

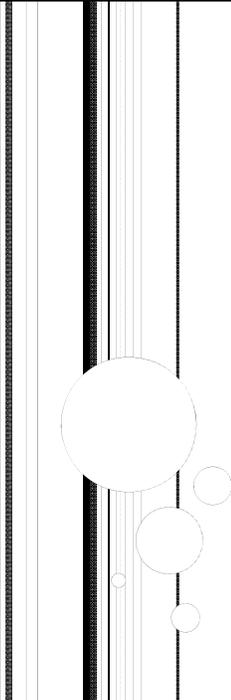


# Regulatory Review

Moderator: Hilary Hess  
Director  
Regulatory Policy Division, BIS



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



# REGULATORY UPDATE

**Hilary Hess**  
**Director**  
**Regulatory Policy Division**



## **REGULATORY INITIATIVES**

- o Export Control Reform
- o Other regulatory action



## **EXECUTIVE ORDER 13563 IMPROVING REGULATION & REGULATORY REVIEW**

- o General Principles of Regulation
- o Retrospective Analysis





## **EXECUTIVE ORDER 13563**

- Agency Plans
- Notice and Comment



## **NOTICE AND COMMENT**

- Notice published on August 5, 2011
- Six-month comment period closed on February 1, 2012
- 22 comments



## **EXPORT CONTROL REFORM: TRANSITION**



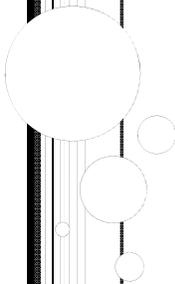
- o Authorizations – General Order No. 5
- o License Exceptions and Exemptions
- o License Validity Periods
- o Other transition issues



## **REGULATORY UPDATE: END-USER FOCUS POLICY FOCUS FOCUS ON REFORM**



**Sheila Quarteman  
Senior Export Policy Analyst  
Regulatory Policy Division**



## **REGULATORY UPDATE: END-USER FOCUS**



**11/09/11**

**76 FR 69609**

Amendment to Existing Validated End-User Authorizations in the People's Republic of China: National Semiconductor Corporation and Semiconductor Manufacturing International Corporation



## **REGULATORY UPDATE: END-USER FOCUS CONT'D**



**02/24/12**

**77 FR 10953**

Amendment to Existing Validated End-User Authorizations for Applied Materials (China), Inc., Boeing Tianjin Composites Co. Ltd., CSMC Technologies Corporation, Lam Research Corporation, and Semiconductor Manufacturing International Corporation in the People's Republic of China, and for GE India Industrial Pvt. Ltd. in India



## **REGULATORY UPDATE: END-USER FOCUS CONT'D**



**04/17/12**

**77 FR 22689**

Revisions to Authorization Validated End-User Provisions: Requirement for Notice of Export, Reexport, or Transfer (In-Country) and Clarification Regarding Termination of Conditions on VEU Authorizations



## **REGULATORY UPDATE: POLICY FOCUS**



**11/14/11**

**76 FR 70337**

Exports and Reexports to the Principality of Liechtenstein

**12/12/11**

**76 FR 77115**

Amendments to the Export Administration Regulations: Facilitating Enhanced Public Understanding of the Provisions That Implement the Comprehensive U.S. Sanctions on Syria

**02/03/12**

**77 FR 5387**

Amendment to the Export Administration Regulations: Addition of a Reference to a Provision of the Iran Sanctions Act of 1996 (ISA) and Statement of the Licensing Policy for Transactions Involving Persons Sanctioned Under the ISA



**REGULATORY UPDATE: FOCUS ON  
REFORM**



**04/13/12  
77 FR 22191**

Revisions to the Export Administration Regulations (EAR):  
Export Control Classification Number 0Y521 Series, Items  
Not Elsewhere Listed on the Commerce Control List (CCL)

**05/18/12  
77 FR 29564**

Revisions to the Export Administration Regulations:  
Auxiliary and Miscellaneous Items that No Longer Warrant  
Control Under the United States Munitions List and Items  
on the Wassenaar Arrangement Munitions List

