

**UPDATE 2011  
CONFERENCE ON EXPORT  
CONTROLS AND POLICY**

# Regulatory Update

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

## Regulatory Initiatives

- ▶ Export Control Reform
- ▶ Other regulatory actions

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

# Executive Order 13563 Improving Regulation & Regulatory Review

- ▶ General Principles of Regulation
- ▶ Retrospective Analysis



# Executive Order 13563

- ▶ Agency Plans
- ▶ Notice and Comment



# Regulatory Initiatives

## *Since Update 2010*

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## Regulatory Initiatives

- ▶ Entity List related activity.
- ▶ Commerce Control List (CCL) Advanced Notice of Proposed Rulemaking (ANPR).
- ▶ Proposed rule addressing the movement of items from the USML to the CCL.



## Entity List Related Activity

- ▶ Entity List continues to play important role in imposing targeted license requirements on certain persons of concern.
- ▶ Section 744.16 removal process creates path off Entity List.
- ▶ Entity List annual review process identifies additional changes, such as modifications or removals of existing entries.



## Entity List Rules

- ▶ 5 Entity List final rules published since Update 2010.
- ▶ Types of changes:
  - Additions (16)
  - Removals (8) - *(1 under 744.16)*  
*(7 under annual review process)*
  - Modifications (27)



## CCL ANPR Published 12/9/10

- ▶ 4 Export Control Reform (ECR) related publications in December 2010.  
*(2 ANPRs and 2 proposed rules)*
- ▶ 12/9/10 – Commerce published CCL ANPR and License Exception STA proposed rule.  
*(License Exception STA published as a final rule on 6/16/11)*
- ▶ 12/10/10 – State published an ANPR and proposed rule for USML Cat VII.



## CCL ANPR – Requested Comments

- ▶ CCL ANPR requested public comments in two areas:
  - (1) Recommendations for how to make the CCL more clear and “positive”
  - (2) Recommendations for how the CCL could be “tiered,” based on criteria established under the ECR, including information on foreign availability.



## Public Response to CCL ANPR

- ▶ Public response to CCL ANPR was substantial
- ▶ 55 public comments
- ▶ 1450 pages of recommendations
- ▶ Comments posted on BIS website at [http://efoia.bis.doc.gov/pubcomm/records-of-comments/record\\_of\\_comments\\_ccl.pdf](http://efoia.bis.doc.gov/pubcomm/records-of-comments/record_of_comments_ccl.pdf)



## Types of Comments in Response to CCL ANPR

- ▶ Public submitted many suggestions to make the CCL more clear and “positive.”
- ▶ “Tiering” recommendations in many cases supported with substantial amount of foreign availability information.



## Review of CCL ANPR Comments

- ▶ BIS has a three step process for reviewing and implementing the public comments:
  - (1) Categorization (C)
  - (2) Evaluation (E)
  - (3) Implementation (I)
- ▶ The categorization phase is completed.
- ▶ BIS is now in the internal evaluation phase.
- ▶ After internal evaluation, BIS will consult with other agencies.
- ▶ Implementation after interagency concurrence.



## Evaluation and Implementation of CCL ANPR Comments

- ▶ BIS's technical advisory committees have played an important role in evaluation phase.
- ▶ BIS subject matter experts reviewing recommendations to identify what changes should be moved toward implementation in 2011 and 2012. Regulatory implementation will be multi-tracked.
- ▶ "Tiering" recommendations will be provided to the applicable agencies for "tiering" the CCL.



## Addressing the Movement of Items from USML to CCL – *Publication of Proposed Rule*

- ▶ BIS published on July 15, “Proposed Revisions to the EAR: Control of Items the President Determines No Longer Warrant Control Under the USML.”
- ▶ This proposed rule describes how items formerly on the USML that, in accordance with section 38(f) of the AECA, that the President determines no longer warrant control under the AECA would be controlled under the EAR.



## Addressing the Movement of Items from USML to CCL – *Required Steps to be taken*

- ▶ Such items would be controlled under the EAR:
  - Once the “positive” USML categories are drafted based on the Department of Defense–led review of the USML,
  - Congressional notification requirements of section 38(f) of the AECA, *and*
  - corresponding amendments to the ITAR and its USML and to the EAR and its CCL are completed.

This proposed rule is important because it demonstrates how such items would be controlled under the EAR.



## Addressing the Movement of Items from USML to CCL – *Types of Changes Proposed*

- ▶ This proposed regulatory construct includes a number of changes to the CCL and the EAR to address the movement of items from the USML to the CCL:
  - “600 series,”
  - Creation of ECCN 0Y521 as an equivalent to USML Category XXI,
  - Changes to EAR definitions to address the movement of items from the USML to the CCL, including adopting a single definition of “specially designed,” *and*
  - Other changes to assist in the structural alignment of the USML and the CCL.



## Addressing the Movement of Items from USML to CCL – *Creation of the “600 series”*

- ▶ Creation of a new control series on the CCL called the “600 series.” In the “xY6zz” format to create a Commerce Munitions List inside the larger CCL.
- ▶ This rule proposes various other changes to the EAR to address the new “600 series.”
- ▶ In addition to proposing a regulatory construct for transfer of items into the CCL, this rule demonstrates how the construct would apply to the initial group of items from USML Cat VII (Tanks and Military Vehicles), which are described in the “600 series” ECCNs included in the proposed rule.



## Addressing the Movement of Items from USML to CCL – *Public Comment Period Now Open*

- ▶ The comment period for the proposed rule is open.
- ▶ BIS encourages interested parties to review the provisions included in the proposed rule and submit comments.
- ▶ Comments on this rule may be submitted to the Federal rulemaking portal ([www.regulations.gov](http://www.regulations.gov)) ID BIS-2011-0015. Comments may also be submitted via e-mail to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, 14<sup>th</sup> St. and Pennsylvania Ave., NW, Washington, DC 20230. Please refer to RIN 0694-AF17 in all comments and in the subject line of e-mail comments.



