





Regulatory Update

Regulatory Policy Division
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UPDATE CONFERENCE ON EXPORT CONTROLS AND POLICY





Regulatory Update

- Around 60 publications in the Federal Register since July 2014
- Includes final rules, proposed rules, advance notices, and notices of inquiry

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Definitions Rule

- Export Control Reform
- Proposed rule
- EAR and ITAR proposed amendments published concurrently June 3, 2015
- Comment period closed August 3, 2015
- 99 public comments

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Definitions Rule

- Harmonize common terms such as export where possible
- Clearly show necessary differences
- Account for certain electronic transmission and storage issues
- Update, streamline, and clarify

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Support Doc Rule

- Final rule (March 13, 2015): revisions to support document requirements for license applications
 - **PRC End-User Statement:** no substantive change to requirement; clarifications and burden reduction
 - **International Import Certificate/Delivery Verification:** requirements removed in entirety
 - **Statement by Ultimate Consignee and Purchaser:** requirement limited to 600 series MDE requiring a license for any reason on the CCL and destined for any country except PRC
 - **FC Import Certificate:** no substantive change to requirement; clarifications and burden reduction

Note: BIS may require a support document for an application that would not otherwise require one.



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Regime Rules

- 4/07/15 (80 FR 18522) Revisions to the Export Administration Regulations Based on the 2014 **Missile Technology Control Regime** Plenary Agreements
 - ECCN 1C111, 3A101, 9A106, 9A110, 9A604, and 9A610.
- Implementation of the **Australia Group (AG)** November 2013 Intersessional Decisions
 - Removes ECCN 1C352 and merges the animal pathogens previously controlled under this ECCN with the human pathogens and toxins controlled under ECCN 1C351.
 - Revises the controls in ECCN 2B350.g on valves, casings (valve bodies) designed for such valves, and preformed casing liners designed for such valves.



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Regime Rules

- 5/20/15 (80 FR 28853) **Wassenaar Arrangement 2013 Plenary Agreements Implementation: Intrusion and Surveillance Items** (proposed rule with request for comments)
 - 266 comments.
 - Another proposed rule in 2016 after lots of meetings
- 5/21/15 (80 FR 29431) **Wassenaar Arrangement 2014 Plenary Agreements Implementation and Country Policy Amendments** (final rule)
 - Revised 42 Export Control Classification Numbers (ECCNs), added one ECCN and removed one ECCN
 - Definitions: Added seven (7) and revised six (6)
 - Anisotropic plasma dry etching equipment, software and technology
 - Country Groupings: A:1, NS:2 and RS:2


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Guidance on “Destroyed”

- **RPL**, if the commodity is:
 - No longer capable of functioning for the purpose for which it was designed (i.e., due to normal wear and tear, a defect, or damage); and
 - Not capable of being repaired to function for the purpose for which it was designed
- **CCL**, only if that commodity no longer possesses the characteristics that made it subject to control by the ECCN under which it was classified prior to its being “destroyed.”
 - (i.e., the classification of the commodity must change and the resulting commodity may be designated as EAR99, provided that it is not enumerated or otherwise describe in another ECCN on the CCL).
- BIS intends to publish a separate rule that will propose amendments to License Exception RPL and Interpretation #7 (see Section 770.2 of the EAR)

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End User/End Use: Other Focus

- 11/7/14 79 FR 66288 –
Venezuela: Implementation of Certain Military End Uses and End Users License Requirements under the Export Administration Regulations
- 1/23/15 80 FR 3463 –
U.S.-India Bilateral Understanding Additional Revisions to the U.S. Export and Reexport Controls Under the Export Administration Regulations

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*End User/End Use: Other Focus
Cont'd*

- 9/30/14 79 FR 58704 –
Proposed Amendments to the Export Administration Regulations: Removal of Special Comprehensive License Provisions

&

- 8/26/15 80 FR 51725 –
Export Administration Regulations: Removal of Special Comprehensive License Provisions



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End User/End Use: Validated End-User Authorization