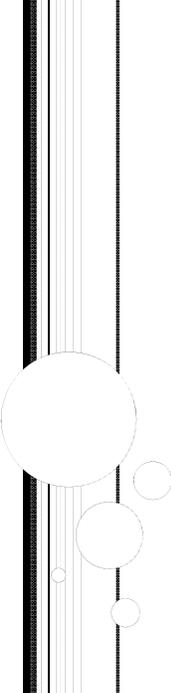


**REGULATORY UPDATE...**



**UP TO THIS MINUTE**





# REGULATORY UPDATE

**Sharron Cook**  
**Senior Export Policy Analyst**  
**Regulatory Policy Division**



## WASSENAAR 2011 IMPLEMENTATION RULE

- o 47 ECCNs affected by this rule
  - Computers
  - Microprocessors
  - Jamming equipment
  - Low Light Level Items
  - Machine Tools
- o Added Mexico as the 41<sup>st</sup> Participating State in the list of WA members in the EAR in Supp No 1 to Part 743
- o Revision to License Exception APP
- o Revision to WA reporting requirements
- o Revision to Definitions in Part 772



## THE AUSTRALIA GROUP (AG) RULE



- **09/12/11**  
**76 FR 56099**  
Implementation of a Decision Adopted under the Australia Group (AG) Intersessional Silent Approval Procedures in 2010 and Related Editorial Amendments
- This rule amended the EAR to implement a proposal that was adopted under the Australia Group (AG) silent approval procedures in November 2010.
- This rule amended ECCN 1C351.a to remove the “South American haemorrhagic fever” and “Pulmonary and renal syndrome-haemorrhagic fever viruses” and replace them with ten viral causative agents for the fevers.
- This rule also alphabetized and renumbered the list of viruses in ECCN 1C351.a to conform with the format in the AG List of Biological Agents.
- This rule alphabetized and renumbered the list of bacteria and “toxins” in ECCN 1C351.c and .d to assist exporters to more easily identify these bacteria and “toxins.”
- This rule amended Section 740.20(b)(2)(vi), which describes certain limitations on the use of License Exception STA, to add several toxins not covered by the License Exception STA rule that BIS published on June 16, 2011 (76 FR 35276).

## HEMT & MMIC



- **01/09/12**  
**77 FR 1017**  
Imposition of Export and Reexport License Requirement for Certain Microwave and Millimeter Wave Electronic Components
- This rule imposed a license requirement on exports and reexports to all destinations, except Canada, of two types of microwave and millimeter wave electronic components.
  - Packaged high electron mobility transistors (HEMT) – ECCN 3A982.a, and
  - Packaged microwave “monolithic integrated circuit” (MMIC) power amplifiers – ECCN 3A982.b.
- This rule also creates new ECCNs 3D982 and 3E982 to control the software and technology, respectively, associated with the new controls set forth in new ECCN 3A982.
- This rule also revises License Exception STA (§ 740.20 of the EAR) to preclude use of License Exception STA for any export, reexport or transfer of items in ECCN 3A982.b.

## NETHERLANDS ANTILLES ...



- o **09/06/11**  
**76 FR 54928**  
Export Administration Regulations: Netherlands Antilles, Curaçao, Sint Maarten and Timor-Leste
- o The Netherlands Antilles dissolved on October 10, 2010.
- o This rule removed the Netherlands Antilles from all places where it is mentioned in the Export Administration Regulations (EAR), e.g., the Commerce Country Chart, the Country Groups, and License Exception APP.
- o Curaçao and Sint Maarten were added to the Commerce Country Chart. Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became semi-autonomous entities within the Kingdom of the Netherlands.
  - The territories and dependencies of a country are treated as the parent country under the EAR.
- o Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands. Therefore, these dependencies are treated like the Netherlands and are not listed on the Commerce Country Chart.
- o This rule also revised the name East Timor to read Timor-Leste throughout the EAR, because this is the proper name of the country.

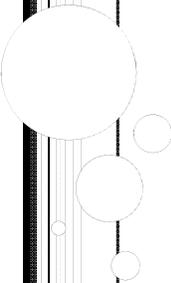


## EDITORIAL CORRECTION TO THE EAR



- o **09/21/11**  
**76 FR 58396**
- o This final rule corrected reference and typographical errors in the Export Administration Regulations (EAR).
  - ECCN 3A001.g is amended by adding a Technical Note that was removed on October 14, 2009.
  - Adding "Technical Note: Parity bits are not included in the key length," because this Note was inadvertently removed from its previous place within ECCN 5A002.
- o This rule added new definitions to the EAR that were inadvertently not incorporated by a previous rule.
  - "Communications Channel Controller"
  - "Network Access Controller"





# REGULATORY UPDATE

**Timothy Mooney**  
**Senior Export Policy Analyst**  
**Regulatory Policy Division**

## REGULATORY ACTIVITY SINCE BIS UPDATE CONFERENCE 2011

- o Export Control Reform (ECR) Initiative has been the focus of regulatory activity in 2011 and 2012.
- o Other EAR regulatory activity continues, such as export control regime implementation rules and end user related rules (e.g., VEU rules and Entity List rules).