## Regulatory Update: End-User FOCUS and Other Regulatory FOCAL POINTS

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## Regulatory Update: End-User FOCUS

- ▶ **10/12/10**  
**75 FR 62462**  
Additions to the List of Validated End-Users in the People's Republic of China: Hynix Semiconductor China Ltd., Hynix Semiconductor (Wuxi) Ltd. and Lam Research Corporation
  
- ▶ **11/01/10**  
**75 FR 67029**  
Amendment to Existing Validated End-User Authorization in the People's Republic of China: Semiconductor Manufacturing International Corporation



## Regulatory Update: End-User FOCUS Cont'd

- ▶ **01/18/11**  
**76 FR 2802**  
Additions and Revisions to the List of Validated End-Users in the People's Republic of China: CSMC Technologies Corporation and Advanced Micro Devices China, Inc.
  
- ▶ **06/28/11**  
**76 FR 37634**  
Revision to the Validated End-User Authorization for CSMC Technologies Corporation in the People's Republic of China



## **Regulatory Update: Other Regulatory FOCAL POINTS**

**U.S.–India Bilateral Understanding: Revisions to  
U.S. Export and Reexport Controls Under the  
Export Administration Regulations**

**01/25/11  
76 FR 4228**



## **Regulatory Update: Other Regulatory FOCAL POINTS Cont'd**

**Request for Public Comments  
Regarding Small and Medium  
Enterprises' Understanding of and  
Compliance With the Export  
Administration**

**10/06/10  
75 FR 61706**



## Regulatory Update:

▶ UP TO THE MINUTE...



## Cook's Corner Regulatory Update

Sharron Cook  
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Regulatory Policy Division



## Publicly Available Mass Market Encryption Software

- ▶ Published January 7, 2011 (76 FR 1059)
- ▶ BIS removes two kinds of encryption software from the jurisdiction of the EAR:
  - (1) Publicly available encryption software in object code with a symmetric key length greater than 64-bits that has been determined to be mass market software under §742.15(b) of the EAR and has been reclassified under ECCN 5D992; and
  - (2) Publicly available encryption software in object code classified under ECCN 5D002 when the corresponding source code meets the criteria specified in §740.13(e) of the EAR (LE TSU).



<http://www.bis.doc.gov/encryption/default.htm>

## Editorial Corrections to the EAR

- ▶ Published on April 29, 2011 (76 FR 23872) for Syria.
- ▶ This rule removed the “X’s” under all the reasons for control on the Commerce Country Chart (Supp No. 1 to part 738), and added the text “See General Order No. 2 in Supplement No. 1 to Part 736 of the EAR to determine whether a license is required to export or reexport to this destination.”
- ▶ This rule revises a number of entries with errors on the CCL: ECCNs 0B002, 1B233, 1C006, 1E201, 1E355, 2B005, 6A995, 6D993, 7D001, 9D001, and 9D002.



## Wassenaar Arrangement 2010

- ▶ Implementation rule published May 20, 2011 (76 FR 29610)
- ▶ This rule revised 53 ECCNs spanning all the Categories of the Commerce Control List, except Category 0.
- ▶ The biggest change in Category 3, where there was a total rewrite of the controls for analog to digital converter (ADC) and digital to analog converter (DAC).
- ▶ Other notable changes.



## Wassenaar 2010 – Correction

- ▶ Published June 14, 2011 (76 FR 34577)
- ▶ ECCN 2A101 Radial ball bearings – MT:1 and AT:1
- ▶ In addition to editorial clean-up type fixes.



# High Performance Computer

- ▶ Published: June 24, 2011 (76 FR 36986)
- ▶ Implements the December 2009 WA Plenary Meeting (the Plenary) agreements that relate to Export Control Classification Number (ECCN) 4A003.
- ▶ Raised the Adjusted Peak Performance (APP) for digital computers.
- ▶ Moves Albania and Croatia from Computer Tier 3 to Computer Tier 1 in License Exception APP (§ 740.7 of the EAR)



## New HPC Numbers

What was changed?	Old APP	New APP	EAR citation
ECCN 4A003	0.75 WT	1.5 WT	Supp No. 1 to part 774 (CCL) ECCN 4A003: - AT entry - Notes 1 and 2 in the License Requirements section, and - 4A003.b
LE APP: deemed exports of "development" and "production" technology controlled by ECCN 4E001 and source code controlled by ECCN 4D001 for foreign nationals of Computer Tier 1 countries	0.5 WT	1.5 WT	§ 740.7(e)(3)(ii)
LE APP: deemed exports of "development" and "production" technology controlled by ECCN 4E001 and source code controlled by ECCN 4D001 for foreign nationals of Computer Tier 3 countries	0.1 WT	0.5 WT	§ 740.7(d)(3)(i)
De minimis for foreign-made computers when they contain U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 and are destined to a country in Computer Tier 3 of Section 740.7 of the EAR	0.75 WT	1.5 WT	§ 734.4(a)(1)
Post shipment reporting requirement for high performance computer exports to destinations in Computer Tier 3, as well as exports of commodities used to enhance computers previously exported or reexported to Computer Tier 3 destinations	0.75 WT	1.5 WT	§ 743.2(b)



# Contact Info

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- ▶ What to contact us about ...
  - Errors in the e-CFR
  - Errors in the BIS EAR
  - Advisory Opinion Submissions
  - Interpretation of the EAR
  - Errors in any BIS regulatory publication
  - Questions about any BIS regulatory publication
  - Suggestions for Improving the EAR

