



# Overview of Export Control Reform

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# President's Export Control Reform Initiative

In 2010, the President approved a plan that envisions:

- A Single Licensing Agency to receive and adjudicate licenses currently processed by State, Treasury and Commerce
- A Single Control List, tiered based on sensitivity of the commodity
- A Single Export Enforcement Coordination Agency
- A Single IT System for submission, review and adjudication of licenses



# Phased Implementation

Departments were directed to begin a 3 phased implementation:

Phase 1: Immediate improvements, create the framework for the 4 singles

Phase 2: Implement the new framework within existing structures and statutory authorities (USML Re-writes, USXports, E2C2)

Phase 3: Complete transition, merge and consolidate.  
- Cannot take place without legislation.



# ITAR in 4 Steps

1. Correct Classification
2. Specially Designed
3. Understand the USML Structure
4. Understanding Paragraph (x)
5. If Confused, Ask?



# Order of Review

- Perspective of an Applicant:
  1. Review the USML for applicability (begin with §121.1(b))
    - a) Specifically enumerated items
    - b) “Specially designed” items (enumerated and “catch-alls”)
  2. If not identified in the USML or is “released” via paragraph (b) exclusion, then review the CCL for applicability (Supp. 4 to Part 774)
    - a) 600 series
    - b) Application of specially designed (§772.1)
    - c) CCL



# Order of Review

Order of Review Decision Tool:

[http://pmddtc.state.gov/licensing/dt\\_OrderofReview.htm](http://pmddtc.state.gov/licensing/dt_OrderofReview.htm)



# Specially Designed

**Key objective of list revisions** – specific enumeration of controlled items and removal of broad “catchalls.”

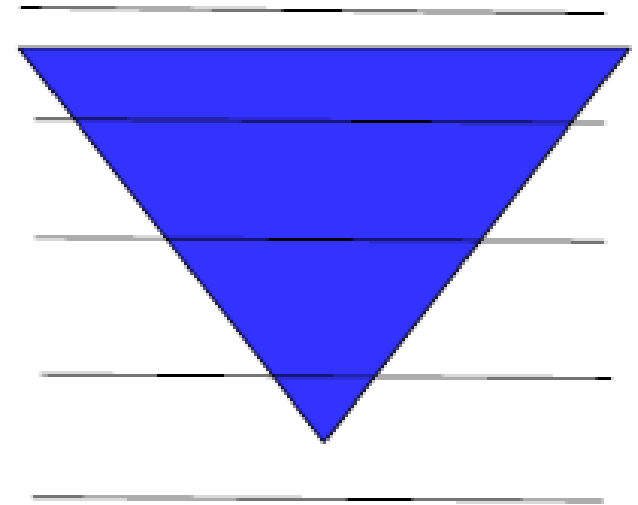
- New definition in ITAR §120.41 and EAR §772.1
  - Mirror definitions with minor differences
- Has a “catch” and “release” construction
- Must be used in the control text
- Only applicable to revised USML categories
  - Not synonymous with “specifically designed or modified” in the USML



# Why Specially Designed Matters

## Levels of Control

- ITAR
- EAR “600” series
- Anti Terrorism (AT)
- EAR99



**Amount and cost of controls  
needed to protect item from  
non US person access**











# Specially Designed

Specially Designed Decision Tool:

[http://pmddtc.state.gov/licensing/dt\\_SpeciallyDesigned.htm](http://pmddtc.state.gov/licensing/dt_SpeciallyDesigned.htm)



# Category Structure

- (a)  End items (platform, vehicle, etc.)
- (b)
- (c)
- (d)  Systems and equipment
  - 
  -  Parts, components, accessories, attachments, associated equipment and systems (*enumerated and catch-all*)
  - 
  - 
  -  Technical Data
  -  [Reserved]
  -
- (x)  Commodities, software and tech data subject to the EAR used in or with defense articles controlled in this category

**Specially Designed embedded throughout.**



## Paragraph (x)

- Paragraph (x) added to each revised Category.
- Provides mechanism for DDTC to authorize exports of EAR-controlled when used in or with defense articles .
  - Authority delegated by Executive Order 13222



## Paragraph (x)

- Intended to avoid the need to obtain separate authorizations for a single shipment.
- Requires that purchase documentation includes commodities, software, or technical data subject to the EAR.
- *NOTE*: Commerce retains jurisdiction for subsequent transactions, e.g. re-exports/transfers, voluntary self-disclosures, recordkeeping, etc.



