to March 9, 2020 for items in USML Categories I, II, or III. For the 0x5zz ECCNs and “600 series” this means that if the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was not listed in a then existing 018 series ECCN, then the item is *per se* not within the scope of a “600 series” or a 0x5zz ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (*i.e.*, the item was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDTC in an amendment to the CCL or to the USML, respectively.

The Department of State in its [State Transition Guidance for Revisions to Categories I, II, and III](#) issued on 1/23/20 also provides guidance on this under the heading **Commodity Jurisdiction Determinations**.

Registration and Applying for Licenses and Classifications

Q.5: Is there a registration requirement under the EAR?

A.5: There is no registration requirement under the EAR. In addition, there are no fees for applying for licenses or submitting classification requests to BIS. To submit license applications or classification requests to BIS, an applicant will need to create a free online account in the

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SNAP-R system. If you do not already have a SNAP-R account, BIS highly recommends creating one as one of the steps taken to prepare for transitioning from the USML to the CCL. [Click here for Guidance on creating a SNAP-R account.](#)

Addition of new ECCNs.

Q.6: How many new ECCNs were added to the CCL to control items moved from USML Categories I, II, and III?

A.6: Seventeen new ECCNs were added to the CCL to control items moved from USML Categories I, II and III.

[Export Compliance Aid \(ECA\) 1: Overview of 17 New ECCNs](#)

New ECCN	Description	Old ECCN
0A501	Firearms (except 0A502 shotguns) and related commodities as follows (see List of Items controlled).	0A018
0A502	Shotguns; shotguns “parts” and “components,” consisting of complete trigger mechanisms; magazines and magazine extension tubes; “complete breech mechanisms;” except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use.	0A984
0A503	Discharge type arms; non-lethal or less-lethal grenades and projectiles, and “specially designed” “parts” and “components” of those projectiles; and devices to administer electric shock, for example, stun guns, shock batons, shock shields, electric cattle prods, immobilization guns and projectiles; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and “specially designed” “parts” and “components,” n.e.s.	0A985
0A504	Optical sighting devices for firearms (including shotguns controlled by 0A502); and “components” as follows (see List of Items Controlled).	0A987
0A505	Ammunition as follows (see List of Items Controlled).	0A984 0A986
0B501	Test, inspection, and production “equipment” and related commodities for the “development” or “production” of commodities enumerated or otherwise described in ECCN 0A501 or USML Category I as follows (see List of Items Controlled).	2B018
0B505	Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities	0B986

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	enumerated or otherwise described in ECCN 0A505 or USML Category III, except equipment for the hand loading of cartridges and shotgun shells, as follows (see List of Items Controlled).	
0D501	“Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 0A501 or 0B501.	NEW
0D505	“Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 0A505 or 0B505.	NEW
0E501	“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 0A501 or 0B501 as follows (see List of Items Controlled).	NEW
0E502	“Technology” “required” for the “development” or “production” of commodities controlled by 0A502.	NEW
0E504	“Technology” “required” for the “development” or “production” of commodities controlled by 0A504 that incorporate a focal plane array or image intensifier tube.	NEW
0E505	“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 0A505.	NEW
0A602	Guns and Armament as follows (see List of Items Controlled).	NEW
0B602	Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated or otherwise described in ECCN 0A602 or USML Category II as follows (see List of Items Controlled).	NEW
0D602	“Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by 0A602 or 0B602 as follows (see List of Items Controlled).	NEW
0E602	“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 0A602 or 0B602, or “software” controlled by 0D602 as follows (see List of Items Controlled).	NEW

ECCN 0A501

Q.7: What is a ‘combination pistol’ and where are they controlled under the new 0x5zz ECCNs on the CCL?

A.7: As specified in *Note 1 to paragraph 0A501.a*, a ‘combination pistol’ (*a.k.a.*, a combination gun) has at least one rifled barrel and at least one smoothbore barrel (generally a shotgun style barrel). ‘Combination pistols’ are controlled under ECCN 0A501.a.

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Q.8: ECCN 0A501.c controls *buttstocks that contain fire control “parts” or “components.”* 0A501.y.1 controls *stocks ... that do not contain any fire control “parts” or “components.”* Where are the following commodities controlled on the CCL:

Q.8.a: A full length stock for a rifle, typically made of wood, laminate or composite materials, consists of both the butt portion and the forearm portion, and which holds the fire control parts (*i.e.*, trigger group or action). Would this be controlled under ECCN 0A501.c or .y?

A.8.a: Pistol grips and stocks that contain fire control “parts” or “components” will be controlled as 0A501.c commodities.

Q.8.b: A buttstock that does not contain fire control “parts” or “components.” ECCN 0A501.y.1 specifies *stocks* – would that include these types of buttstocks?

A.8.b: Pistol grips and stocks that do not contain fire control “parts” or “components” are controlled as 0A501.y.1 items.

Q.9: ECCN 0A501.c controls *pistol grips that contain fire control “parts” or “components.”* 0A501.y.1 controls *grips that do not contain any fire control “parts” or “components.”*

Q.9.a: Is the term *pistol grips* under 0A501.c meant to control pistol grip frames, *i.e.*, the metal or composite grip frame to which grip panels are attached?

A.9.a: No. Pistol grip frames or receivers are controlled as 0A501.e items.

Q.9.b: Is the term *grips* meant to control pistol grip panels, typically made of composite or wood, which are attached to a pistol grip frame?

A.9.b: Pistol grips panels (wood, composite, bone or other decorative materials) which are attached to the frame are designated EAR99.

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Q.10: ECCN 0A501.e controls *[r]eceptors (frames)... including castings, forgings or stampings or machined items thereof*. Does this include partially machined or finished receivers or frames, also known as *80% receivers*?

A.10: Yes, *80-percenters* are controlled under 0A501.e.

Q.11: I understand that detachable magazines with a capacity of greater than 16 rounds “specially designed” for a commodity controlled by 0A501.a or .b are controlled under .d, but where are magazines with a capacity of 16 rounds or less controlled?

A.11: As specified in *Note 2 to paragraph 0A501.d*, magazines with a capacity of 16 rounds or less are controlled under 0A501.x.

Q.12: ECCN 0A501.y.2 controls *scope mounts or accessory rails*. Prior to the creation of this ECCN, BIS’s website advised, “*Mounts, bases, rings and rails are EAR99.*” Paragraph y.2 does not mention bases or rings. Are scope bases still designated as EAR99, or are they included under *accessory rails*? Are scope rings still designated as EAR99, or are they included under *scope mounts*?

A.12: Mounts, bases, rings and rails will now have an ECCN associated with these items as 0A501.y.2, and are only controlled for UN and AT reasons.

Q.13: ECCN 0A501.y.3 controls *iron sights*. Does that include sights made of other materials like polymer, or that are fiber optic or tritium? Or does BIS mean this to control any type of open sights, regardless of material?

A.13: ECCN 0A501.y.3 controls open type sights that do not contain any optical elements regardless of the actual material of construction. This includes flip-up, fiber-optic, tritium, or polymer sights.

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Q.14: ECCN 0A501.y.4 controls *sling swivels*. Does this control the stud or attachment point to the stock that becomes a permanent part of the stock? Or does it control the actual swivel that attaches to the stud? Or does it control both?

A.14: 0A501.y.4 includes both the swivel and the stud (or attachment point).

Q.15: ECCN 0A501.y.5 controls *butt plates or recoil pads*. Does this include any type of recoil part or component that might be attached to the end of the stock?

A.15: Yes.

Q.16: Where are “parts” and “components” that are common to firearms described in ECCN 0A501 and to firearms “subject to the ITAR” controlled?

A.16: As specified in *Technical Note 1 to 0A501*, the controls on “parts” and “components” in ECCN 0A501 include those “parts” and “components” that are common to firearms described in ECCN 0A501 and to those firearms “subject to the ITAR.” *Technical Note 1 to 0A501* does not apply to parts or components enumerated on USML Category I under paragraphs (e)(*i.e.*, silencers, mufflers, and sound suppressors) or to those enumerated under (h)(1)(*i.e.*, drum and other magazines for firearms to .50 caliber (12.7 mm) inclusive with a capacity greater than 50 rounds), regardless of jurisdiction of the firearm. *Note 3 to 0A505.x* functions in the same way as *Note 1 to 0A501*, but is specific to “parts” and “components” that are common to ammunition and ordnance described in 0A505 and to ammunition and ordnance enumerated in USML Category III.

Q.17: Are antique firearms, muzzle loading black powder firearms, BB guns, pellet rifles, paint ball, and all other air rifles controlled under ECCN 0A501?

A.17: Provided these firearms and related items meet the criteria in *Note 3 to 0A501*, they are not controlled under ECCN 0A501 and are designated as EAR99. As specified in *Note 3 to 0A501*, antique firearms (*i.e.*, those manufactured before 1890) and reproductions thereof; muzzle loading black powder firearms, except those designs based on centerfire weapons of a post-1937 design; BB guns; pellet rifles; paint ball; and all other air rifles are EAR99 commodities.

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Q.18: Based on the answer to A.17, does that mean that all muzzle loading (black powder) firearms that do not meet the scope of *Note 3 to 0A501*, are controlled under ECCN 0A501?

A.18: If you are classifying a muzzle loading (black powder) firearm that does not meet the criteria of *Note 3 to 0A501*, you should review *Note 4 to 0A501* for additional classification guidance. As specified in *Note 4 to 0A501*, muzzle loading (black powder) firearms with a caliber less than 20 mm that were manufactured after 1937, that are used for hunting or sporting purposes, that were not “specially designed” for military use, that are not “subject to the ITAR,” and that are not controlled as shotguns under ECCN 0A502 are designated as EAR99.

Q.19: *Blue guns* are complete replicas of firearms that are used as training aids. They are completely non-functioning, and usually made of a composite material, but made to the exact dimensions of the related functioning firearm. Are *blue guns* EAR99 since they are replicas?

A.19: *Blue guns* or *rubber ducks* that are non-functioning replicas which cannot be made to fire ammunition are designated as EAR99.

ECCN 0A502

Q.20: Except for the fully automatic shotguns “subject to the ITAR,” are all shotguns that are “subject to the EAR” controlled under ECCN 0A502?

A.20: Yes. All shotguns that are “subject to the EAR” are controlled under ECCN 0A502 except antique shotguns that meet the criteria of *Note 1 to 0A502*. As specified in *Note 1 to 0A502*, shotguns made in or before 1898 are considered antique shotguns and designated as EAR99. In addition, as stated in the heading of ECCN 0A502, equipment used exclusively to treat or tranquilize animals and arms designed solely for signal, flare, or saluting use are not classified under 0A502 and if “subject to the EAR” are designated EAR99.

Q.21: Are shot pistols and shotguns that have had the shoulder stock removed and a pistol grip attached controlled under ECCN 0A501 or 0A502? Also are slug guns controlled under ECCN 0A501 or 0A502?

A.21: These firearms are controlled under ECCN 0A502. As specified in the *Technical Note to ECCN 0A502*, shot pistols or shotguns that have had the shoulder stock removed and a pistol

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grip attached are controlled by ECCN 0A502. The *Technical Note to ECCN 0A502* also specifies that slug guns are controlled under ECCN 0A502.

ECCN 0A504

Q.22: Are there any additional EAR license requirements that I should be aware of for ECCN 0A504?

A.22: The full scope of the EAR license requirement must be taken into account for all exports, reexports, or transfers (in-country) when making a license determination under the EAR, including end-use and end-user controls in part 744 of the EAR. As specified in *Related Controls* paragraph (3) to ECCN 0A504, § 744.9 of the EAR imposes a license requirement on certain commodities described in 0A504 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919. Therefore, if you are exporting, reexporting, or transferring (in-country) commodities classified under ECCN 0A504, you should become familiar with the requirements of § 744.9 of the EAR.

Q.23: ECCN 0A504.i controls riflescopes that were not “subject to the EAR” as of March 8, 2020 and are “specially designed” for use in firearms that are “subject to the ITAR.” Note 2 to paragraph (i) states that paragraph (a)(1) of the definition of “specially designed” in § 772.1 of the EAR is used to determine whether riflescopes controlled under ECCN 0A501.i are “specially designed.” Does this note mean that only paragraph (a)(1) is reviewed and paragraph (b) is not reviewed when making the determination whether these rifle scopes are “specially designed?”

A.23: Yes, as specified in the *Note 2 to 0A501.i* only paragraph (a)(1) is used in making the determination whether a rifle scope is “specially designed.” The paragraph (b) releases are not considered as part of the “specially designed” analysis for rifle scopes controlled under ECCN 0A504.i.

ECCN 0A505

Q.24: ECCN 0A505 controls ammunition for firearms controlled under 0A501. The revised USML Category III under the ITAR controls ammunition that is belted or linked. If I am exporting 5.56mm ammunition controlled under 0A505, does it become ITAR-controlled if it is belted or linked? If so, does the technology control for this item also remain on the ITAR?