- 12/1/14 79 FR 71014 -
Amendments to Existing Validated End-User Authorization in the People's Republic of China: Lam Research Service Co., Ltd
- 3/5/15 80 FR 11863 –
BIS Rule – Amendment to Existing VEU Authorization in the PRC-Samsung China Semiconductor



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Destination Control Statement proposed rules

- On May 22, 2015, Commerce, in conjunction with State, published a proposed rule to revise the destination control statement (DCS) in § 758.6 of EAR to harmonize the statement required for the export of items subject to EAR with destination control statement in § 123.9(b)(1) of ITAR.
- State's May 22 rule proposed changes to § 123.9(b)(1) of ITAR.
- DCS requirements under ITAR and EAR are an example of requirements that can and should be harmonized to reduce burden on exporters, improve compliance, and ensure regulations are achieving their intended purpose for use under the U.S. export control system.

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Entity List (EL) Rules

Date/FR cite	EL changes	Russian sanctions	Other EL activity
9/2/15 (80 FR 52963)	29 additions: 14 (744.11); 15 (746.5)	X	
8/7/15 (80 FR 47402)	1 addition (746.5)	X	
7/28/15 (80 FR 44846)	10 additions (744.11) 4 removals (744.16)		X
6/4/15 (80 FR 31834)	1 addition (744.11)		X
4/23/15 (80 FR 22638)	8 additions (744.11)		X
2/18/15 (80 FR 8524)	11 additions (744.11) 1 removal (744.16)		X

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Unverified List

- Published 10/7/15, 80 FR 60529
- Adding additional addresses for 4 listed persons
- Removing 2 persons
 - Ditis Hong Kong Ltd
 - Fauji Fertilizer Company Ltd., Pakistan
- Adding 12 persons
 - 1 person located in Canada,
 - 1 person located in the Czech Republic,
 - 1 person located in Georgia,
 - 4 persons located in Hong Kong, and
 - 5 persons located in the United Arab Emirates.

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Russian Sanctions and the Entity List

- ▶ Entity List has been an important tool in implementing Russian sanctions.
- ▶ Commerce has published nine rules that have imposed sanctions on Russia and those acting on their behalf for their activities involving Crimea region of Ukraine.
- ▶ Seven of those Russian sanctions rules added persons to Entity List.

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Russia

- 2014 Russia/Ukraine – Executive Orders 13660, 13661, 13662 and 13685 – Basis for OFAC designations and additions to Entity List.
 - 2014 – 2015 Multiple Entity List Additions.
- 8/6/14 New § 746.5 – Russian Industry Sanctions: Export, reexport and transfer license requirements for 8 ECCNS and certain Schedule B numbers (new Supp. No. 2 to Part 746) for use in certain Russian oil related activities.

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Russia

- 9/17/14 Added Russia to § 744.21 – Export, reexport or transfer license requirement for
 - Military end use or end user for items in Supp. No. 2 to part 744; and
 - 600 series and 9X515 (including .y) items regardless of end use or end user.


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Russia / Ukraine

- 1/29/15 – New § 746.6 – All items subject to the EAR except food and EAR99 medicine license requirement for Crimea region of Ukraine.
 - May use only license exceptions listed in § 746.6.
- 5/22/15 EAR99 & 5D992.c free software for communications became NLR.

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Enhancing Communication to, from and among the Sudanese People

- 2/18/15 – Sudan eligible destination for License Exception CCD.
- 2/18/15 – Case-by-case license application review of telecommunications items for civil telecommunications infrastructure.
- 9/2/15 – Consumer communications devices eligible for TMP Tools of Trade.
- 9/21/15 Sale or donation requirement removed from License Exception CCD.

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Hong Kong

- 12/23/14 Added NS Column 2 License Requirement.
- A U.S. export license requirement triggers Hong Kong import license requirement.
- Consistent with other Wassenaar members' treatment of Hong Kong.



