A Special Presentation for the Upstate New York Trade Conference & Exposition

EXPORT CONTROL REFORM (ECR) Update, Impact and Implications

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We live in a world and career field full of acronyms. In the context of ECR there is a new one on the scene.

**MCD**

What does it stand for?
The Administration’s interagency review of the US export control system called for fundamental reform of the current system to enhance US national security.

In 2010, the Administration announced its goal of achieving four singularities:

- Control List
- Primary Enforcement Coordination Agency
- Information Technology System
- Licensing Agency
ECR
Update, Impact and Implications
Vision and Reality

Vision: Control List and Tiers

US Munitions List (USML)

Commerce Control List (CCL)

600 Series

Catch-All Based Controls

Reality: USML to CCL Migration

- Rulemakings result in items moving to the CCL.
- Dual rules [Export Administration Regulations (EAR) & International Traffic in Arms Regulations (ITAR)]
- 38(f) Congressional hurdle apparently cleared.
- New “Specially Designed” definition opens door to reduced controls.
- Selected “.y” items subject only to Anti-Terrorism (AT) controls.
- EAR license exceptions for migrated items
- ITAR Category VIII final (Effective 10/15/2013)
- ITAR Categories IV, V, VI, VII, IX, X, XI, XIII, XV, XVI, and XX have all been proposed/published.

Migration is “groundwork” for the vision, but also real change.
Parts, components, accessories and attachments “Specially Designed” for certain enumerated U.S. origin aircraft are covered by revised USML Category VIII.

New “Specially Designed” definition determines control of such parts.

The F-16 is an example of an aircraft for which a “Positive” list of controls for parts & components applies under the USML.

The result is that many parts and components “Specially Designed” for the F-16 are no longer ITAR-controlled.

Such parts have moved to the CCL and Department of Commerce (DOC) controls.

(Reference: Federal Register / Volume 78/ April 16, 2013 / Final Rule, Page 22740)
Examples: Enumerated USML-Controlled F-16 Parts & Components

- Tail boom stabilator and automatic rotor blade folding systems (h)(3)
- Aircraft wing folding systems and parts & components (h)(4)
- Tail hooks, arresting gear and parts & components (h)(5)
- Missile rails, weapon pylons, pylon-to-launcher adapters, Unmanned Aerial Vehicle (UAV) launching systems, external stores support systems and parts & components (h)(6)
- Damage/failure-adaptive flight control systems (h)(7)
- Threat-adaptive autonomous flight control systems (h)(8)
- Certain non-surface based flight control systems and certain radar altimeters (h)(9)(10)
- Air-to-air refueling systems and hover-in-flight refueling systems and parts & components (h)(11)
- UAV flight control systems and vehicle management systems with swarming capability (h)(12)

(Reference: Federal Register / Volume 78/ April 16, 2013 / Final Rule, Page 22740)
F-16 Fighting Falcon

EAR CCL
Export Control Classification Number (ECCN) 9A610

Examples: F-16 Parts & Components Under the CCL

ECCN 9A610.x
- “Specially Designed” parts and components not on USML or listed elsewhere, such as:
  - Wings, rudder, fin, panels
  - Wing box
  - Internal & exterior fuel tanks
  - Engine inlets & ducting
  - Fuselage - forward, center and aft
  - Cockpit structure
  - Forward equipment bay
  - Cartridge and Propellant Actuated Devices
  - Technology associated with the above items

ECCN 9A610.y
- Specific list of AT-controlled items
- Aircraft tires
- Certain check valves
- Certain filter and filter assemblies
- Certain steel wear brake pads
- Hoses, lines, couplings, brackets
- Certain cockpit panel knobs and switches
- Fire extinguishers
- Analog gauges & indicators
- Cockpit mirrors
- Underwater beacons

(Reference: Federal Register / Volume 78/ April 16, 2013 / Final Rule, Page 22660)
Specially Designed

- Two-part “Catch & Release” approach
  - Catch is broad enough to capture any item for use with a USML or CCL defense article
- Releases are:
  - Grandfather
  - Fastener (including: screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins, washers, spacers, insulators, grommets, bushings, springs, wires or solder)
- Production
- Under Development for:
  - Multiple Use
  - General Purpose Use
  - EAR99/AT Use
SITUATION: You are a US manufacturer of a wide-range of commercial off-the-shelf and dual-use connectors for a variety of uses.