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A.24: Any ammunition that is linked or belted is ITAR controlled. However, the technology associated with the ammunition remains controlled on the Commerce Control List under ECCN 0E505.

Q.25: Are shotguns shells that contain only chemical irritants controlled under ECCN 0A505 or under some other ECCN because of the inclusion of the chemical irritants?

A.25: As specified in *Note 1 to 0A505.c*, shotgun shells that contain only chemical irritants are controlled under ECCN 1A984.

Q.26: Are percussion caps, and lead balls and bullets, for use with muzzle-loading firearms controlled under ECCN 0A505?

A.26: No. As specified in *Related Controls* paragraph (2) in ECCN 0A505, percussion caps, and lead balls and bullets, for use with muzzle-loading firearms are designated as EAR99.

Q.27: Are lead shot smaller than No. 4 Buckshot, empty and unprimed shotguns shells, shotgun wads, smokeless wads, smokeless gunpowder, dummy rounds and blank rounds controlled under ECCN 0A505?

A.27: No. As specified in *Note 4 to 0A505*, lead shot smaller than No. 4 Buckshot, empty and unprimed shotgun shells, shotgun wads, smokeless gunpowder, 'dummy rounds' and blank rounds (unless linked or belted), not incorporating a lethal or non-lethal projectile(s) are designated EAR99. *Note 4 to 0A505* defines a 'dummy round or drill round' as a round that is completely inert, *i.e.*, contains no primer, propellant, or explosive charge. It is typically used to check weapon function and for crew training.

ECCN 0A602

Q.28: Where are black powder guns and armament manufactured in or prior to 1890 and replicas thereof designed for use with black powder propellants controlled?

A.28: As specified in *Note 3 to 0A602*, black powder guns and armament manufactured in or prior to 1890 and replicas thereof designed for use with black powder propellants are designated EAR99.

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Removal of Nine ECCNs

Q.29: Where are the items previously controlled under the nine ECCNs removed from the CCL now controlled?

A.29: The items controlled under eight of the ECCNs that were removed are controlled under new 0x5zz ECCNs as of March 9, 2020. The technology controlled under the ninth ECCN that was removed (ECCN 0E918) is designated EAR99 or not “subject to the EAR,” if it meets part 734 criteria.

The following two Export Compliance Aids (ECA 2 and ECA 3) show the new CCL classifications of the items controlled by the nine removed ECCNs as of March 9, 2020. ECA 2 provides a high level cross walk to show where the removed ECCNs have been mapped to new 0x5zz ECCNs and ECA 3 provides a more detailed cross walk of old ECCNs mapped to their new locations in the 0x5zz ECCNs.

ECA 2: High Level Cross Walk of Removed ECCNs Mapped to New 0x5zz ECCNs

Removed ECCNs mapped to new 0x5zz ECCNs	
0A918	→ 0A501 – Firearms
0A984	→ 0A502 – Shotguns
0A985	→ 0A503 – Non-Lethal
0A987	→ 0A504 - Scopes
0A986	→ 0A505 - Ammunition
	OB501
0B986	→ 0B505
	OD501
	OD505
	OE501
0E984	→ 0E502
0E987	→ 0E504
	OE505

ECA 3: More Detailed Cross Walk of Removed ECCNs Mapped to New 0x5zz ECCNs

Removed ECCNs	Description of CCL Item in Removed ECCN and New ECCN	New ECCNs
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0A918	Bayonets from 0A918 controlled by 0A501.y	0A501.y
0A984	All commodities in 0A984 controlled by either 0A502 or 0A505	0A502 or 0A505
0A985	All commodities in 0A985 controlled by 0A503	0A503
0A986	All commodities in 0A986 controlled by 0A505.c, <i>including less than lethal rounds</i>	0A505.c
0A987	All commodities in 0A987 controlled by 0A504	0A504
0B986	All commodities in 0B986 controlled by 0B505.c	0B505.c
0E918	Because 0E918 “technology” for “development,” “production,” or “use” of bayonets is widely known, any attempt to limit its dissemination through export license requirements is unlikely to be effective, so it will be designated EAR99 <i>or</i> not “subject to the EAR,” if meets part 734 criteria.	EAR99
0E984	All “technology” in 0E984 for development of shotguns and buckshot shotgun shells controlled under 0E502 (shotguns) <i>or</i> 0E505 (buckshot shotgun shells).	0E502 or 0E505
0E987	All “technology” in 0E987 controlled by 0E504	0E504

Q:30: I have an existing BIS license that is still valid for one of these nine ECCNs, e.g., for long barrel shotguns that were controlled under ECCN 0A984 that moved to 0A502 as of March 9, 2020.

Q.30.a: Can I use that existing BIS license or do I need to obtain a replacement license as of March 9, 2020?

A.30.a: You may continue to use the existing BIS license for the length of time that BIS license is still valid. You do not need a replacement license.

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Q.30.b: In the Electronic Export Information (EEI) filing in the Automated Export System (AES) for export clearance am I required to include the ECCN 0A984 listed on the license or the new ECCN 0A502?

A.30.b: As of March 9, 2020, you will enter the new ECCN 0A502 in the EEI filing in AES. Section 750.7(c)(1)(viii) of the EAR allows a change in ECCN, where necessary only for the purpose of conforming to an official revision in the CCL; or wording of the item description with no notification to BIS. In this scenario, the change in ECCN is conforming to the official revision in the CCL in the Commerce final rule that became effective on March 9, 2020. However, note that this authorization does not apply to an actual change in the item to be shipped, or an increase in the total price or quantity stated on the license.

Q.30.c: If I use the new ECCN 0A502 instead of the 0A984 stated on the license, will that cause a fatal error or a verify message in AES?

A.30.c: No, it will not cause a fatal error or verify message in AES. BIS has confirmed this with the U.S. Census Bureau.

Q.30.d: If I use a removed ECCN stated on the license instead of the new ECCN, will that cause a fatal error message in AES?

A.30.d: Yes, it will cause a fatal error message in AES. See the example below under ECA 5 of an exporter that had a license to export shotgun shells that were controlled under ECCN 0A986 that are now controlled under ECCN 0A505 as of March 9, 2020. Because ECCN 0A986 has been removed and is no longer on the approved list of ECCNs in AES, when the filer tried to enter 0A986 it caused a fatal error in AES. The exporter needed to correct their filing to use the new ECCN 0A505 to resolve the fatal error.

Revisions to Eight ECCNs

Q.31: Why were eight ECCNs revised in the final rule?

A.31: ECCNs 0A018, 0A988, 0E982, 1A984, 2B004, 2B018, 2D018, and 7A611 were revised to make conforming changes to allow for the addition of the seventeen new ECCNs and the removal of the nine ECCNs described above.

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3D Printing of Firearms

Q.32: Where can I find information in the final rule for how comments on the Commerce proposed rule regarding 3D printing of firearms were addressed in the final rule?

A.32: See 85 FR 4139-4142 of the Commerce final rule under the heading *3D Printing of Firearms*.

Please also review the Court Order of March 6, 2020 in A.2 above.

Brokering Controls

Note: Commerce developed these brokering FAQs jointly with DDTC to assist public understanding of controls under the CCL and the U.S Munitions Import List (USMIL). DDTC regulates brokering under part 129 of the ITAR, and these FAQs are not intended to supplant the ITAR.

Q.33: My Category I firearm moved to the CCL as of March 9, 2020, but in reading the Commerce and State final rules I read that certain brokering controls are still applicable. Did the Commerce final rule add any brokering requirements to the EAR?

A.33: No. However, the Department of State in its proposed rule and final rule retains brokering controls for items which are now listed on the CCL that are also listed on the USMIL. BIS directs the public to review the State final rule for information on the brokering controls under the ITAR. 85 FR 3819-3820 and 3828

Q.34: My understanding is that the USML and the CCL are mutually exclusive – meaning the item is either on the USML or the CCL. Is that *not* the same for the CCL and the USMIL?

A.34: Correct, the ITAR USML and CCL are mutually exclusive control lists – meaning an item is either on the ITAR USML or on the CCL. The USMIL and the CCL are *not* mutually exclusive because the two lists overlap in certain places. As described in the Background section of the Commerce final rule, pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), *all* defense articles controlled for export or import, or that are subject to brokering controls, are part of the USML under the AECA, not just those on the ITAR USML. The list of AECA defense articles on the USMIL are those that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. *All defense articles described in the USMIL or the USML are subject to the brokering*

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controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL for purposes of export controls does *not* affect the list of defense articles controlled on the USMIL under section 38 of the AECA, 22 U.S.C. 2778, for purposes of permanent import or brokering controls.

The Department of State final rule also included additional background on brokering (see 85 FR 3819-3820). As noted above, questions on the Department of State final rule should be directed to State, including questions on the ITAR brokering requirements, but to assist public understanding, BIS included an excerpt below from the State final rule (see 85 FR 3819-3820) that provides additional context for the ITAR brokering requirements.

“Section 38(b)(1)(A)(ii) of the AECA, requires, with limited exceptions, registration of persons who engage in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President as such under section 38(a)(1) and licensing for such activities. Through Executive Order 13637, the President delegated the responsibility for registration and licensing of brokering activities to the Department of State with respect to defense articles or defense services controlled either for purposes of export by the Department of State or for purposes of permanent import by ATF. Section 129.1 of the ITAR states this requirement. As such, all defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of jurisdiction from the ITAR's USML to the EAR's CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under the AECA for purposes of permanent import or brokering controls for any brokering activity, including facilitation in their manufacture, export, permanent import, transfer, reexport, or retransfer.” 85 FR 3819-3820.

Q.35: All of the firearms my company manufactures moved to the CCL, as of March 9, 2020. I was assuming that one of the benefits of the State and Commerce final rules is that I would no longer have to register under the ITAR or require ITAR licenses or other approvals, but because my firearms will be listed on the USMIL and the CCL, does that mean I will have to register as a broker under the ITAR, as well as obtain a license from State and Commerce to export the same firearms to Germany?

A.35: Questions specific to the brokering requirements under the ITAR should be directed to the Department of State. However, with regard to this specific question and concern over imposing a dual licensing requirement, the Background section of the Commerce final rule addressed this under the heading *Brokering*, where it stated “The Department of State in its companion rule noted it does not intend to impose a double licensing requirement for individuals undertaking activities on behalf of another to facilitate a transaction that will

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require licensing by the Department of Commerce. In practical terms, this means the vast majority of exporters who only export firearms on the CCL directly from the U.S. or reexport U.S.-origin firearms on the CCL are not “brokers” and will not have to register with DDTC.” 85 FR 4143.

The Department of State final rule included a change from the proposed rule to address concerns over dual-licensing for brokering (see 85 FR 3820), when the State rule described that “[The State final rule] adds two new paragraphs, (b)(2)(vii) and (viii), to § 129.2 to update the enumerated list of actions that are not brokering. This change is a conforming change and is needed to address the transfer from the USML to the CCL of USMIL defense articles that remain subject to the brokering controls, and to ensure that the U.S. government does not impose a double licensing requirement on the export, reexport, or retransfer of such items subject to the EAR or continue to require registration with the Department solely based on activities related to the manufacture of these items.” 85 FR 3820.

The State final rule also included other references in the Background section that are set out below to assist your understanding:

- “The Department [of State] does not intend to impose a double licensing requirement for individuals undertaking activities on behalf of another to facilitate a transaction that will require licensing by the Department of Commerce. Therefore, the Department is revising the proposed § 129.2(b)(2)(vii) and adding a new (b)(2)(viii) to clarify that activities to facilitate the domestic manufacture or export of items subject to the EAR are not brokering under the ITAR and do not require authorization or registration.” 85 FR 3828.
- “The Department [of State] confirms that new provisions in § 129.2(b)(2)(vii) and (viii) apply to all items subject to the EAR, not just those that transitioned from USML Categories I, II or III, to the extent that other items subject to the EAR are also included on the USMIL. These provisions also clarify the use of the NLR designation and revise the scope of the exclusion from brokering activities to include those activities that are controlled by the Department of Commerce.” 85 FR 3828

Determining whether a particular activity is a brokering activity is determined by DDTC and such determinations are made consistent with the requirements under part 129 of the ITAR. Click [here](#) for a link to § 129.9 (*Guidance*) of the ITAR. Paragraph (a) of § 129.9 states that “Any person desiring guidance on whether an activity constitutes a brokering activity within the scope of this part 129 may request in writing guidance from the Directorate of Defense Trade Controls.”

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License Exceptions

Q.36: Did the Commerce final rule add any additional general restrictions on the use of License Exceptions under § 740.2?

A.36: Yes, the Commerce final rule added two new general restrictions under § 740.2, one under paragraph (a)(21) and a second under paragraph (a)(22). These new general restrictions apply to the following 0x5zz items and if applicable you cannot use an EAR license exception:

- **New § 740.2(a)(21)** restricts use of license exceptions, except for License Exception GOV under § 740.11(b)(2)(ii), for reexport or transfer (in-country) of certain firearms classified under 0A501 or 0A502. Restriction applies if a part or component that is not “subject to the ITAR,” but would otherwise meet criteria in USML Category I(h)(2) is incorporated into the firearm or is to be reexported or transferred (in-country) with the firearm with “knowledge” the part or component will be subsequently incorporated into the firearm.