## ENTITY LIST RELATED ACTIVITY

- o Entity List continues to play an important role in imposing targeted license requirements on certain persons of concern.
- o Section 744.16 removal process creates path off Entity List.
- o Entity List annual review process identifies additional changes, such as modifications or removals of existing entries.
- o Since Update 2011, BIS published 10 rules amending the Entity List.

## PUBLISHED ENTITY LIST RULES

a

<b>Date published</b>	<b><i>Federal Register</i> citation</b>
07/25/2011	76 FR 44259
08/15/2011	76 FR 50407
10/12/2011	76 FR 63184
10/31/2011	76 FR 67059
11/21/2011	76 FR 71867
12/16/2011	76 FR 78146
04/18/2012	77 FR 23114
04/25/2012	77 FR 24587
04/27/2012	77 FR 25055
05/14/2012	77 FR 28250 (correction)

EXPORT CONTROL REFORM INITIATIVE  
(IMPLEMENTING THE USML-TO-CCL PROCESS)

- o The following slides provide an overview of the regulatory activity coming out of the USML-to-CCL process.
- o The July 15, 2011 Framework rule established the basic control structure.
- o During 2011 and 2012, the Departments of State and Commerce published a series of rules proposing revised USML Categories and corresponding “600 series” ECCNs.
- o June 2012 significant progress was made in the USML-to-CCL process with publication of the revised “specially designed” proposed rule and “transition issues” proposed rule.

THE *JULY 15, 2011 FRAMEWORK RULE*  
FOR THE USML-TO-CCL PROCESS

- o On July 15, 2011, BIS published, “*Proposed Revision to the EAR: Control of Items the President Determines No Longer Warrants Control Under the USML.*”
- o This proposed rule described 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.

## CHANGES PROPOSED IN THE JULY 15 RULE

- This proposed regulatory construct included a number of changes to the CCL and the EAR to address the movement of items from the USML to the CCL:
  - Creation of the “600 series;”
  - Creation of ECCN 0Y521 as an equivalent to USML Category XXI
    - *Note: This portion of the proposed rule was published as stand-alone final rule on April 13, 2012, 77 FR 22191.*
  - 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.

## PUBLIC COMMENTS ON JULY 15 RULE

- Comments were supportive of the ECR Initiative.
- Most comments were supportive of the “600 series” structure that most people thought was a reasonable way to address a fairly complicated problem.
- Most comments also suggested certain changes that needed to be made in order for the objectives of the rule and the larger ECR Initiative to be fulfilled.

## PUBLIC COMMENTS ON THINGS THAT NEEDED TO BE ADDRESSED

- o Key issues public thought needed to be addressed:
  - (1) Need to simplify and address unintended overreach of proposed "specially designed" definition;
  - (2) need to address certain elements of the July 15 control structure, such as the *de minimis* provisions and evaluate whether additional changes needed to be made to EAR license exceptions to create equivalent authorizations to certain ITAR exemptions;
  - (3) need to address transition related issues; *and*
  - (4) need to see the revised USML Categories and corresponding "600 series" ECCNs in order to properly evaluate.
  
- o Significant progress made in 2011 an 2012 to address these issues as additional proposed rules were published in the USML-to-CCL process.

## PUBLISHED PROPOSED RULES UNDER USML-TO-CCL PROCESS

*11/07/11 76 FR 68675	<b>(AIRCRAFT)</b> <i>Proposed Revisions to the EAR: Control of Aircraft and Related Items that the President Determines do not Warrant Control Under the USML.</i> <b>USML Cat VIII and CCL 9Y610 "600 series"</b>
*12/06/11 76 FR 76085	<b>(MILITARY VEHICLES)</b> <i>Proposed Revisions to the EAR: Control of Military Vehicles and Related Items that the President Determines do not Warrant Control on the USML.</i> <b>USML Cat. VII and CCL 0Y606 "600 series"</b>
*12/06/11 76 FR 76072	<b>(MILITARY GAS TURBINE ENGINES)</b> <i>Revisions to the EAR: Control of Gas Turbine Engines and Related Items the President Determines No Longer Warrant Control Under the USML.</i> <b>USML Cat VI, VII, or VIII and CCL 9Y619 "600 series"</b>
*12/23/11 76 FR 80282	<b>(SURFACE VESSELS)</b> <i>Revisions to the EAR: Control of Vessels of War and Related Articles the President Determines No Longer Warrant Control Under the USML.</i> <b>USML Cat VI and CCL 8Y609 "600 series"</b>
*12/23/11 76 FR 80291	<b>(SUBMERSIBLE VESSELS)</b> <i>Revisions to the EAR: Controls Applicable to Submersible Vessels, Oceanographic Equipment and Related Articles that the President Determines No Longer Warrant Control under the USML.</i> <b>USML Cat XX &amp; VI and CCL 8Y620 "600 series"</b>

