

This document is a summary of proposed changes to the Export Administration Regulations regarding infrared detection items. Readers should consult the proposed rules in their entirety to determine the full scope of proposed changes to infrared detection items, as well as other items currently controlled under USML Category XII. For questions and guidance on existing U.S. export control laws and regulations, exporters should contact the Bureau of Industry and Security and/or the Department of the State.

Guidance on Proposed Rule – Revisions to the Export Administration Regulations (EAR): Control of Fire Control, Range Finder, Optical, and Guidance and Control Equipment the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

On May 5, 2015, the Bureau of Industry and Security (BIS) published a proposed rule¹ that described revisions to the EAR corresponding to a proposed rule² published by the Department of State's Directorate of Defense Controls that described revisions to USML Category XII. To assist the public in preparing comments to the BIS proposed rule, below is a summary of changes proposed for items related to infrared detection. The BIS proposed rule also includes the establishment of new 600 series ECCNs under 6x615 and 7x611. Since those ECCNs follow the same construct as prior 600 series controls, this summary does not address those specific proposals. BIS encourages members of the public to read both proposed rules in order to determine the full impact on their operations and provide comments on all areas of concern, including the new 600 series entries and the changes to controls for infrared detection items. Public comments are due by July 6, 2015.

Proposed Increased Controls on Items Related to Infrared Detection (e.g., Thermal Imaging or Night Vision Capability)

Category 6 of the Commerce Control List (CCL) implements most of the controls pertaining to infrared detection items that are on the Wassenaar Arrangement's List of Dual-Use Goods and Technologies. The BIS proposed bookend rule to USML Category XII would affect a number of ECCNs implementing multilateral controls, as described below.

ECCN 6A002: optical sensors and equipment, including infrared focal plane arrays and image intensifier tubes

The proposed rule would make the following changes:

- Provide that image intensifier tubes described in 6A002.a.2 must have a luminous sensitivity of 500 microamps per lumen or less to be subject to the EAR.
- Provide that focal plane arrays (FPAs) described in 6A002.a.3 must be in a "permanent encapsulated sensor assembly," as defined in part 772, to be subject to the EAR.
- Impose a worldwide Regional Stability (RS) control for the entire ECCN, which would impose new license requirements, as follows:
 - o License requirement for lead selenide based FPAs that are not subject to MT control in 6A002.a.3.d.2.a and a.3.e and certain support "components" for optical sensors in 6A002.d for Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and United Kingdom.

¹ See 80 Fed. Reg. 25798 (May 5, 2015).

² See 80 Fed. Reg. 25821 (May 5, 2015).

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- License requirement for all other optical detectors in 6A002.a for Canada.
- License requirement for monospectral imaging sensors and multispectral imaging sensors in 6A002.b for Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and United Kingdom.
- Remove STA-36 eligibility for all items in 6A002 (currently, only some subparagraphs are removed from STA eligibility).
- Expand restriction in License Exception APR that precludes using § 740.16(a) to reexport all 6A002 items from Country Group A:1 and cooperating countries.
- Restrict use of § 740.16(b) of APR to preclude reexports of 6A002 items to and among Country Group A:1 and cooperating countries.
- New worldwide Regional Stability control would subject license applications to a case-by-case review.
- Expand § 744.9 end-use/end-user requirement to 6A002 items such that a license would be required to export, reexport, or transfer (in-country) to any destination a 6A002 item if at the time of the transaction one knows, is informed, or is unable to determine whether the 6A002 item will be or is intended to be used by a military end user or incorporated into a 0A919 military commodity.