ECA 4: Text of USML Category I(h)(2)

USML Category I(h)(2) Parts and components specially designed for conversion of a semiautomatic firearm to a fully automatic firearm.

- **New § 740.2(a)(22)** restricts use of license exceptions for any 0x5zz item when a party to the transaction is designated on the Department of the Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals and Blocked Persons (SDN) list under the designations [SDNT], or [SDNTK]. OFAC makes SDNT designations pursuant to the *Narcotics Trafficking Sanctions Regulations*, 31 CFR part 536, and SDNTK designations are made, pursuant to the *Foreign Narcotics Kingpin Sanctions Regulations*, 31 CFR part 598.

Q.37: Are ECCN 0x5zz items eligible for reexports under paragraphs (a) and (b) of License Exception APR (§ 740.16)?

A.37: No. All 0x5zz ECCNs are excluded from the use of paragraphs (a) and (b) of License Exception APR.

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License Exception LVS

Q.38: When will License Exception LVS (§ 740.3) be useful for authorizing exports, reexports, and transfers (in-country)?

A.38: License Exception LVS will be useful for authorizing certain low value shipments of commodities when it is available, but as with all EAR license exceptions there are terms and conditions that need to be met to use the license exception. License Exception LVS requirements include the following:

- limited to a specified LVS dollar value limit;
- limited to exports, reexports, and transfers (in-country) to Country Group B, although certain eligibility is limited to only Canada;
- there are criteria that need to be met for an eligible ‘order’ under License Exception LVS;
- there is a limit on the net value for LVS shipments where no single shipment may exceed the specified LVS dollar value limit;
- there are restrictions that prohibit the splitting of orders to meet the applicable LVS dollar value limit; and
- there are restrictions on annual value of LVS orders where the total value of exports per calendar year to the same ultimate or intermediate consignee of commodities classified under a single ECCN may not exceed 12 times the LVS value limit for that ECCN.

ECA 5: Cheat Sheet for License Exception LVS Eligibility for 0x5zz, 0A602 and 0B602 ECCNs

ECCN	“Items” paragraphs eligible for LVS	LVS eligible dollar value limit	Country Group B LVS eligibility (including Canada)	Canada additional LVS eligibility
0A501				
	0A501.c The following types of “parts” and “components” if “specially designed” for a commodity controlled by paragraph .a or .b of this entry, or USML Category I (unless listed in USML Category I(g) or (h)): barrels, cylinders, barrel extensions,	\$500	X	

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	<p>mounting blocks (trunnions), bolts, bolt carriers, operating rods, gas pistons, trigger housings, triggers, hammers, sears, disconnectors, pistol grips that contain fire control “parts” or “components” (e.g., triggers, hammers, sears, disconnectors) and buttstocks that contain fire control “parts” or “components.”</p> <p>0A501.d Detachable magazines with a capacity of greater than 16 rounds “specially designed” for a commodity controlled by paragraph .a or .b of this entry.</p> <p>0A501.x “Parts” and “components” that are “specially designed” for a commodity classified under paragraphs .a through .c of this entry or the USML and not elsewhere specified on the USML or CCL.</p>			
	<p>0A501.e Receivers (frames) and “complete breech mechanisms,” including castings, forgings stampings, or machined items thereof, “specially designed” for a commodity controlled by paragraph .a or .b of this entry</p> <p><i>Note: LVS eligible <u>only</u> if the ultimate destination is Canada.</i></p>	\$500		X
0A502				
	Shotgun “parts” and “components,” consisting of complete trigger mechanisms; magazines and magazine extension tubes	\$500	X	
	<p>Complete breech mechanisms</p> <p><i>Note: LVS eligible <u>only</u> if the ultimate destination is Canada.</i></p>	\$500		X
0A504				
	0A504.g	\$500		

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	Lenses, other optical elements and adjustment mechanisms for articles in paragraphs .a, .b, .c, .d, .e, or .i.			
OA505				
	OA505.x “Parts” and “components” that are “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category III and not elsewhere specified on the USML, the CCL or paragraph .d of this entry.	\$500	X	
	OA505.x (formerly OA018.b) Commodities that, immediately prior to March 9, 2020, were classified under OA018.b. (i.e., “Specially designed” components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are “subject to the ITAR”). (See 22 CFR parts 120 through 130))	\$3,000	X	
OA602	<i>Note: Entire entry is LVS eligible.</i>			
	OA602.a Guns and armament manufactured between 1890 and 1919. OA602.b Military flame throwers with an effective range less than 20 meters. OA602.x “Parts” and “components” that are “specially designed” for a commodity subject to control in paragraphs .a or .b of this ECCN or a defense article in USML Category II and not elsewhere specified on the USML or the CCL.	\$500	X	
OB501	<i>Note: Entire entry is LVS eligible.</i>			
	OB501.a Small arms chambering machines.	\$3,000	X	

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	<p>OB501.b Small arms deep hole drilling machines and drills therefor.</p> <p>OB501.c Small arms rifling machines.</p> <p>OB501d Small arms spill boring machines.</p> <p>OB501.e Production equipment (including dies, fixtures, and other tooling) “specially designed” for the “production” of the items controlled in OA501.a through .x. or USML Category I.</p>			
OB505	<i>Note: Entire entry is LVS eligible.</i>			
	<p>OA505.a Production equipment (including tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment), not enumerated in USML Category III that are “specially designed” for the “production” of commodities controlled by ECCN OA505.a or .x or USML Category III.</p> <p>OB505b Equipment “specially designed” for the “production” of commodities in ECCN OA505.b.</p> <p>OB505c Equipment “specially designed” for the “production” of commodities in ECCN OA505.c.</p> <p>OB505.d Equipment “specially designed” for the “production” of commodities in ECCN OA505.d.</p> <p>OB505.x “Parts” and “components” “specially designed” for a commodity subject to control in paragraph .a of this entry.</p>	\$3,000	X	

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OB602	Note: Entire entry is LVS eligible.			
	<p>OB602.a The following commodities if “specially designed” for the “development” or “production” of commodities enumerated in ECCN 0A602.a or USML Category II:</p> <ul style="list-style-type: none"> a.1. Gun barrel rifling and broaching machines and tools therefor; a.2. Gun barrel rifling machines; a.3. Gun barrel trepanning machines; a.4. Gun boring and turning machines; a.5. Gun honing machines of 6 feet (183 cm) stroke or more; a.6. Gun jump screw lathes; a.7. Gun rifling machines; and a.8. Barrel straightening presses. <p>OB602.b Jigs and fixtures and other metal-working implements or accessories of the kinds exclusively designed for use in the manufacture of items in ECCN 0A602 or USML Category II.</p> <p>OB602.c Other tooling and equipment, “specially designed” for the “production” of items in ECCN 0A602 or USML Category II.</p> <p>OB602.d Test and evaluation equipment and test models, including diagnostic instrumentation and physical test models, “specially designed” for items in ECCN 0A602 or USML Category II.</p>	\$3,000	X	

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ECA 6: *Decision Tree Tool for Determining LVS Eligibility*

Decision Tree Tool for License Exception LVS (§ 740.3)

Note 1: *The Decision Tool for License Exception LVS is based on the assumption that you have:*

- (1) determined your commodity is “subject to the EAR;” and*
- (2) determined your export, reexport, or transfer (in-country) requires an EAR authorization.*

Note 2: *The Decision Tool for License Exception LVS is not intended to replace your reviewing the criteria of License Exception LVS and other EAR provisions as applicable and is provided here as a guide to assist understanding of when this license may be available and useful to exporters, reexporters, and transferors.*

Question A:

Is the 0x5zz commodity or “600 series” commodity identified as being eligible for License Exception LVS in the *List Based License Exceptions* section of the ECCN you are planning to export, reexport, or transfer (in-country)?

- If yes, proceed to question B.
- If no, License Exception LVS is not available because that commodity has no list based eligibility for LVS as stated in the ECCN.

QUESTION B:

Have you received an ‘order’ for this commodity that is no greater than the LVS dollar value limit specified in the ECCN you are planning to export, reexport, or transfer (in-country)?

For example, if you are planning to export buttstocks that contain fire control “parts” controlled under 0A501.c the LVS eligibility is \$500, so the “order” may not exceed \$500.

- If yes, proceed to question C. (**CAUTION:** Splitting ‘orders’ in order to stay within the LVS dollar value limit is prohibited under License Exception LVS.)
- If no, License Exception LVS is not available because the “order” exceeds the applicable LVS dollar value limit.

QUESTION C:

Is the export, reexport, or transfer (in-country) subject to one of the general restrictions in § 740.2? For example, if you are exporting to someone on the BIS Unverified List in

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Supplement No. 6 to part 744, you will not be able to use any EAR license exception, including License Exception LVS.

- If yes, License Exception LVS is not available because one of the general restrictions in § 740.2 restricts the use of LVS.
- If no, proceed to question D.

QUESTION D:

CANADA SPECIFIC QUESTION (for additional LVS eligibility only available for Canada)

Is the commodity a receiver (frame) or “complete breach mechanism,” including castings, forgings stampings, or machined items thereof, “specially designed” for a commodity controlled by paragraph .a or .b of ECCN 0A501 controlled under 0A501, or a complete breach mechanism controlled under 0A502, that you are planning to export, reexport, or transfer (in-country) to Canada?

- If yes, proceed to Question F.
- If your commodity is described in Question D, but the export, reexport, or transfer (in-country) is not to Canada, then License Exception LVS is not available because the LVS eligibility for these commodities is limited to Canada.
- If your commodity is not described in Question D, proceed to Question E to determine whether LVS eligibility for your ECCN that applies to all of Country Group B, including Canada, may be available for your commodity.

QUESTION E:

COUNTRY GROUP B (for LVS eligibility for all of Country Group B, including Canada)

Is the country you are planning to export, reexport, or transfer (in-country) to identified in Country Group B in Supplement No. 1 to part 740?

- If no, License Exception LVS is not available because the license exception is only available for Country Group B countries.
- If yes, proceed to Question F.

QUESTION F:

During the current calendar year, have you received any ‘orders’ from this same entity (including natural persons) where you used License Exception LVS to authorize an export, reexport, or transfer (in-country) commodities classified under this ECCN entry to the same ultimate consignee?

- If yes, proceed to Question G.
- If no, the export, reexport, or transfer (in-country) may be authorized under License Exception LVS.

QUESTION G: During the current calendar year, has the net dollar value of ‘orders’ exported, reexported, or transferred (in-country) to this same ultimate consignee exceeded 12 times the LVS dollar value limit for your commodity as identified under the *List Based License Exceptions* section of the ECCN?

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- If yes, the export, reexport, or transfer (in-country) may not be authorized under License Exception LVS because the transaction will exceed the maximum annual value of LVS orders.
- If no, the export, reexport, or transfer (in-country) may be authorized under License Exception LVS.

Note: Use of License Exception LVS also requires complying with all applicable EAR export clearance requirements, reporting requirements, and recordkeeping requirements.

Q.39: What is considered an ‘order’ under License Exception LVS (§ 740.3)?

A.39: The term ‘order’ as used in § 740.3 means a communication from a person in a foreign country, or that person’s representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

Q.40: Is it permissible to split an ‘order’ to meet the applicable LVS dollar value limits?

A.40: No, it is not. An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However, an order that meets all the LVS eligibility requirements, including the applicable LVS dollar value limit, may be split among two or more shipments. For example, if a customer in Japan places an order with a U.S. shotgun parts and components manufacturer for \$500 worth of complete trigger mechanisms, but the U.S. exporter only has half of the order currently in stock, it is permissible for the U.S. exporter to fulfill the ‘order’ with more than one shipment, such as making one shipment for \$300 today and next week making a subsequent shipment of \$200 to complete fulfilling the ‘order.’

Q.41: I understand that the annual value restriction is twelve times the LVS dollar value limit specified in the ECCN, but is there a limit on the total number of ‘orders’ that I can have from the same ultimate consignee over the twelve-month period?

A.41: There is not a specified limit for the total number of ‘orders’ you may receive from an ultimate consignee. However, the net value of the “orders” over each calendar year with that ultimate consignee may not exceed twelve times the LVS dollar value limit. For example, under ECCN 0A501 for the commodities that are eligible there is a \$500 LVS dollar value limit, so an exporter could receive a net total of ‘orders’ up to \$6,000 in a calendar year from an ultimate

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consignee. The exporter, reexporter, or transferor is responsible for keeping track of how many exports, reexports, or transfers (in-country) are being made to each ultimate consignee and ensuring that the annual value of LVS 'orders' does not exceed the 12 times the LVS value for that ECCN for each respective ultimate consignee.

Q.42: If I have more than one 'order' from the same ultimate consignee, is it permissible to export, reexport, or transfer (in-country) all of those orders in a single shipment exported on the same day?