# 17 of 21 USML Categories Revised

USML	Description	Status
IV	Launch Vehicles/Missiles	Rule 3 – Effective 7/1/2014
V	Explosives/Propellants	Rule 3 – Effective 7/1/2014
VI	Vessels of War	Rule 2 – Effective 1/6/2014
VII	Ground Vehicles	Rule 2 – Effective 1/6/2014
VIII	Aircraft and Related Articles	Rule 1 – Effective 10/15/2013
IX	Training Equipment	Rule 3 – Effective 7/1/2014
X	Personal Protective Equipment	Rule 3 – Effective 7/1/2014
XI	Electronics	Rule 5 – Effective 12/30/2014
XIII	Materials and Miscellaneous	Rule 2 – Effective 1/6/2014
XIV	Toxicological Agents	Rule 6 – Effective 12/31/2016
XV	Spacecraft/Satellites	Rule 4 – Effective 11/10/2014
XVI	Nuclear	Rule 2 – Effective 7/1/2014
XVII	Classified Articles	Rule 1 – Effective 10/15/2013
XVIII	Directed Energy Weapons	Rule 6 – Effective 12/31/2016
XIX	Gas Turbine Engines	Rule 1 – Effective 10/15/2013
XX	Submersible Vessels	Rule 2 – Effective 1/6/2014
XXI	Articles Not Enumerated	Rule 1 – Effective 10/15/2013



# Other ECR Rules

- ECR Definitions interim final rule, Published June 3<sup>rd</sup>
  - Harmonized Definitions for:
    - Export – 120.10
    - Reexport – 120.19
    - Release – 120.50
    - Retransfer – 120.51
  - Harmonized authorization for export of technical data to employees of U.S. companies working abroad
  - Moved 124.16 to 126.18(d) and made it an exemption
- Paragraph (x) Exemptions & Destination Control Statement



# ECR Proposed Rules

- USML Category XII 2<sup>nd</sup> proposed rule
  - Published Feb 19<sup>th</sup>, comments were due April 4<sup>th</sup>
- USML Category VIII and XIX proposed rule
  - Published Feb 9<sup>th</sup>, comment were due March 24<sup>th</sup>



# Additional Proposed Rules

- 126.4 – By and For the US government
  - Published May 22<sup>nd</sup>, comments closed July 6<sup>th</sup>
- U.S. Persons Employed Abroad
  - Published June 26<sup>th</sup>, comments closed July 27<sup>th</sup>
- USML XI(b)
  - Forthcoming





# USML Continued Review

- DDTC will continue to review the USML Categories to ensure that they remain up to date and clear to the regulated community
- Notice of Inquiry for Categories VIII and XIX
  - Proposed Rule published and Final Rule forthcoming
- Notice of Inquiry for ECR Rule II
  - Categories VI, VII, XIII and XX
  - Published October 9, 2015, comments closed December 9, 2015
- Notice of Inquiry for Rule III – coming this winter



# General Trends

- Increase in advisory opinions
  - Some questions have resulted in future rule changes
- Difficulty with no catch-all buckets
  - VI(f)(1), VII(g)(1), and VIII(h)(1) are not catch-alls
  - Bulk licenses and WDAs likely “things of the past”
- High Return Without Action (RWA) rate  
RWAs **are not** Commodity Jurisdiction determinations



# Additional Trends

- Decrease in DDTC licenses exceeds BIS increase – why?
- License processing times up slightly
- Lack of clarity/specificity in applicant submissions
- Submissions are improving!



# Export Control Reform

Additional information on the White House website:

- <http://www.whitehouse.gov/the-press-office/fact-sheet-presidents-export-control-reform-initiative>



# We're Here to Help

- Response Team
  - [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov) or 1-202-663-1282
- Advisory Opinions
  - U.S. Department of State  
PM/DDTC, SA-1, 12<sup>th</sup> Floor  
2401 E Street, NW  
Washington, D.C. 20037
- Commodity Jurisdictions
  - [https://www.pmdtc.state.gov/commodity\\_jurisdiction/index.html](https://www.pmdtc.state.gov/commodity_jurisdiction/index.html)
  - We try to provide the Commerce ECCN if not USML
- Commerce Control List Classification
  - <http://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification>



# More Information

Learn more by visiting our website:

*[www.pmddtc.state.gov](http://www.pmddtc.state.gov)*

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Questions?