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International Trade & Regulatory ADVISORY ■

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First Set of Final Rules Make Export Control Reform an Imminent Reality; Initial USML and CCL Revisions Affect Aircraft and Associated Equipment

I. Summary

On October 15, 2013, the first of many Final Rules required to advance the Obama Administration's Export Control Reform (ECR) initiative will take effect. The initial Final Rules promise to directly impact manufacturers, exporters and servicers of aircraft, gas turbine engines, and other aircraft parts and equipment. Their publication also represents a significant milestone in the overall regulatory reform effort that began almost four years ago and is now finally on the brink of implementation.[1] Indeed, a hearing on the future of ECR held last week by the House Foreign Affairs Committee suggests that further progress lies ahead for the reform effort, as the Administration's representatives from the Commerce, State and Defense Departments received a noticeably cooperative reception despite the concerns expressed by some Members. Thus, while the "four singularities" vision of ECR first announced by the President in 2009 remains an ambitious work in progress, a framework and path forward for what we now know to be achievable regulatory reform is finally clear. Accordingly, industry can begin to genuinely evaluate the challenges and opportunities ECR presents. Even if your company is not currently engaged in exports of aircraft equipment or USML items generally, Section III of this advisory outlines some basic steps all exporters should consider taking to adapt smoothly to the coming regulatory changes.

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[1] For additional background on the ECR initiative and commentary on previous milestones in the ECR initiative, please see our previous advisories:

- "White House Launches Comprehensive Review of U.S. Export Control Laws" – http://www.alston.com/resources/publications/international-trade-regulatory-advisory-white-house-launches-comprehensive-review-of-us-export-control-laws.
- "U.S. Export Controls: 2010 Reform Effort" – http://www.alston.com/advisories/international-trade-regulatory-advisory-us-export-controls-2010-reform-effort.
- "Export Control Reform: Key Insights and Status Update" – http://www.alston.com/advisories/international-trade-and-regulatory-update-export-control-reform-key-insights-and-status-update.
- "The USML-to-CCL Rule: Export Control Reform Takes Shape" – http://www.alston.com/advisories/international-trade-and-regulatory-advisory-the-usml-to-ccl-rule-export-control-reform-takes-shape.

Published in the *Federal Register* on April 16, but assigned a 180-day delayed effective date, these first of ECR's Final Rules include key "transition rules" and definitions that are critical to implementing the overall ECR framework. They also establish the first revisions to be made to the United States Munitions List (USML) and the Commerce Control List (CCL). Specifically, the Final Rules will move a number of aircraft and related equipment and technologies from the USML, which identifies defense articles and defense services subject to the International Traffic in Arms Regulations[2] (ITAR) and the licensing jurisdiction of the State Department's Directorate of Defense Trade Controls (DDTC), to the CCL, which identifies the so-called dual use or commercial items subject to the Export Administration Regulations[3] (EAR) and the licensing jurisdiction of the Commerce Department's Bureau of Industry and Security (BIS). The two Final Rules, one issued by DDTC amending the USML and ITAR[4] and one by BIS amending the CCL and EAR,[5] both also include a new definition of "specially designed," a phrase that both exporters and the U.S. government have struggled to define and apply for years. This phrase, now assigned a lengthy definition described below, will continue to play an important role in classifying aircraft parts and components, as well as other items that will be moved from the USML to the CCL in the future.

Since military aircraft, engines and related equipment currently in Category VIII of the USML are the first items to be impacted by the USML and CCL reforms, aircraft industry manufacturers, suppliers and service providers have less than six months to review and reclassify their military aircraft products, technologies and services and adjust to new license requirements under the EAR. For those items that will move to the CCL in October, license requirements and eligibility for EAR license exceptions will vary depending upon where a particular item is classified on the revised CCL and the destination country, among other factors. For exporters of military aircraft parts and components that are accustomed to the ITAR's onerous but comparatively straightforward DDTC license requirements—if an item is on the USML, then a license is nearly always required to export it—the EAR's more complicated regime of license requirements and license exceptions will represent a substantial change, but one with long-term promise for companies able to take full advantage of the EAR's available license exceptions.