A.42: Yes, an eligible shipment may include more than one order, provided the net value for the single shipment does not exceed the applicable LVS dollar value(s) for the commodities being authorized for export, reexport, or transfer (in-country) under License Exception LVS.

Q.43: When determining whether License Exception LVS can apply to an export, do you consider the value of the commodities at the ECCN level, e.g., 0A501, or the ECCN "items" level, e.g., 0A501.c? For example, if an order includes two commodities - one commodity under the order is controlled under ECCN 0A501.c and one commodity under the order is controlled under 0A501.x. Do we apply the LVS value of \$500 to the 0A501.c commodity, and apply \$500 to the 0A501.x commodity? Or does the \$500 apply to the two 0A501 commodities on the order?

A.43: License Exception LVS under § 740.3 of the EAR authorizes the export, reexport, and transfer (in-country) in a single shipment of eligible commodities as identified by *LVS - \$(value limit)* on the CCL. An order is eligible for shipment under LVS when the "net value" of the commodities controlled *under the same entry* on the CCL does not exceed the amount specified in the LVS paragraph for that entry. An LVS shipment may include more than one eligible order. The phrase *commodities controlled under the same entry on the CCL* means all items classified under the same ECCN, regardless of the items level classification. Therefore, the LVS dollar value is based off the ECCN classification – not the items level classification.

Paragraph (d)(2)(Restriction on annual value LVS orders) uses more precise text that helps provide the answer to the meaning of the less precise text used in other parts of License Exception LVS. Paragraph (d)(2) specifies the annual value restriction applies to commodities *classified under a single ECCN*. Therefore, in your example of 0A501.c and .x, the eligible 'order' for each shipment authorized under License Exception LVS must not exceed \$500 at the ECCN level (0A501).

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Q.44: Is it permissible under License Exception LVS to mix items level paragraphs in one ECCN under an eligible LVS order?

A.44: Yes, that is permissible under License Exception LVS provided the net value of the different items level paragraphs do not exceed the applicable LVS dollar value identified in the ECCN. For example, under ECCN 0A501 LVS eligibility, an exporter may receive an order for \$500. The \$500 order consists of \$250 of magazines controlled under ECCN 0A501.d and \$250 of barrel extrusions controlled under 0A501.c. The exporter may use License Exception LVS to authorize the export, reexport or transfer (in-country), provided none of the general restrictions in § 740.2 apply and the export, reexport or transfer (in-country) meets the other applicable requirements of License Exception LVS. Mixing items level paragraphs in one ECCN that exceed the LVS dollar value is *not* permissible under License Exception LVS.

Q.45: How can I address License Exception LVS when two or more LVS dollar value limits apply?

A.45: An ‘order’ may include commodities that are controlled under more than one ECCN on the CCL (meaning classified under two or more different ECCNs on the CCL that are eligible for LVS). In this case, the net value of the entire ‘order’ may exceed the LVS dollar value for any single ECCN on the CCL. However, the net value of the commodities controlled under each ECCN shall not exceed the LVS dollar value limit specified for that ECCN. For example, an order includes ECCN 0x5zz commodities valued at \$500. The order consists of commodities controlled under two 0x5zz ECCNs, each having an LVS value limit of \$500. Commodities in the order controlled under ECCN 0A501.x are valued at \$500 while those controlled under ECCN 0A502 are valued at \$500. Since the net value of the commodities controlled under *each* ECCN falls within the LVS dollar value limits applicable to that ECCN entry (*i.e.*, ECCN 0A501 and 0A502, respectively), the order may be shipped under License Exception LVS.

License Exception BAG

(§ 740.14)

Q.46: How many ECCN 0A501 firearms and ECCN 0A505 rounds of ammunition may be exported under License Exception BAG (§ 740.14)?

A.46: A United States citizen or a permanent resident alien leaving the United States may export under License Exception BAG firearms, “parts,” “components,” “accessories,” or “attachments” controlled under ECCN 0A501 and ammunition controlled under ECCN 0A505.a, but not more than three firearms and 1,000 rounds of ammunition may be taken on any one trip. The export would also be subject to additional limitations in paragraph (e)(3)(ii)-(v).

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Under paragraph (e)(4), a nonimmigrant alien leaving the United States may export or reexport under this License Exception only such firearms controlled under ECCN 0A501 and ammunition controlled under ECCN 0A505 as he or she brought into the United States under the relevant provisions of Department of Justice regulations at 27 CFR part 478.

Q.47: If a foreign person is in the United States on vacation or for business and purchases a firearm controlled under ECCN 0A501 or ammunition controlled under 0A502, could License Exception BAG be used to authorize the export when the foreign person returns to their country?

A.47: No. License Exception BAG would not be available for that type of an export. In that fact pattern, the foreign person would likely need to obtain a BIS license to authorize the export of the firearm. The purchase and use of a firearm in the United States must comply with any applicable ATF regulations.

Q.48: Are there additional requirements that I need to follow at the time of export under License Exception BAG (§ 740.14)?

A.48: Yes, there are additional limitations that are specified in paragraphs (e)(3)(i)-(v). The following table provides a high-level summary of these additional limitations, along with a more detailed summary.

ECA 7: Cheat Sheet for License Exception BAG

High level summary	More detailed summary with § 740.14(e)(3)(i)-(v) references
<p>No more than:</p> <ul style="list-style-type: none"> • 3 firearms and • 1,000 rounds of ammunition 	<p>Not more than 3 firearms and 1,000 rounds of ammunition may be taken on any one trip. (See (§ 740.14(e)(3)(i)).</p>
<p>PCAs must be of a kind and in quantities reasonable for:</p> <ul style="list-style-type: none"> • person’s exclusive use, <u>or</u> 	<p>“Parts,” “components,” “accessories,” and “attachments” (PCAs) exported must be of a kind and limited to quantities that are reasonable for the person’s exclusive use <u>or</u> that are</p>

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<ul style="list-style-type: none"> necessary for routine maintenance of firearms exported under BAG 	<p>necessary for routine maintenance of the firearms being exported. (See § 740.14(e)(3)(ii)).</p>
<ul style="list-style-type: none"> Must be exported with person's baggage 	<p>Commodities must be with the person's baggage (may not be mailed). (See § 740.14(e)(3)(iii)).</p>
<ul style="list-style-type: none"> For person's exclusive use, Not for resale or transfer, Not permanently exported, <i>and</i> Ultimately returned to U.S., unless ammunition used, or authorized under (e)(4). 	<p>Commodities must be for person's exclusive use and not for resale or other transfer of ownership or control and may not be exported permanently, except as provided in paragraph (e)(4). All firearms, "parts," "components," "accessories," or "attachments" controlled under ECCN 0A501 and all unused ammunition controlled under ECCN 0A505.a must be returned to the United States, except as provided in paragraph (e)(4). (See § 740.14(e)(3)(iv) and (e)(4)).</p>
<p>CBP requirements prior to departure:</p> <ul style="list-style-type: none"> Declare items to CBP, Present items to CBP for inspection, <i>and</i> Confirm eligibility/compliance under BAG. 	<p>Travelers leaving the United States temporarily are required to:</p> <ul style="list-style-type: none"> declare firearms, "parts," "components," "accessories," "attachments," and ammunition being exported to a Customs and Border Protection (CBP) officer prior to departure from the United States, present such items to the CBP officer for inspection, <i>and</i> confirm that the authority for the export is License Exception BAG and that the exporter is compliant with its terms. <p>(See § 740.14(e)(3)(v)).</p>

Q.49: Do these additional requirements in § 740.14(e)(3)(i)-(v) apply regardless of the mode of transportation that I use to export my firearm and ammunition? For example, if instead of using a common carrier, e.g., an airline, train or bus, I use my personal vehicle to export the firearms and ammunition across the Canadian or Mexican border am I still required to meet the same additional requirements?

A.49: Yes. The additional requirements apply regardless of the mode of transportation used to export the firearm or ammunition. The additional requirements would also apply to

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someone walking across the border to Canada or Mexico or sailing to Bermuda with firearms or ammunition being authorized under License Exception BAG.

Q.50: Am I responsible for bringing back to the United States the ECCN 0A501 firearms and 0A505 ammunition that I exported under License Exception BAG?

A.50: Yes, ECCN 0A501 firearms and 0A505 unused ammunition must be returned to the United States if exported under License Exception BAG. If the items are to be permanently exported, except for used ammunition, another EAR authorization will be required to authorize the permanent export, *e.g.*, a BIS license.

As specified in paragraph (e)(3)(iv) of License Exception BAG, the commodities must be for the person's exclusive use and *not* for resale or other transfer of ownership or control. Firearms, "parts," "components," "accessories," "attachments," and ammunition, may not be exported permanently under License Exception BAG, except as provided in paragraph (e)(4) (an authorization for a nonimmigrant alien leaving the United States). All firearms, "parts," "components," "accessories," or "attachments" controlled under ECCN 0A501 and all unused ammunition controlled under ECCN 0A505.a exported under License Exception BAG must be returned to the United States. The only exception to that requirement is paragraph (e)(4) of License Exception BAG that authorizes a nonimmigrant alien leaving the United States to export or reexport only such firearms controlled under ECCN 0A501 and ammunition controlled under ECCN 0A505 as he or she brought into the United States under the relevant provisions of Department of Justice regulations at 27 CFR part 478.

Q.51: What if I was planning to live overseas for two years and had brought one firearm with me that had been authorized under License Exception BAG, but I no longer have time for competitive shooting after one year of living overseas, so I have decided to sell the firearm to someone in that foreign country. Is this permissible under the EAR and what would I need to do in order to transfer (in-country) the firearm to another person?

A.51: You will need another EAR authorization to authorize the transfer (in-country) or reexport in that fact pattern. In that fact pattern, it would be highly unlikely that another EAR license exception would be available, except possibly License Exception GOV under paragraphs (b)(2)(i) and (ii), so most likely you would need to apply for and obtain a BIS license prior to transferring (in-country) or reexporting that firearm.

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Q.52: I understand that I am responsible for returning the firearm to the United States that was exported under License Exception BAG. I intend to return the firearm to the United States, but what happens if the firearm is stolen while I am out of the United States? What do I need to do in that situation?

A.52: To avoid this type of situation, you should take reasonable steps to maintain effective control of the firearm while you are outside of the United States. Before using License Exception BAG you should evaluate whether you will be able to maintain effective control of the firearm while outside the United States and develop your own compliance plan for what safeguards you will take to ensure effective control of the firearm.

BIS realizes that even with the best efforts to safeguard a firearm or other item, that sometimes things can get stolen or lost. If this occurs, you will be in violation of the terms of License Exception BAG, so it is important that you document as much as possible the theft or how the firearm was lost. For example, filing a police and/or hotel report that documents that you reported the firearm stolen are ways to start documenting what occurred. Contacting BIS's Office of Export Enforcement (OEE) to inform them of the loss of the firearm is also advisable to document with BIS that the terms of License Exception BAG were not complied with, and try to establish that you were not the party that was responsible for violating the terms of License Exception BAG. If the firearm was lost, the specifics of how the firearm was lost will be important.

License Exception TMP

(§ 740.9)

Q.53: Is License Exception TMP under § 740.9 paragraph (a) available for firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502?

A.53: Yes, for certain destinations, but only paragraphs (a)(5) (*Exhibition and demonstration*) and (a)(6) (*Inspection, test, calibration, and repair*) of paragraph (a) of License Exception TMP are available for firearms controlled under ECCN 0A501.a or .b, or for shotguns with a barrel length less than 18 inches controlled under ECCN 0A502. Paragraph (a) of License Exception TMP does not authorize any export or reexport of firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18" controlled under ECCN 0A502 *to, or any export of such an item that was imported into the U.S. from, a country in D:5, or from Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan.*

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Q.54: Is there a limit on the quantity of firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502 that may exported under License Exception TMP under paragraphs (a)(5) and (a)(6)?

A.54: Yes, there is a limit. Paragraph (a)(5) and (a)(6) of License Exception TMP may not be used to export more than 75 firearms per shipment.

Q.55: Are the other items controlled under 0x5zz ECCNs also limited to paragraphs (a)(5) and (a)(6) as the only paragraph (a) authorizations being available under License Exception TMP?

A.55: No. The other items controlled under 0x5zz ECCNs, (*i.e.*, any 0x5zz item other than firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502) may be eligible for the other authorizations under § 740.9(a), provided none of the general restrictions in § 740.2 apply and all of the applicable terms and conditions of that particular paragraph of License Exception TMP are met.

Q.56: My company provides maritime cargo transport services, including in certain waters that are known danger spots for pirating activities. In order to defend against possible pirate attacks my company provides the crew on these vessels with ten firearms that are classified under ECCN 0A501.a. The crew will maintain effective control of the ECCN 0A501.a firearms, and the firearms will be returned to the United States within one year. Based on the answers above, is my understanding correct that the tools of trade authorization of License Exception TMP under paragraph (a)(1) (*Tools of trade*) is *not* available to authorize this export?