ECCN 6A003: cameras, systems, or equipment and components therefor

The proposed rule would make the following changes:

- Expand restriction in License Exception APR that excludes using § 740.16(a) to reexport all 6A003 items from Country Group A:1 and cooperating countries.
- Restrict use of § 740.16(b) of APR to exclude reexports of all 6A003 items to and among Country Group A:1 and cooperating countries. However, the provision for countries identified in paragraph (b)(3) remains for reexports to certain destinations of fully packaged consumer ready civil products or cameras with less than 111,000 elements to be embedded in civil products.
- Expand § 744.9 end-use/end-user requirement to all 6A003 items such that a license would be required to export, reexport, or transfer (in-country) to any destination a 6A003 item if at the time of the transaction one knows, is informed, or is unable to determine whether the 6A003 item will be or is intended to be used by a military end user or incorporated into a 0A919 military commodity. Currently, § 744.9 only applies to cameras in 6A003.b.3, 6A003.b.4.b, and 6A003.b.4.c.

ECCN 6D002: software for the “use” of 6A002.b imaging sensors

The proposed rule would make the following changes:

- Impose worldwide Regional Stability (RS) control for such software, resulting in a new license requirement for Canada
- Remove eligibility to use License Exception TSR.
- New worldwide Regional Stability control would result in reviewing license applications with a presumption of denial, regardless of country of destination.

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- Remove STA eligibility.

ECCN 6D003.c: software designed or modified for cameras incorporating “focal plane arrays” specified by 6A002.a.3.f and designed or modified to remove a frame rate restriction and allow the camera to exceed the frame rate specified in 6A003.b.4 Note 3.a

The proposed rule would make the following changes:

- Impose a worldwide Regional Stability (RS) control for such software, resulting in a new license requirement for Canada.
- Remove eligibility to use License Exception TSR.
- New worldwide Regional Stability control would result in reviewing license applications with a presumption of denial, regardless of country of destination.
- Remove STA eligibility.

ECCN 6E001: technology for the “development” of 6A002 or 6A003 commodities

The proposed rule would make the following changes:

- Impose a worldwide Regional Stability (RS) control for such technology, resulting in a new license requirement for Canada.
- Remove STA-36 eligibility for all such technology (currently only some 6E001 technology related to certain 6A002 items is precluded).
- Remove eligibility to use License Exception TSR.
- New worldwide Regional Stability control would result in reviewing license applications with a presumption of denial, regardless of country of destination.

ECCN 6E002: technology for the “production” of 6A002 or 6A003 commodities

The proposed rule would make the following changes:

- Impose a worldwide Regional Stability (RS) control for such technology, resulting in a new license requirement for Canada.
- Remove all license exception eligibility for 6E002 technology for 6A002.a.2, 6A002.a.3, or 6A990 in § 740.2.
- Remove eligibility to use License Exception TSR for production of all 6A002 and 6A003 items.
- New worldwide Regional Stability control would result in reviewing license applications with a presumption of denial, regardless of country of destination, unless the application is for certain build-to-print technology, which would be case-by-case review.
- Remove STA-36 eligibility for all such technology (currently only some 6E002 technology related to certain 6A002 items is precluded).

The proposed rule would also create new unilateral ECCNs (or expand the scope of current unilateral ECCNs) to add controls that do not currently exist on the CCL.

ECCN 6A990: certain read-out integrated circuits (ROICs)

The proposed rule would make the following changes:

- Increase the scope of ROICs subject to this ECCN. Currently, this ECCN controls only certain ROICs for automotive imaging and ranging; proposed rule would expand control

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to ROICs “specially designed” for 6A002.a.3 focal plane arrays. Previously, many of these ROICs were EAR99 (unless specifically designed or modified for defense articles in USML Cat XII and not in normal commercial use). This control corresponds to controls for ROICs in proposed Cat XII(e)(4) and (e)(5).

- Impose a worldwide Regional Stability (RS) control, which would add a new license requirement for Canada.
- Remove STA eligibility.
- Expand restriction in License Exception APR that precludes using § 740.16(a) to reexport 6A990 items from Country Group A:1 and cooperating countries.
- Restrict use of § 740.16(b) of APR to preclude reexports of 6A990 items to and among Country Group A:1 and cooperating countries.
- Allow for the use of License Exception LVS with a value limit of \$500.
- New worldwide Regional Stability control would subject license applications to a case-by-case review.