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Cuba 1/16/15

- License Exception GFT available for *consolidated* shipments of gift parcels.
- License Exception CCD allowed for sales in addition to donations.
- New License Exception Support for the Cuban People (SCP).



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Cuba 1/16/15

- License Exception SCP authorizes export and reexport of EAR99 or AT only items for specified activities related to:
 - Improving living conditions and supporting independent economic activity;
 - Strengthening civil society; or
 - Improving the free flow of information to, from and among the Cuban people.



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Cuba 1/16/2015

- Case by case review of applications for telecommunications items.
- General approval policy for applications for exports or reexports of items necessary for the environmental protection of U.S. and international air quality, waters, or coastlines (including items related to renewable energy or energy efficiency).
- Embargo still in place – EAR § 746.2(a).



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Cuba 7/22/15

- Removed from Country Group E:1.
 - 25% *de minimis*.
 - Fewer restrictions in License Exceptions RPL, GOV, BAG and AVS apply to Cuba.
 - General Order No. 3 – restrictions on Country Group E:1 or E:1 nationals in licenses issued before 7/22/15 continue to apply to Cuba and Cuban nationals.
- Embargo still in place – EAR § 746.2(a).



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Cuba 9/21/15

- Expanded License Exception SCP:
 - Still limited to EAR99 & AT only items;
 - Allows certain loaned or leased items;
 - Allows certain reexports;
 - Certain software development commodities and software for authorized purposes;
 - Physical presence for certain activities authorized by OFAC or exempt pursuant to 31 CFR 515.206; and
 - Certain temporary exports and reexports.
- AVS for specified vessel types engaged in authorized activities.



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Cuba 9/21/15

- Release of EAR99 technology or source code to Cuban nationals outside Cuba is NLR.
- Case by case review of license applications for civil aviation safety.
- Embargo still in place – EAR § 746.2(a).



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ECR Rules

- 11/12/14 79 FR 67055 **Clarifications and Corrections** to the Export Administration Regulations (EAR): Control of **Spacecraft** Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)
- 12/23/14 79 FR 76874 **Clarification to Scope of Certain “600 series”** Export Control Classification Numbers (ECCNs).
- 3/2/15 80 FR 11315 **Notice of Inquiry** Request for Comments Regarding Controls on **Military Aircraft and Military Gas Turbine Engines**
- 5/05/15 80 FR 25798 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)

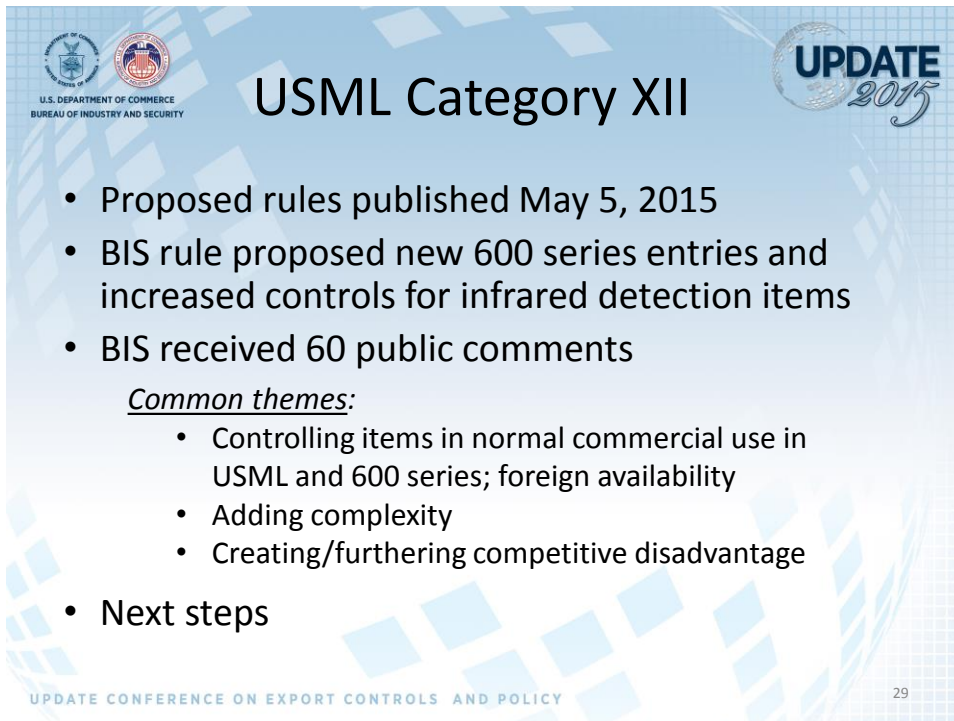
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ECR con't