A.56: Your understanding is correct. Firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502 are *not* eligible for the tools of trade authorization under License Exception TMP. A license would be required to authorize this type of an export. In applying for a license for such an export, including a letter of explanation that explains the need for your people to have these firearms onboard and highlighting that the crew will maintain effective control of the firearms and the firearms will be returned to the United States are helpful things to highlight in the license application. You may also highlight in such an application why you believe such an export is consistent with U.S. national security and foreign policy objectives, *e.g.*, highlighting that you believe that these firearms onboard may help reduce the chance of the ship's crew being taken captive. You may also include whether the same types of transactions had been authorized previously under ITAR.

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Q.57: Are there any additional export clearance requirements that need to be complied with for exports of firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502 when using License Exception TMP?

A.57: Yes, in accordance with the requirements in § 758.1(b)(9) and (g)(4)(i) of the EAR, the exporter or its agent must provide documentation that includes the serial number, make, model, and caliber of each firearm being exported by filing these data elements in an EEI filing in AES for exports authorized under License Exception TMP under paragraphs (a)(5) or (6).

Q.58: Is License Exception TMP under paragraph (b)(5) available to authorize the export of firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502 that were imported temporarily into the U.S.?

A.58: Yes, License Exception TMP under paragraph (b)(5) (*Exports of firearms and certain shotguns temporarily in the United States*) is available to authorize certain exports of firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502. Paragraph (b)(5) authorizes the export of *no* more than 75 firearms per shipment controlled by 0A501.a or .b, or shotguns with a barrel length less than 18" in 0A502 temporarily in U.S. for a period *not* exceeding one year, provided:

- *Not* shipped from or manufactured in D:5; and
- *Not* shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, except for any firearm model that is specified under Annex A in Supplement. No. 4 to part 740.
- *Not* ultimately destined to D:5 or Russia; and
- When firearms entered U.S. as a temporary import, temporary importer or its agent must have done the following:
 - Provided the following statement to U.S. Customs and Border Protection (CBP):
“This shipment will be exported in accordance with and under the authority of License Exception TMP (15 CFR 740.9(b)(5));”
 - Provided to CBP an invoice or other appropriate import-related documentation (or electronic equivalents) that includes complete list and description of firearms being temporarily imported, including their model, make, caliber, serial numbers, quantity, and U.S. dollar value; *and*
 - Provided (if temporarily imported for trade show, exhibition, demonstration, or testing) to CBP relevant invitation or registration documentation for event *and*

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an accompanying letter that details arrangements to maintain effective control of firearms while in U.S.

- The exporter or its agent must provide import documentation to CBP at the time of import also to CBP at time of export.

Q.59: Are there additional requirements for firearms that enter the United States as a temporary import for subsequent export under License Exception TMP under paragraph (b)?

A.59: Yes. Paragraph (b)(5) imposes additional requirements that need to be met for firearms under 0A501.a and .b that are imported for subsequent export under License Exception TMP.

License Exception RPL

(§ 740.10)

Q.60: If I exported an ECCN 0A501.a firearm to Australia under a BIS license and subsequently I need to send a replacement component for use in the firearm, is there an EAR license exception that may be available?

A.60: License Exception RPL under § 740.10 is a transaction based license exception that may be available in this fact pattern, provided the export is not restricted under § 740.2 and meets the applicable requirements under paragraph (a) of License Exception RPL. Paragraph (a) authorizes the export and reexport of one-for-one replacement parts, components, accessories, and attachments for previously exported equipment or other end items. In order to use License Exception RPL under paragraph (a), the replacement component must not improve or change the basic design characteristics, *e.g.*, as to accuracy, capability, performance or productivity, of the firearm upon which they will be installed.

Q.61: As a follow up to Q.60, if the scenario was the same, but this time instead of sending a replacement component to the person that bought the firearm in Australia, the person in Australia will temporarily return the firearm to me in the United States for repair and servicing. After repairing and servicing, I will export the item back to the person in Australia. Is License Exception RPL available to authorize that type of a transaction?

A.61: Yes, License Exception RPL under § 740.10 may be available in that type of fact pattern to authorize the export, provided the export is not restricted under § 740.2 and meets the applicable requirements under paragraph (b) of License Exception RPL. The export of firearms controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches

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controlled in ECCN 0A502 temporarily in the United States for servicing and replacement may be exported under paragraph (b)(2) or (3) of this section only if the additional requirements in paragraph (b)(4) of this section are also met. See § 758.10 for the entry clearance requirements that would need to be met for a temporary import for subsequent export under License Exception RPL.

License Exception GOV

(§ 740.11)

Q.62: Are firearms controlled under ECCN 0A501.a, or .b, eligible for License Exception GOV?

A.62: Yes, but only for paragraphs (b)(2)(i) and (ii) of the United States Government authorization. No other authorizing paragraphs of License Exception GOV are available for commodities listed in ECCN 0A501.

Q.63: Are other 0x5zz items, (i.e., 0x5zz items other than those controlled under ECCN 0A501), eligible for License Exception GOV? For example, are paragraph (c) (Cooperating Governments and the North Atlantic Treaty Organization) and other authorizing subparagraphs of (b)(2) of the United States Government authorization under License Exception GOV available?

Q.63: Other 0x5zz items, *e.g.*, ammunition controlled under ECCN 0A505, are eligible for other authorizing paragraphs under License Exception GOV, including paragraph (c) and (b)(2)(iii), provided the export, reexport, or transfer (in-country) is *not* restricted under any of the general restrictions in § 740.2 and meets all of the applicable requirements of that authorization under License Exception GOV under § 740.11.

Q.64: Can License Exception GOV under paragraph (b)(2)(ii) be used to authorize the export of pistols controlled under ECCN 0A501.a to a contractor providing security at a U.S. Government facility outside the United States?

A.64: No. Private security contractors are not ‘contractor support personnel’ for purposes of paragraph (b)(2)(ii) of License Exception GOV under § 740.11 because although they may work within a U.S. Government owned or operated facility, such contractors do not provide administrative, managerial, scientific or technical support under contract to the U.S. Government. A BIS license would be required. In the license application it would be helpful to include a letter of explanation that describes how the contractors are providing security for a U.S. Government facility outside the United States, including any documentation, *e.g.*, a

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contractor with the U.S. Government that establishes there is such a contractual relationship in place with the U.S. Government to provide such security services.

License Exception STA

(§ 740.20)

Note 1: *The Commerce final rule revised License Exception STA to make firearms under OA501 and most “parts,” “components,” “accessories,” and “attachments” under OA501 not eligible for STA. Only “parts,” “components,” “accessories,” and “attachments” under OA501.x are eligible for STA.*

Note 2: *The Commerce final rule revised License Exception STA to make shotguns with barrel length less than 18 inches controlled under OA502 not eligible for STA.*

Q.65: I understand that License Exception STA is not a list based license exception, but how do I determine whether my ECCN is excluded from or eligible for STA?

A.65: You are correct that License Exception STA is not a list based license exception. In order to determine if the item or your country group is excluded from License Exception STA, you will need to clear three regulatory hurdles before determining your item and country group is eligible for License Exception STA.

- The first hurdle that needs to be cleared is to review the ECCN and determine if your item is excluded under the *Special Conditions for STA* section of the ECCN. The *Special Conditions for STA* section of the ECCN may also exclude country groups, which is typically an exclusion for Country Group A:6 when applicable.
- The second hurdle that needs to be cleared is reviewing § 740.2. License Exception STA may not be used if any of these general restrictions apply to the export, reexport, or transfer (in-country). For the “600 series” ECCNs in the Commerce final rule (OA602, OB602, OD602 and OE602), § 740.2(a)(13) excludes Country Group A:6 from the use of License Exception STA for all “600 series” items.
- The third hurdle that needs to be cleared is reviewing § 740.20(b)(2) (*Limitations on use of License Exception STA*). Paragraph (b)(2) includes a large number of ECCN specific exclusions when License Exception STA is not available to authorize an export, reexport, or transfer (in-country). Almost all of these exclusions in (b)(2) apply to all of STA – meaning they exclude Country Groups A:5 and A:6. Paragraph (b)(2)(ii)(A) and (B) include exclusions for OA501.a, .b, .c, .d, or .e, OA503, OE503 and shotguns with barrel

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length less than 18 inches controlled in 0A502, so none of License Exception STA is available for those 0x5zz items.

BIS has included the following table, **Cheat Sheet for License Exception STA Eligibility for 0x5zz and 0A602, 0B602, 0D602, and 0E602**, that reflects the results of the analysis for reviewing the three hurdles referenced above for the 0x5zz and 0A602, 0B602, 0D602 and 0E602 ECCNs. BIS includes this information to assist your understanding of when License Exception STA may be available.

ECA 8: Cheat Sheet for License Exception STA Eligibility for 0x5zz and 0A602, 0B602, 0D602, and 0E602

Note: In order to use License Exception STA, the item would need to be “subject to the EAR,” and the export, reexport, or transfer (in-country) would need to not be restricted under § 740.2 and meet all of the applicable terms and conditions of License Exception STA under § 740.20.

Excluded from License Exception STA	
0x5zz items excluded from STA based on § 740.20(b)(2)(ii).	<ul style="list-style-type: none"> • 0A501.a, .b, .c, .d, .e • 0A503 • 0E504 • Shotguns with barrel length less than 18 inches controlled in 0A502
Country Group A:6 excluded from STA based on the <i>Special Conditions for STA</i> sections in the 0x5zz and “600 series” (0A602, 0B602, 0D602, 0E602) ECCNs.	<ul style="list-style-type: none"> • 0A501 • 0A505 • 0A602 (<i>Also excluded because of § 740.2(a)(13)</i>) • 0B501 • 0B505 • 0B602 (<i>Also excluded because of § 740.2(a)(13)</i>) • 0D501 • 0D505 • 0D602 (<i>Also excluded because of § 740.2(a)(13)</i>) • 0E501 • 0E505 • 0E602 (<i>Also excluded because of § 740.2(a)(13)</i>)
Eligible for License Exception STA for Country Group A:5	
0z5zz and “600 series” (0A602, 0B602, 0D602, 0E602) items	<ul style="list-style-type: none"> • 0A501.x (<i>Not eligible for Canada and Argentina because of the FC control</i>)

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<p>eligible for STA for Country Group A:5.</p>	<ul style="list-style-type: none"> • Shotguns with barrel length 18 inches or over in 0A502 (<i>Not eligible for Canada and Argentina because of the FC control</i>) • 0A504 (<i>Not eligible for Canada and Argentina because of the FC control for 0A504.a, .b, .c, .d, .e, .g, and .i</i>) • 0A505 (<i>Not eligible for Canada and Argentina because of the FC control</i>) • 0B501 • 0B505 • 0D501 • 0D505 • 0E501 • 0E502 • 0E505 • 0A602 • 0B602 • 0D602 • 0E602
<p>Eligible for License Exception STA for Country Group A:5 and A:6</p>	
<p>0z5zz items eligible for STA for Country Group A:5 and A:6.</p>	<ul style="list-style-type: none"> • Shotguns with barrel length 18 inches or over in 0A502 (<i>Not eligible for Canada and Argentina because of the FC control</i>) • 0A504 • 0E502

Q.66: Can License Exception STA be used to authorize the export, reexport, or transfer (in-country) of ECCNs 0A501.x or 0A505 commodities that are controlled for the Firearms Convention (FC)?

A.66: No.

Q.67: Reviewing the table above for License Exception STA availability, it appears there is very limited License Exception STA eligibility for ECCN 0A501. Am I understanding the table correctly that no end-item firearms under ECCN 0A501.a or .b are eligible for License Exception STA and the only parts and components that are eligible for License Exception STA are those controlled under 0A501.x?

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A.67: You are understanding the table correctly. License Exception STA for ECCN 0A501 is only available for the parts and components under 0A501.x. No other commodities controlled under ECCN 0A501 are eligible for License Exception STA.

Q.68: Does the *Note to paragraph (c)(1)* of License Exception STA also apply for items in 0x5zz ECCNs or is that note limited to “600 series” items?

A.68: The *Note to paragraph (c)(1)* is only required for the “600 series.” It is *not* required for the 0x5zz items that are eligible for License Exception STA, or for any other items that may be eligible for License Exception STA that are *not* in the “600 series,” *e.g.*, 9x515 spacecraft related items.

Licensing Process

Q.69: Under the BIS licensing system, do I have to apply for licenses based only on the quantities in the purchase order, or can I apply for higher quantities? Do I have to include a copy of the purchase order with the license application?

A.69: You do not need to include a purchase order with your export application. However, BIS advises you to provide sufficient rationale of the quantity requested to be exported – this can include past purchasing history and anticipated or projected sales. BIS export licenses are valid for a four-year timeframe, so it is recommended that an application include future sales to cover future customer orders.

Q.70: Because of the great variety of firearm models and configurations for a particular model family, what specific information do I need to put on the license application to describe the firearm?