ECCN 6D991: software for the “development,” “production,” or “use” of commodities in 6A002, 6A003, or 6A990

The proposed rule would make the following changes:

- Expand scope of control to capture software for the development, production, or use of all items in 6A002 and 6A003 (with respect to thermal imaging or night vision items, currently only applies to software for 6A002.a.1.d and 6A990).
- Impose a worldwide Regional Stability (RS) control for such software, resulting in new license requirements, as follows:
 - o License requirement for all destinations of software related to 6A002 optical sensors (except 6A002.a.1.d sensors) and 6A003 cameras. Such software was previously EAR99.
 - o License requirement for such software for 6A002.a.1.d sensors for Canada.
- Remove STA eligibility for such software.
- New worldwide Regional Stability control would result in reviewing license applications with a presumption of denial, regardless of country of destination.

ECCN 6D994: software (n.e.s.) that is specially designed for the maintenance, repair, or overhaul of 6A002, 6A003, or 6A990 commodities

- Would impose a worldwide Regional Stability (RS) control for software that was previously EAR99 (unless classified under 6D002 or 6D003.c).
- Ineligible for License Exception STA.
- New worldwide Regional Stability control would subject license applications to a case-by-case review.

ECCN 6E990: technology required for the “development” or “production” of 6A990 ROICs

The proposed rule would make the following changes:

- Due to the proposed changes in 6A990, expand scope of ECCN to capture technology that was previously EAR99.
- Impose a worldwide Regional Stability (RS) control for such technology, resulting in a new license requirement for Canada.

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- Remove all license exception eligibility for such technology in § 740.2.
- New worldwide Regional Stability control would result in reviewing license applications with a presumption of denial, regardless of country of destination.
- Remove STA eligibility.

ECCN 6E994: technology required for the maintenance, repair, or overhaul of 6A002, 6A003, or 6A990 commodities

- Would impose a worldwide Regional Stability (RS) control for technology that was previously EAR99.
- Ineligible for License Exception STA.
- New worldwide Regional Stability control would subject license applications to a case-by-case review.

ECCN 0E987: technology required for the “development” or “production” of 0A987 commodities that incorporate a focal plane array or image intensifier tube

- Would impose a worldwide Regional Stability (RS) control for technology that was previously EAR99.
- Ineligible for License Exception STA.
- New worldwide Regional Stability control would result in reviewing license applications with a presumption of denial, regardless of country of destination.

The proposed rule also amends controls on reexports or in-country transfers of 0A919 military commodities located and produced outside of the U.S.

ECCN 0A919: With respect to dual-use infrared detection items, 0A919 currently controls military commodities outside of the U.S. if they incorporate certain cameras in 6A003.

The proposed rule would make the following changes:

- Increase the scope to include foreign military commodities incorporating any item in 6A003, as well as 6A002 items, 6A990 items, or 9Hz cameras in 6A993.a (meeting the criterion of Note 3.a to 6A003.b.4).
- Update the *de minimis* provisions in § 734.4 to provide that there would be no *de minimis* level for 0A919 military commodities incorporating the dual-use infrared detection items described above. Thus, reexports of a 0A919 item incorporating any amount of 6A002, 6A003, 6A990, or 6A993.a (9 Hz camera) content would be subject to the EAR and require a license worldwide, with the exception of Canada.

As previously addressed, the proposed rule would expand the end-use/end-user control described in § 744.9. In addition to expanding the scope of the control to include all 6A002, 6A003, and 6A990 items, the proposed rule would also make the following changes:

- Expand the scope of ECCNs subject to § 744.9 to include 0A987 commodities incorporating any of the following: 6A002 items, 6A003 items, or 9 Hz cameras in 6A993.a.
- Expand the scope of ECCNs subject to § 744.9 to include 9 Hz cameras in 6A993.a

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- Expand the scope of ECCNs subject to § 744.9 to include 8A002.d.1.c and 8A002.d.2 items.
- Expand the scope to require a license when the exporter, reexporter, or transferor is unable to determine whether the described infrared detection items will be used by a military end user or incorporated into a 0A919 military commodity.
- Expand the scope to apply to all destinations, which effectively adds a new license requirement for Canada.