You are approached by a buyer who wants one of your products with only a minor change to suit a military application.
USML to CCL Migration
First Example - Now & Then

What are the differences?

What difference do the differences make?
1. How does that change impact jurisdiction?

2. Which connector is currently under State Department (DOS) jurisdiction and why?

3. Are the two different connectors the same in form, fit and function?

Projected 600 Series ECCN: 9A610.x
JURISDICTION & CLASSIFICATION
Example Part Analysis Under New Rules

- Is the connector specifically called out in the USML?
- Is it captured by a USML “catch all” as a “Specially Designed” part of a controlled end item?
- It is not, because, like F-16, Blackhawk parts are not covered by the Category VIII(h)(1) catch all >>>> CCL
- Is it described by any of the 9A610 paragraphs besides .y and .x?
- If no, is it described by any of the .y provisions?
- If no, is it “released” by any of the release clauses in the “Specially Designed” definition?
- If no, classify in 9A610.x.
Example Licensing Analysis

- What if you plan to develop the modified part for sale to commercial customers as well?
  - Potentially released by multiple use release
- What if the part was a “fastener” >> released?
- What if part was described in 9A610.y >> AT only?
- Is classification in 9A610.x better than being USML?
- EAR license exceptions may eliminate burdens:
  - Strategic Trade Authorization (STA) allows export to 36 countries for government end-use
  - Limited Value Shipment (LVS)
  - Temporary exports, imports and re-exports (TMP)
  - Replacement/servicing of parts & equipment (RPL)
SITUATION: You are a US manufacturer of common butterfly valves used for a wide range of industrial applications including marine, water, oil, gas industries, food, dairy, brewing, pharmaceutical, beverage and chemical/process industries.

You are approached by a military buyer who wants one of your products with only a few minor changes for safety considerations.
USML to CCL Migration
Another Example - Now & Then

What are the differences?

What difference do the differences make?
The buyer does not want to make any modifications whatsoever to the Pressure Rating and Temperature Range. However, the customer decides to only make small changes to the upper shaft stem.

1. What are the differences between the two items?
2. Which one is currently under DOS jurisdiction?
3. Are the two different items the same in form, fit and function?

Projected 600 Series ECCN: 8A609.x
ECR: Update, Impact and Implications

General Recommendations

- Analyze Proposed Rules covering your products
  - Submit comments (if it’s not too late)
  - Consider advocacy on .y paragraph inclusion
- Conduct review of your items’ jurisdiction and classification under Proposed Rules
- Review existing licenses/authorizations to determine how to continue or replace under new rules
- For migrated items, begin preparation of license applications under EAR or confirm exceptions
- Develop plan to communicate changed jurisdiction and classification to business partners
- Prepare updated internal compliance programs
JURISDICTION & CLASSIFICATION
Key US Government Points of Contact

DOS, Directorate of Defense Trade Controls
Di Bounds, (202) 736-9230
Eric McPherson, (202) 663-2918
FAX: (202) 663-3618
Commodity Jurisdiction (CJ):
http://www.pmddtc.state.gov/commodity_jurisdiction/index.html

Department of Defense, Defense Technology Security Administration
Steve Hanson, (571) 372-2340
Michael (Mike) Eaton, (571) 372-2324
FAX: (571) 372-2339
ELISA: http://elisa.dtsa.mil

DOC, Bureau of Industry & Security
Gene Christiansen, (202) 482-2984
FAX: (202) 482-4094
http://www.bis.doc.gov/licensing/facts3.htm
JURISDICTION & CLASSIFICATION
Useful MCD Contacts

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Reality Check: “It’s no longer a matter of if or when, it’s now.”

IN CONCLUSION
Questions, Comments, Other...

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14. School of Business Administration and Economics, The College at Brockport
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18. County of Monroe Industrial Development Agency (COMIDA) Procurement Technical Assistance Center (PTAC)
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