A.70: Sufficient details are required so that the BIS Licensing Officer can confirm that the ECCN is correct. However, the exporter should include a number of configurations – caliber, barrel length, metal finish, and other specifics in the commodity description – to allow sufficient flexibility for sales to a commercial market. Purchase orders and manufacturing serial numbers are *not* required in advance to receive an export license.

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Conventional Arms Reporting

Q.71: What items are subject to conventional arms reporting?

A.71: In § 743.4 (Conventional arms reporting), as specified in paragraphs (c)(1)(i) and (c)(2)(i), ECCN 0A501.a and .b are commodities that require Wassenaar Arrangement reporting and United Nations reporting under this conventional arms reporting section of the EAR.

Q.72: Instead of making semi-annual reports to BIS for the conventional arms reporting is there any alternative method for submitting this same information to BIS that may be less burdensome?

A.72: Yes, an exporter will have two options for submitting the required information needed for the conventional arms reporting. The first method is referred to as the standard method whereby the exporter is required to submit semi-annual reports to BIS following the requirements of § 743.4. The second method is referred to as the alternative method and is specified in §§ 743.4(h) and 758.1(g)(4)(ii). If the exporter follows the requirements specified in § 743.4 for the alternative submission method described in new paragraph (h) (*Alternative submission method*), that separate reporting does not need to be made to BIS for purposes of § 743.4. Because of the EEI filing requirements in AES in new § 758.1(g)(4)(ii) for the firearms that require conventional arms reporting, all conventional arms reporting requirements for firearms should be able to be met by using the alternative submission method.

Q.73: If an exporter prefers to use the standard method instead of the alternative method for submitting the semi-annual conventional arms reports is that permissible under the EAR?

A.73: BIS was anticipating based on the comments received on the Commerce proposed rule that all exporters would prefer the alternative submission method under § 743.4(h). If the exporter prefers to use the standard method for submitting the semi-annual reports that is permissible, and then the information in § 758.1(g)(4)(ii) would not be required to be reported in the EEI filing in AES.

Q.74: I do not see BIS licenses referenced in § 743.4. Do exports of ECCN 0A501.a and .b commodities authorized under BIS licenses also require Wassenaar Arrangement reporting and United Nations reporting under this conventional arms reporting section of the EAR. If it does require reporting, how will BIS obtain the information needed for this reporting and why were BIS licenses not referenced in § 743.4?

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A.74: Exports of ECCN 0A501.a and .b commodities authorized under BIS licenses require Wassenaar Arrangement and United Nations conventional arms reporting. BIS will be able to obtain this information using the BIS licensing system data, so no separate reporting is required by exporters for BIS to be able to collect the necessary information BIS needs for compiling the semi-annual reports to the Wassenaar Arrangement and United Nations for conventional arms reporting.

Export Clearance Requirements

Note: As specified in § 758.3(a) (Export transactions), “The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.”

Q.75: Are there any additional export clearance requirements that are applicable to 0x5zz³ ECCNs?

A.75: Yes, there are additional export clearance requirements that are applicable to certain 0x5zz ECCNs. Specifically, for firearms controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c, there are additional export clearance requirements that are only applicable to those commodities.

Q.76: Do these additional export clearance requirements for 0x5zz items mean an exporter or other party designated to assist the exporter with export clearance responsibilities, e.g., a freight forwarder, will need to know whether the 0x5zz items being exported are controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c?

A.76: Yes, to make a proper determination regarding your export clearance requirements for 0x5zz items, the exporter or other party designated to assist the exporter with export clearance responsibilities, e.g., an authorized agent, will need to know whether the 0x5zz items being exported are controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for

³ The 0x5zz ECCNs do not include the 0Y521 ECCNs (0A521, 0B521, 0C521, 0D521, and 0E521).

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.c. Therefore, for exporters that have designated some other party to assist with export clearance responsibilities, *e.g.*, an authorized agent, it is important this classification information is communicated to those other parties in the transaction. The U.S. Principal Party in Interest (USPPI), consistent with the requirements in § 758.3(a), must determine whether a license exception can be used for the 0x5zz to the subparagraph level classification (*e.g.*, 0A501.x) and therefore should provide the forwarder/filing agent with the ECCN, including the subparagraph level classification and the applicable EAR License Exception or license field. For example, if an exporter has authorized an agent to file EEI in the AES on their behalf for an export of a commodity controlled under ECCN 0A501, the authorized agent will have a practical need to know whether the export is for an end-item firearm controlled under 0A501.a or .b, or for some other commodity under 0A501 and ideally this should be communicated on the Shippers Letter of Instruction from the USPPI to the authorized agent (*see* Q.100). In addition to export clearance requirements, there are other EAR requirements tied to whether the commodity is an end-item firearm in ECCN 0A501.a or .b, such as what license exceptions will be available. For example, License Exceptions LVS (§ 740.3) and STA (§ 740.20) are *not* available for 0A501.a or .b, but are available for a commodity controlled under 0A501.x, provided the export was not otherwise restricted under § 740.2 and met all the applicable requirements of License Exceptions LVS or STA.

Q.77: When is filing EEI in AES required for 0x5zz ECCNs that are not controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c?

A.77: The filing EEI in AES requirements for these other 0x5zz items follow the normal rules for filing and are specified in § 758.1(b)(1) and (b)(2), and (b)(4)-(b)(8).

Note 1: *The requirements for filing EEI in AES for the commodities controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c are specified in new § 758.1(b)(9).*

Note 2: *The requirements for filing EEI in AES for “600 series” (including new 0A602, 0B602, 0D602, and 0E602) and 9x515 .a through .x items are specified in § 758.1(b)(3).*

Q.78: I have a \$500 export of “parts” “specially designed” for use in firearms controlled under ECCN 0A501.x to Germany (a Country Group B country under Supplement No. 1 to part 740). The export will be authorized under License Exception LVS under § 740.3. I have reviewed § 758.1(b)(1) and (b)(2), and (b)(4)-(b)(8) and none of those filing EEI in AES requirements apply.

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Q.78.a: Am I correct that I do not have to file EEI in AES for this export?

A.78.a: That is correct. ECCN 0A501.x commodities are not within the scope of § 758.1(b)(9). Therefore, if none of the other requirements in § 758.1(b)(1) and (b)(2), and (b)(4)-(b)(8) that could be applicable to a 0x5zz ECCN apply, you are *not* required to file EEI in AES.

Q.78.b: In this export where I am not required to file EEI in AES, is there any other document where I would need to specify the authorization being used to authorize this export to Germany?

A.78.b: As specified in § 758.1(d) (*Notation on export documents for exports exempt from EEI filing requirements*), when an exemption from filing the EEI applies, the export authority (license exception or NLR) of all the items must be entered on the loading document (*e.g.*, Cargo Declaration, manifest, bill of lading, (master) air waybill) by the person responsible for preparing the document, see 15 CFR 30.35 of the FTR. This requirement is intended to parallel the Bureau of Census requirement, so that the basis for the EEI exemption and the license authority are entered in the same place and manner (see 15 CFR 30.45(e) and (f) of the FTR for detailed requirements). The loading document must be available for inspection by government officials, along with the items, prior to lading on the carrier.

Q.78.c: If instead of exporting \$500 of “parts” “specially designed” for use in firearms controlled under ECCN 0A501.a to Germany, I will now be exporting \$20,000 of these same “parts” to Germany and am therefore no longer eligible for License Exception LVS. I will instead be using the authorization of License Exception STA, and I assume that I will be required to file EEI in AES for this export because of STA and the value of the export exceeds \$2,500. Is my understanding correct?

A.78.c: Yes, in the new scenario, filing EEI in AES is required because the export is being authorized under License Exception STA, so the requirement § 758.1(b)(4) would apply and the value of the commodities classified under a single Schedule B Number (or HTS) is over \$2,500, meaning § 758.1(b)(5) would also apply.

Q.79: When is filing EEI in AES required for commodities controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c?

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A.79: Filing EEI in AES is required for all exports of these firearms regardless of dollar value or destination, except for those authorized under License Exception BAG. As specified in new § 758.1(b)(9), filing EEI in AES is required for all exports, except for exports authorized under License Exception BAG, as set forth in § 740.14 of the EAR, of items controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Canada.

Q.80: If I am going on a trip to Italy with my personally owned rifle controlled under 0A501.a and 200 rounds of ammunition controlled under ECCN 0A505.a for a shooting competition and the export will be authorized under License Exception BAG, based on the answer to A.79 above, I understand filing EEI in AES is not required. However, are there any other export clearance requirements under the EAR that I need to be aware of for this export, such as other documents that are used for export clearance purposes?

A.80: The export clearance requirements of § 758.11 Export clearance requirements for firearms and related items applies to all exports of commodities controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, and ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Canada, that are authorized under License Exception BAG, as set forth in § 740.14. Prior to making any export described in paragraph (a) of § 758.11, the exporter is required to submit a properly completed Department of Homeland Security, CBP Form 4457, (Certificate of Registration for Personal Effects Taken Abroad) (OMB Control Number 1651-0010), to the U.S. Customs and Border Protection (CBP), pursuant to 19 CFR 148.1, and as required by this section of the EAR.

Also as specified in *Note 1 to paragraph (c)(1)* of § 758.1, exporters are directed to see the export clearance requirements for exports of firearms controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505, authorized under License Exception BAG, as set forth in § 740.14 of the EAR. These requirements are specified in paragraph (e) (*Special provisions for firearms and ammunition*) under paragraphs (e)(3) and (e)(4). For example, paragraph (e)(3)(iii) specifies that the commodities must be with the person's baggage. In addition, paragraph (e)(3)(iv) specifies that travelers leaving the United States temporarily are required to declare the firearms, "parts," "components," "accessories," "attachments," and ammunition being exported under this license exception to a Customs and Border Protection (CBP) officer prior to departure from the United States and present such items to the CBP officer for inspection, confirming that the authority for the export is License Exception BAG and that the exporter is compliant with its terms.

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Q.81: Where to obtain the CBP Form 4457?

A.81: The CBP Certification of Registration Form 4457 can be found on the following CBP website:

<https://www.cbp.gov/document/forms/form-4457-certificate-registration-personal-effects-taken-abroad>

Q.82: Where to find additional information on the CBP Form 4457?

A.82: See the following CBP website page for additional information:

https://help.cbp.gov/app/answers/detail/a_id/323/~travelling-outside-of-the-u.s---temporarily-taking-a-firearm%2C-rifle%2C-gun%2C.

Q.83: Upon returning from a trip in which I used License Exception BAG to take my personal firearm to Italy, am I required to show the CBP Form 4457 when I return to the United States?

A.83: Yes, as specified in § 758.11(d), the exporter when returning with a commodity authorized under License Exception BAG and exported pursuant to this section (*i.e.*, commodities controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c), is required to present a copy of the CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad) (OMB Control Number 1651-0010), to CBP, pursuant to 19 CFR 148.1, and as required by § 758.11(d) of the EAR.

Q.84: Is the CBP Form 4457 an “export control document” under the EAR?

A.84: Yes, the CBP Form 4457 is an “export control document” under the EAR for exports authorized under License Exception BAG that require a CBP Form 4457 to be submitted pursuant to § 758.11. As specified in § 762.2(a)(1), records required to be retained include “export control documents” as defined in part 772. The definition of “export control documents” in § 772.1 includes “any and all documents prepared and submitted by exporters and agents pursuant to the export clearance requirements of part 758 of the EAR,” which would include the new § 758.11.

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In addition, under § 762.2, new paragraph (a)(11) documents to be retained include documents that contain the serial number, make, model, and caliber for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502 that have been exported and the CBP Form 4457. The “exporter” or any other party to the transaction (see § 758.3 of the EAR) that creates or receives such records is the person responsible for retaining this record.

Q.85: What type of oversight is being provided with the use of the CBP Form 4457 for such exports under License Exception BAG?

A.85: The U.S. Government maintains oversight through the requirement in the final rule for the CBP Form 4457 to be filed as specified in § 758.11, along with the export requirements to present the firearm to CBP prior to export under License Exception BAG in § 740.14(e)(3)(iv). In addition, the final rule requires the serial number, make, model, and caliber of the firearm to be included on the CBP Form 4457. When the U.S. citizen or permanent resident alien returns, the U.S. Government requires that the same firearm be returned as stated on the CBP Form 4457. Failure to comply with these requirements could subject a U.S. citizen or permanent resident alien to administrative and/or criminal penalties depending on the specifics of the potential violation.

Q.86: What exports require identifying firearms by manufacturer, model, caliber, and serial number in the EEI filing in AES?