- 6/17/15 80 FR 34562 Commerce Control List: Addition of Items Determined to No Longer Warrant Control under United States Munitions List **Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)**
- 7/13/15 80 FR 39950 **Clarifications and Corrections** to the Export Administration Regulations (EAR): Control of **Spacecraft** Systems and Related Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)
- 10/09/15 80 FR 61137 Commerce Control List: **Request for Comments** Regarding Controls on **Military Vehicles, Vessels of War, Submersible Vessels, Oceanographic Equipment,** and Auxiliary and Miscellaneous Military Equipment.

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BUREAU OF INDUSTRY AND SECURITY

USML Category XII

UPDATE 2015

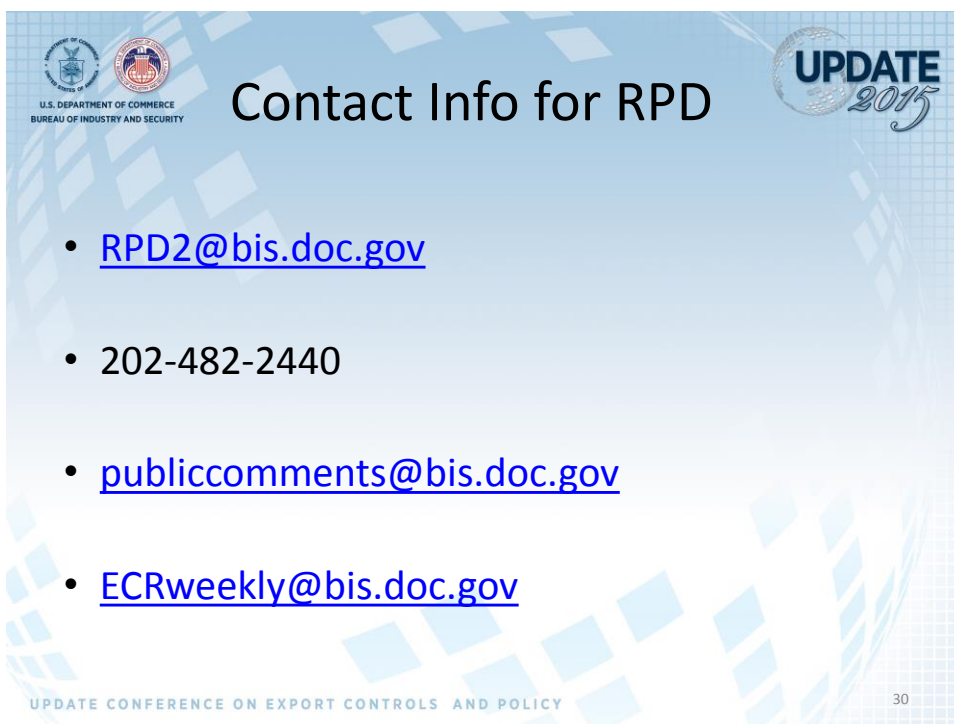
- Proposed rules published May 5, 2015
- BIS rule proposed new 600 series entries and increased controls for infrared detection items
- BIS received 60 public comments

Common themes:

- Controlling items in normal commercial use in USML and 600 series; foreign availability
- Adding complexity
- Creating/furthering competitive disadvantage

- Next steps

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BUREAU OF INDUSTRY AND SECURITY

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