\*Federal Register citations are for the EAR proposed rules

## PUBLISHED PROPOSED RULES UNDER USML-TO-CCL PROCESS

*05/02/12 77 FR 68675	<b>(ENERGETIC MATERIALS)</b> <i>Proposed Revisions to the EAR: Control of Energetic Materials and Related Articles the President Determines No Longer Warrant Control Under the USML</i> <b>USML Cat V and CCL 1Y608 "600 series"</b>
*05/18/12 77 FR 29564	<b>(MISCELLANEOUS ITEMS AND AUXILIARY MILITARY EQUIPMENT)</b> <i>Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items that No Longer Warrant Control Under the United States Munitions List and Items on the Wassenaar Arrangement Munitions List</i> <b>USML Category XIII and CCL 0Y617 "600 series"</b>
June 2012	<b>(PERSONAL PROTECTIVE EQUIPMENT &amp; SHELTERS)</b> <i>Revisions to the Export Administration Regulations (EAR): Control of Personal Protective Equipment, Shelters, and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)</i> <b>USML Cat X and CCL 1Y613 "600 series"</b>
June/July 2012	<i>Note: Overview of additional USML categories and corresponding "600 series" ECCNs published prior to the BIS 2012 Update Conference.</i>

\*Federal Register citations are for the EAR proposed rules

## PUBLISHED PROPOSED RULES AND ANPRM UNDER THE USML-TO-CCL PROCESS

June 2012	<b>(TRANSITION ISSUES)</b> <i>Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions after Retrospective Regulatory Review</i>  <i>Note: The Department of State also published concurrently the proposed policy statement, request for comments, Export Control Reform Transition Plan</i>
June 2012	<b>(SPECIALLY DESIGNED proposed rule)</b> <i>Proposed "Specially Designed" Definition</i>  <i>Note: The Department of State also published concurrently the proposed rule, Amendment to the International Traffic in Arms Regulations: Definition for "Specially Designed."</i>
June 2012	<b>(SPECIALLY DESIGNED ANPRM)</b> <i>Request for Comments on the Feasibility of Enumerating "Specially Designed" Components</i>

\*Federal Register citations are for the EAR proposed rules

## JUNE 2012 WAS A SIGNIFICANT MONTH IN TERMS OF THE USML-TO-CCL PROCESS

- o The “specially designed” proposed rule and the “transition issues” proposed rules published in June 2012 are import publications for the new control structure.
  - “Specially designed” because of the importance of its use in the “600 series,” in particular under the .x and .y paragraphs.
  - The simplified two-paragraph structure based on the catch-and-release concept for “specially designed” will allow this term to play the key role envisioned for it under the USML-to-CCL process.
  - The “transition issues” rule because it modifies some of the framework elements from the July 15 rule, and adds other elements to the basic framework, such as proposing changes to EAR license exceptions to create equivalent authorizations to certain ITAR exemptions.
  - The “transition issues” rule also provides guidance on how the items will transition, in particular what policies would be put into place to manage the transition from the USML to the CCL, which was something that public was already asking questions about at last year’s BIS Update Conference.

## COMMENTS ON THE PROPOSED RULES

- o Comments on the above rules that have closed for public comment are available on the BIS Web site: <http://efoia.bis.doc.gov>
- o For those rules that are still open for public comment we encourage you to review those rules and submit any comments you may have for improving those proposed rules.
- o There are three ways to comment:
  - (1) Comment by e-mail at [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov)
  - (2) Post a comment on [www.regulations.gov](http://www.regulations.gov)
  - (3) Submit paper comments

*Note: Please follow the instructions in the rule for the way that you chose.*

## CONTACT INFORMATION

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