A.86: As specified in § 758.1(g)(4)(i), for any export authorized under License Exception TMP or a BIS license authorizing a temporary export of items controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, in addition to any other required data for the associated EEI filing, you must report the manufacturer, model, caliber, and serial number of the exported items in the EEI filing in AES. Providing the manufacturer and caliber information, *e.g.*, Smith & Wesson M&P 9mm gun, will give the U.S. Census Bureau enough information to verify the Schedule B number per 15 CFR 30.6(a)(13). If License Exception TMP is used, the EEI filing must include the Export Information Code TE to specify that the shipment is temporary. The requirement in paragraph (g)(4)(i) also applies to any other export authorized under a BIS license that includes a condition or proviso on the license requiring the submission of this information specified in paragraph (g) of § 758.1 when the EEI is filed in AES. Therefore, the number of exports requiring this additional information in the EEI filing in AES will be a small sub-set of the total exports of 0x5zz ECCNs. As noted above, this is another example of where it will be important for the parties involved in export clearance to know whether they are exporting commodities controlled under ECCNs 0A501.a or

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.b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502 because the export clearance requirements will be different compared to other 0x5zz items.

Q.87: In reviewing the requirement in § 758.1(g)(4)(ii), it appears there is the wrong ECCN in the phrase *0A501 barrel length less than 18 inches*? The rest of paragraph (g)(4)(ii) correctly references ECCN 0A502 when referring to the shotguns with barrel length less than 18 inches, so it is clear that what is intended is 0A502, but is this something BIS intends to correct?

A.87: Yes, there is a typo in that ECCN in § 758.1(g)(4)(ii). BIS intends to correct this in an upcoming correction rule.

Q.88: I do not have a concern with entering 0A501.a or 0A501.b in the Commodity Description block in the EEI filing in AES as required under § 758.1(g)(4)(ii). However, I am concerned about having to include the phrase *0A502 barrel length less than 18 inches* as required because of the length of that phrase. The current character limitation of the Commodity Description block in the EEI filing in AES is 45 characters. Would it be acceptable to BIS to instead use the shorter phrase *0A502sb*? This alternative phrasing would include the ECCN 0A502 and sb (short barrel) to indicate the commodity was a shotgun with a barrel length less than 18 inches? Also given that 0A501 or 0A502 are required to be entered in the ECCN block, does the ECCN need to be restated in the Commodity Description block?

A.88: BIS will permit the alternative shorter formulation of *0A502sb* to be used, as well as the option to use the full phrase *0A502 barrel length less than 18 inches* in the Commodity Description block in the EEI filing in AES when meeting the requirement under § 758.1(g)(4)(ii). BIS had used the phrase *0A502 barrel length less than 18 inches* because ECCN 0A502 does not have an “items” paragraphs, but using *0A502sb* would allow BIS to identify those as short barrel shotguns, so allowing this flexibility in meeting the requirement in § 758.1(g)(4)(ii) is acceptable to BIS. As an additional space saving option, it is also permissible to include .a (instead of 0A501.a), .b (instead of 0A502.b), or .sb (instead of the phrase *0A502 barrel length less than 18 inches* or the shorter variant *0A502sb*).

Q.89: I understand that the requirement in § 758.1(g)(4)(ii) was added as an alternative method for those commenters on the proposed rule that requested BIS use the data in AES instead of requiring the submission of semi-annual reports to BIS for the conventional arms reporting under § 743.4. However, if an exporter decides to submit the conventional arms reporting under § 743.4 instead of using the alternative submission method described under

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§§ 743.4(h) and 758.1(g)(4)(ii), does the same exporter still have to comply with § 758.1(g)(4)(ii)? I do not believe that would be the case, but please confirm.

A.89: If an exporter decides to not use the alternative submission method described under §§ 743.4(h) and 758.1(g)(4)(ii) and instead submits the reports to BIS pursuant to § 743.4, the exporter would no longer have to comply with the requirements in § 758.1(g)(4)(ii) because they would be fulfilling their EAR conventional arms reporting by the standard submission method as described under § 743.4.

Q.90: Can BIS provide any guidance on what to consider before an exporter decides on whether to use the standard submission method under § 743.4 or the alternative submission method described under §§ 743.4(h) and 758.1(g)(4)(ii)?

A.90: Before deciding on which of the submission methods to use, the exporter should confirm that whichever option is used, the exporter will be able to follow those requirements consistently. If the exporter will be the one filing the EEI in AES, this will be an easier determination to make. If the exporter is designating another party to file the EEI in AES, *e.g.*, a freight forwarder, and the exporter intends to use the alternative submission method, the exporter should communicate with that other party to make them aware of the exporter's intention for the information in § 758.1(g)(4)(ii) to be submitted for those EEI filings in AES and to ensure that the other party is able to insert that information. If the authorized agent filing EEI on your behalf is not able to comply with the requirements of the alternative submission method, then the exporter will need to use the standard method.

Q.91: I am an exporter that wants to use the alternative submission method. What are some ways that I can help support my freight forwarder in meeting the filing requirement in § 758.1(g)(4)(ii), so I do not have to use the standard submission method under § 743.4? In addition, do you have suggestions how an exporter may help support their freight forwarder to meet the requirements of § 758.1(g)(4)(i)?

A.91: A good compliance practice is for exporters to include the relevant information in the Shipper Letter of Instruction (SLI), when such a document is being used, to assist the freight forwarder in meeting the filing requirement in § 758.1(g)(4)(ii), as well as in (g)(4)(i). Exporters who send their data electronically to their forwarders by making adjustments in the data to accommodate the new requirements in § 758.1(g)(4)(ii), as well as (g)(4)(i), will make it easier for those filing EEI in AES on an exporter's behalf.

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For reference, the National Customs & Forwarders Association of America, Inc. (NCBFAA) as a service to the forwarding industry, includes an SLI model that is available to both members and non-members of NCBFAA. [Click here for the SLI model.](#)

The NCBFAA has provided permission for BIS to reference their link to the SLI model document in this FAQ. BIS does not endorse any organization or particular SLI form for submitting information between the parties to the transaction, but because this SLI Model is used as a best practice in the freight forwarding industry and by many exporters, BIS includes it as part of this response to provide an example of how such information may be communicated.

In Block 23 of the SLI model, an exporter can assist by including OA501.a, or OA501.b, or the shorter .a or .b, or for shotguns the phrase *OA502 barrel length less than 18 inches* or the shorter *OA502sb* in that block of the SLI as the first text to appear. Also in Block 23 of the SLI model, an exporter can assist for any export authorized under License Exception TMP or a BIS license authorizing a temporary export of ECCNs OA501.a or .b, or shotguns with a barrel length less than 18 inches controlled under OA502, by including the manufacturer, model, caliber, and serial number for each of the firearms. To further assist, the exporter should put a note in *Instructions to the Forwarder* that the description of the item must be shown on the EEI exactly as it is shown on the SLI. If there is an issue with showing the information shown in Block 23, the forwarder should advise the USPPi as soon as possible for developing a solution.

Entry Clearance Requirements for Temporary Imports

Q.92: Is an authorization required under the EAR to temporarily import an item into the United States?

A.92: No. An authorization under the EAR is *not* required for the temporary import of “items” that are “subject to the EAR,” including for “items” “subject to the EAR” that are on the USMIL. There are, however, entry clearance requirements for temporary imports of “items” “subject to the EAR” that are on the USMIL as provided below.

Q.93: Because an EAR authorization is *not* required to temporarily import an item into the United States, why did BIS add § 758.10 Entry Clearance requirements for temporary imports to the EAR? In addition, what is a temporary import for purposes of this new section?

A.93: Temporary imports are transactions that involve both the temporary entry of an item into the U.S. from a foreign country and the subsequent export of that item from the U.S. To preserve the treatment of temporary import transactions for items that transferred on March

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9, 2019, from the USML in the ITAR to become subject to the EAR, BIS imposed a temporary imports entry clearance requirement by adding new § 758.10. This new section is limited to items in the 0x5zz ECCNs that are both “subject to the EAR” and on the USMIL in 27 CFR 447.21. To allow such items to temporarily enter the U.S., the final rule created a process to collect identifying information for the sole purpose of tracking items being temporarily imported for subsequent export. BIS does not impose a license requirement for such imports, but this information is necessary to facilitate the export after a temporary import. Temporary imports are limited to firearms temporarily in the United States for a period *not* exceeding one year (*See* License Exception TMP § 740.9(b)(5) and License Exception RPL § 740.10(b)(4). BIS licenses issued to facilitate the export after a temporary import will include this same one-year time limitation.) The entry clearance requirement is an EAR requirement and any false representation made under the new § 758.10 will be a violation of the EAR.

Q.94: Do the new entry clearance requirements in § 758.10 apply to all ECCN 0x5zz items?

A.94: No, the entry clearance requirements in § 758.10 only apply to certain ECCN 0x5zz commodities. Section 758.10 imposes temporary import entry clearance requirements for firearms “subject to the EAR” that are on the United States Munitions Import List (USMIL, 27 CFR 447.21), except for firearms “subject to the EAR” (as well as shotguns controlled under ECCN 0A502, shotgun shells controlled under ECCN 0A505.c, “parts,” “components,” “accessories,” or “attachments” controlled under ECCN 0A501, and ammunition controlled under ECCN 0A505.a) that are temporarily brought into the United States by nonimmigrant aliens under the provisions of Department of Justice regulations at 27 CFR part 478 (*See* § 740.14(e) of License Exception BAG for information on the export of these firearms “subject to the EAR”). These firearms are controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502.

Note: *Items “subject to the EAR” that are also on the USMIL that are conditionally imported for purposes of obtaining ATF classification are subject to the ATF conditional import process pursuant to the applicable ATF provisions at 27 CFR 478.116 or 27 CFR 479.113. The EAR cannot be used to temporarily import items for ATF classification.*

Q.95: I have some questions regarding if instead of making a temporary import, I am making a permanent import of a firearm controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502.

Q.95a: Is an EAR authorization required for a permanent import?

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A.95.a: No. An authorization under the EAR is *not* required for permanent import of “items” that are “subject to the EAR,” including for “items” “subject to the EAR” that are on the USMIL.

Q.95.b: Are permanent imports of a firearm controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 regulated by any other agency?

A.95.b: Yes, as specified in § 758.10(a)(2), permanent imports are regulated by the Attorney General under the direction of the Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives (see 27 CFR parts 447, 478, 479, and 555).

Q.96: How will the U.S. Government know when an ECCN 0A501.a or .b or shotgun with a barrel length less than 18 inches controlled in ECCN 0A502 is for temporary import?

A.96: By the temporary importer/subsequent exporter following the entry clearance requirements in § 758.10 under paragraph (b) (*EAR procedures for temporary imports and subsequent exports*), the U.S. Government will be able to confirm whether an ECCN 0A501.a or .b item or shotgun with a barrel length less than 18 inches controlled in ECCN 0A502 is for temporary import. At the time of entry into the United States of the temporary import, the temporary importer must provide one of the following statements specified in paragraphs (b)(1)(i)(A), (B), or (C) of § 758.10, as well as the information in paragraphs (b)(1)(ii)-(iv) as applicable, to U.S. Customs and Border Protection:

(A) “This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of License Exception TMP (15 CFR 740.9(b)(5));”

(B) “This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of License Exception RPL (15 CFR 740.10(b));” *or*

(C) “This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of BIS license number (provide the license number) (15 CFR 750.7(a) and 758.4);”

Q.97: If I want to make a temporary import of a firearm controlled under ECCN 0A501.a or .b or shotgun with a barrel length less than 18 inches controlled under ECCN 0A502 where the

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subsequent export will be authorized under a BIS license, do I need to have obtained the BIS license prior to the temporary import?

A.97: Yes, in that fact pattern in order for the import to be considered a temporary import under § 758.10, the BIS license needs to have been obtained prior to the firearm under ECCN 0A501.a or .b or shotgun with a barrel length less than 18 inches controlled in ECCN 0A502 being imported. If a BIS license was not obtained prior to the import, the import would be treated as a permanent import which is subject to other U.S. Government licensing requirements prior to actual importation. Permanent imports are regulated by the Attorney General under the direction of the Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives (see 27 CFR parts 447, 478, 479, and 555).

Q.98: If I import a firearm under ECCN 0A501.a or .b or shotgun with a barrel length less than 18 inches controlled in ECCN 0A502 as a permanent import as regulated by the Attorney General under the direction of the Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives (see 27 CFR parts 447, 478, 479, and 555), does that change the EAR license requirements for exports of those firearms under the EAR?

A.98: No. The EAR license requirements apply to *all* subsequent exports from the United States regardless of whether a firearm under ECCN 0A501.a or .b or shotgun with a barrel length less than 18 inches controlled in ECCN 0A502 was originally imported as a temporary import or permanent import into the United States.

Q.99: How will the U.S. Government know at the time of subsequent export that a firearm under ECCN 0A501.a or .b or shotgun with a barrel length less than 18 inches controlled in ECCN 0A502 is for subsequent export after temporary import in accordance with the requirements in § 758.10 of the EAR?

A.99: At the time of export, in accordance with the U.S. Customs and Border Protection procedures, the eligible exporter, or an agent acting on the filer’s behalf, must as required under § 758.1(b)(9) of the EAR file the export information with CBP by filing EEI in AES, noting the applicable EAR authorization as the authority for the export, and provide, upon request by CBP, the entry document number or a copy of the CBP document under which the “item” “subject to the EAR” on the USMIL was temporarily imported.

For temporary imports made under § 758.10, the only three EAR authorizations that are permissible for authorizing the subsequent export are License Exceptions TMP under § 740.9(b)(5), RPL under § 740.10(b) and BIS licenses. As noted above, firearms “subject to the EAR” (as well as shotguns controlled under ECCN 0A502, shotgun shells controlled under ECCN

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0A505.c, “parts,” “components,” “accessories,” or “attachments” controlled under ECCN 0A501, and ammunition controlled under ECCN 0A505.a) that are temporarily brought into the United States by nonimmigrant aliens under the provisions of Department of Justice regulations at 27 CFR part 478 (See § 740.14(e) of License Exception BAG for information on the export of these firearms “subject to the EAR”) are not included in the entry clearance requirements in § 758.10 for temporary imports.

Changes to EAR Recordkeeping

Q.100: Which party is responsible for keeping the serial number, make, model, and caliber for exports of any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502 under the new recordkeeping requirement under § 762.2(a)(11)?

A.100: The “exporter” or any other party to the transaction that creates or receives such records is the person responsible for retaining this record.

Q.101: Are record holders required to destroy their EAR records after 5 years? I ask this question because the Gun Control Act (GCA) requires all Federal Firearm Licensees (FFLs) to maintain firearm records for 20 years after the date of disposition. I am concerned whether the change requiring records under the EAR as specified in new § 762.2(a)(11) may cause confusion because of the different record retention periods with the EAR requiring 5 years and the GCA requiring 20 years.

A.101: The EAR does not require records to be destroyed after five years, just that the records be kept for at least that long. Nothing in the EAR prohibits maintaining the records for longer periods.

Q.102: I have a couple of questions regarding the change to § 762.3 (*Records exempt from recordkeeping requirements*), where the Commerce final rule narrowed the scope of an exemption from the EAR recordkeeping requirements for warranty certificates. For warranty certificates for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502, when the certificate issued is for an address located outside the United States, the certificate now required to be retained.

Q.102.a: How can an exporter that is not the manufacturer be in a position to obtain a warranty certificate? Warranties are issued by the manufacturer, not the exporter.

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For these reasons a potential issue with the recordkeeping requirement of warranty certificates is that an exporter may not have a manufacturer’s (or any other) warranty certificate as part of the transaction.

A.102.a: The EAR recordkeeping requirements generally do not impose an affirmative duty to create a record. The recordkeeping requirements typically apply if in the normal course of your business activities related to an export, reexport, or transfer (in-country) a record is created or received that is within the scope of records that must be retained for purposes of the EAR recordkeeping requirements. Therefore, if you as the exporter do not create or receive a warranty certificate, you would not have a recordkeeping requirement to keep the warranty certificate.

Q.102.b: Can you clarify what types of warranty certificates this requirement applies to? Many manufacturers do not always issue specific warranty certificates to individuals. For example, most manufacturers provide warranty statements in a broad boilerplate statement included in an instruction manual, or on their website. Therefore, there is no way to know when that information is accessed by a foreign person or sent to an address outside the U.S.

A.102.b: There are three criteria to the warranty certificate requirement in § 762.3 that *all* need to be met for a party to the transaction to be required to keep the warranty certificate. If the answer to any of these three qualifying questions is no, then the warranty certificate does *not* need to be kept for EAR recordkeeping purposes.

ECA 9: Cheat Sheet for Determining Whether a Warranty Certificate Must be Retained for Recordkeeping Purposes

Am I required to retain a warranty certificate for EAR recordkeeping purposes?		
Q.A	<p><i>Was a warranty certificate issued?</i></p> <ul style="list-style-type: none"> • If no, you do not have to keep a warranty certificate as an EAR record. • If yes, proceed to Question B. 	<p>EAR does <i>not</i> create an affirmative duty for you to create a warranty certificate. Therefore, if you do <i>not</i> create a warranty certificate as part of your normal business activities, you will answer “no” to Question A.</p>

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Q.B	<p><i>Was the warranty certificate issued for a firearm controlled in ECCN 0A501.a or for shotguns with barrel length less than 18 inches controlled in 0A502?</i></p> <ul style="list-style-type: none"> • If no, you do <i>not</i> have to keep a warranty certificate as an EAR record. • If yes, proceed to Question C. 	<p>The warranty certificate only applies for those referenced firearms. If the warranty certificate is <i>not</i> issued for one of the identified firearms, such as if the warranty certificate was issued for a machine tool, then you would answer “no” to Question B.</p>
Q.C	<p><i>Was the warranty certificate issued for an address located outside the United States?</i></p> <ul style="list-style-type: none"> • If no, you do <i>not</i> have to keep a warranty certificate as an EAR record. • If yes, the warranty certificate is required to be retained for EAR recordkeeping purposes. 	<p>This last criterion in Question C is the key for answering the question in Q.102.b. If the warranty certificate is standard boiler plate text that is included as part of the manual or other documents that accompany the shipment of the firearm that would <i>not</i> meet this last criterion, so there would <i>not</i> be a recordkeeping requirement for the warranty certificate. If the end user subsequently fills out a postcard or submits an online warranty certificate registration, the party to the export transaction that received that warranty card or online warranty certificate submission will then be required to keep the warranty certificate for that person located outside the United States.</p>

Q.103: I am not the exporter or any other party to the export transaction, but I am a U.S. firearms manufacturer that received a warranty certificate from a person in Japan for a firearm controlled under ECCN 0A501.a. Would I need to keep this warranty certificate as a record under the EAR because of the new requirement in § 762.3?

A.103: If the manufacturer is *not* the exporter, it is *not* required to keep the warranty certificate for purposes of part 762. Section 762.1(b) (*Persons subject to the part*) identifies the persons that are required to keep records for purposes of part 762 of the EAR.

For Further Information Contacts

Q.104: For further questions on the Commerce final rule whom should I contact?

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A.104: For further questions on the Commerce final rule contact: Steven Clagett, Office of Nonproliferation and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482-1641; e-mail steven.clagett@bis.doc.gov or Jeff Bond, tel. (202) 482-0716; email: Jeff.Bond@bis.doc.gov Office of Nonproliferation and Treaty Compliance, Nuclear and Missile Technology Controls Division for questions regarding the Export Control Classification Numbers (ECCNs) and licensing, as well as Timothy Mooney, Regulatory Policy Division, tel. (202) 482-3371; email timothy.mooney@bis.doc.gov for questions on other changes included in the final rule.

Q.105: Are there other contacts to assist my understanding of the EAR and the Commerce final rule? I am new to the EAR, so in addition to questions on the Commerce final rule, I also have other questions on understanding the EAR.

A.105: Yes, BIS has several outreach staff available to answer your questions over the phone or by email. These staff have been trained on the Commerce final rule and have expertise in other parts of the EAR to assist your understanding:

- (202) 482-4811 - (located in Washington, DC)
 - (949) 660-0144 - (located in Newport Beach, CA)
 - (408) 998-8806 - (located in San Jose, CA)
 - E-mail: ECDOEXS@bis.doc.gov (General questions about the EAR)
 - E-mail: RPD2@bis.doc.gov (Regulatory interpretation, Advisory Opinions or to submit *De minimis* Reports)
- Anti-boycott Compliance Advice Line - (202) 482-2381, and Encryption – (202) 482-0707

BIS website also includes a significant amount of free information and free online tools to assist your understanding of the EAR under the “Exporter Portal” icon. Start at www.bis.doc.gov.

Enforcement

Q.106: What can I do if I suspect a violation of the EAR?

A.106: BIS has a form on its website for reporting suspected violations. [Click here for that page of the BIS website.](#)

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Export Enforcement relies heavily on the partnership it has with the business community. Many times it is the information you provide that helps us in our investigations. By prosecuting those who violate our regulations we are helping the vast majority of exporters who follow the rules and are diligent in their efforts to conduct their affairs in an honest and appropriate manner. We appreciate your willingness to work with us. Should you prefer to communicate with BIS enforcement personnel via telephone or to leave a voicemail, please use the Enforcement Hotline 800-424-2980 or contact your local OEE field office directly. [Click here for OEE field office contact information.](#)

Q.107: Will U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) continue to have the authority and jurisdiction to investigate the illegal export of those items being transferred (firearms, firearms parts, and ammunition) as of March 9, 2020?

A.107: This transfer does *not* affect ICE HSI's authority or jurisdiction in any way. ICE HSI will continue to enforce the regulations governing the export of firearms, firearms parts, and ammunition. The transfer enhances enforcement efforts by creating authority for EE Special Agents to investigate the illegal export of those items being transferred to the CCL, and does not in any way diminish existing ICE HSI authorities.

Key Terms

Additive manufacturing. In additive manufacturing, which is often referred to as 3D printing, material such as metal or plastic is laid down in very thin layers one upon the other fusing together until the final net shape is achieved. In both instances, the adding or removing of the material is controlled by a computer without human intervention. 3D printers utilize electronic digital files to process the materials into a physical object, and these files can be distributed over the internet. A 3D printer or computer numerically-controlled (CNC) equipment uses Computer Aided Manufacturing (CAM) files in G-code or AMF format as executable code to produce certain items.

Antique firearms (for purposes of ECCN 0A501). Firearms manufactured before 1890 and reproductions thereof.

Antique firearms (for purposes of ECCN 0A502). Shotguns made in or before 1898.

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Blue guns or rubber ducks. Blue guns or rubber ducks are complete replicas of firearms which are used as training aids. They are completely non-functioning, and usually made of a composite material, but made to the exact dimensions of the related functioning firearm. They are replicas and cannot be made to fire ammunition.

Caseless ammunition. Caseless ammunition is firearm ammunition without a cartridge case that holds the primer, propellant, and projectile together as a unit (*see* 22 CFR 121, *Note 1*, paragraph (3) to USML Category I, and *Note 1 to paragraph (a)(4)* to USML Category III). Caseless ammunition is “subject to the ITAR.”

CBP Form 4457 (*Department of Homeland Security, CBP Form 4457 (Certificate of Registration for Personal Effects Taken Abroad)*) (OMB Control Number 1651-0010). Prior to making any export of commodities controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Canada, that are authorized under License Exception BAG, as set forth in § 740.14, the exporter is required to submit a properly completed Department of Homeland Security, CBP Form 4457 (*Certificate of Registration for Personal Effects Taken Abroad*) (OMB Control Number 1651-0010) to the U.S. Customs and Border Protection (CBP), pursuant to 19 CFR 148.1, and as required by § 758.11 of the EAR. The exporter when returning with a commodity authorized under License Exception BAG and exported pursuant this section, is required to present a copy of the CBP Form 4457 (*Certificate of Registration for Personal Effects Taken Abroad*) (OMB Control Number 1651-0010), to CBP, pursuant to 19 CFR 148.1, and as required by § 758.11 of the EAR.

Combination pistol (a.k.a., a combination gun). A combination pistol has at least one rifled barrel and at least one smoothbore barrel (generally a shotgun style barrel). (*See Note 1 to paragraph 0A501.a*)

Complete breech mechanisms. The mechanism for opening and closing the breech of a breech-loading firearm, especially of a heavy-caliber weapon. (*See* definition in § 772.1)

Dummy rounds or drill round. A dummy round or drill round is a round that is completely inert, *i.e.*, contains no primer, propellant, or explosive charge. It is typically used to check weapon function and for crew training.

Fully automatic firearm or shotgun. A fully automatic firearm or shotgun is any firearm or shotgun that shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger

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(see 22 CFR 121, Note 1, paragraph (2), to USML Category I). Fully automatic firearms or shotguns are “subject to the ITAR.”

Temporary imports. Temporary imports are transactions that involve both the temporary entry of an item into the U.S. from a foreign country and the subsequent export of that item from the U.S. (see § 758.10 for entry clearance requirements for certain temporary imports).

Sentinel Program. The BIS Sentinel Program is one of the Office of Export Enforcement’s (OEE) Export Compliance Programs. Many end-use checks are conducted through BIS’ Sentinel Program. Trained OEE Special Agents are deployed from the United States to countries to visit the end-users of sensitive controlled commodities and determine whether these items are being used in accordance with license conditions. Sentinel teams assess the suitability of foreign end-users to receive U.S.-origin licensed goods and technology, assess prospective end-users on pending license applications for diversion risk, and conduct educational outreach to foreign trade groups. In this way, Sentinel trips help to create the confidence needed to foster trade while strengthening U.S. national security.

Three-dimensional (3D) printing. Three-dimensional (3D) printing is a type of additive manufacturing based on the principle of combining numerous, extremely thin layers of a physical material (including plastics, metals, and even living cells) in a controlled build process and joining them to gradually build up a physical, three-dimensional object.

United States Munitions Import List (USMIL). The list of Arms Export Control Act (AECA) defense articles on the United States Munitions Import List (USMIL) are those that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447.

Note to USMIL definition: *All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR’s USML to the EAR’s CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under section 38 of the AECA, 22 U.S.C. 2778, for purposes of permanent import or brokering controls.*