Publication of the ECR initiative's first Final Rules also indicates that BIS, DDTC and Congress have in place a functioning process for providing notifications under Section 38(f) of the Arms Export Control Act (AECA), the statutory authority for the ITAR. Section 38(f) requires the President to notify Congress before items are removed from the ITAR's USML and transferred to the CCL. Congress and the Administration negotiated for months over the specifics of the 38(f) notification process. As BIS and DDTC prepare more changes, the Proposed Rules issued by the agencies for each set of USML and CCL revisions will also serve as the Section 38(f) notifications to Congress. The intention of BIS and DDTC is that any concerns from Capitol Hill will have been vetted and resolved prior to publication through the Administration's practice of ongoing consultations with Congress.

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2 22 C.F.R. Parts 120-130. Note that the definition of "defense services" in the ITAR will, for now, remain the same. While DDTC published a proposed revision to the meaning of "defense service" on April 18, 2011, as we described in our advisory **DDTC Proposed Rule Would Narrow Scope of ITAR-Covered Defense Services**, the new definition is not a part of the first set of Final Rules issued on April 16. Thus, implementation of this aspect of ECR will presumably come at some later date in 2013.

3 15 C.F.R. Parts 730-774.

4 78 Fed. Reg. 22,740 (April 16, 2013) ("DDTC Final Rule").

5 78 Fed. Reg. 22,660 (April 16, 2013) ("BIS Final Rule").

This remainder of this advisory:

- outlines what now appears to be the final regulatory framework for the migration of items from the USML to the CCL—a key element of the overall ECR initiative, and one that can now reasonably be expected to be achieved—as well as some key definitions and the licensing regime for items moving to the CCL;
- summarizes the initial proposed changes to the USML and CCL, which will directly impact the aircraft industry and its suppliers; and
- identifies additional regulatory changes forthcoming and suggests steps exporters might consider to help adapt to the changes, such as developing a plan to review product classifications and modifying business and compliance procedures to accommodate BIS licensing requirements.

II. The USML-to-CCL Framework, Key Definitions and Licensing Regime

Since its launch in 2009, observers have witnessed the slow development and adaptation of the Administration's plan to reform the U.S. export control system, including adjustments to the scope, timeline and framework of the reform effort. With the initial Section 38(f) notices clearing Congress and the publication of the first set of Final Rules, exporters can begin to evaluate their particular export control obligations under a known set of forthcoming rule changes, and assess whether the reforms will bring particular benefits for their business.

Former USML Items and the CCL's 600 Series ECCNs

As we previously outlined (***The USML-to-CCL Rule: Export Control Reform Takes Shape***), a key component of the ECR framework is the creation of a new "600 series"[6] of Export Control Classification Number (ECCN) entries in each CCL Category that will capture the items that the Administration determine no longer warrant control on the USML and which are therefore moving from the USML to the CCL. Each 600 series ECCN will have three types of subparagraph, as follows:

1. Specifically enumerated end items, parts, components, accessories and attachments[7] moving from the USML to the CCL will be included in subparagraphs .a through .w;
2. Parts, components, accessories, attachments and software that are not enumerated on the revised USML or in paragraph .a through .w of the corresponding 600 series ECCN *and* which are "specially designed" for an item enumerated on the USML or in the corresponding 600 series ECCN will be included in subparagraph .x; and
3. Specifically enumerated parts, components, accessories and attachments that, although specially designed for an item enumerated on the revised USML or in the corresponding 600 series ECCN, warrant no more than "AT-only"[8] controls will be included in subparagraph .y.

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6 The 600 series ECCNs use the nomenclature "xY6zz," with *x* being the CCL Category, *Y* being the CCL Subcategory (A/B/C/D/E), *6* denoting the 600 series and *zz* generally tracking the fourth and fifth characters of the Wassenaar Agreement Munitions List categories for similar items. To avoid confusion, BIS is no longer referring to 600 series ECCNs as the "Commerce Munitions List," as it did in the July 15, 2011, "framework work" rule in which it initially proposed the framework for transferring items from the USML to the CCL. *See* 76 Fed. Reg. 41,958 (July 15, 2011).

7 These terms—"part, "component", "accessories", "attachments"—are among several new definitions to be added to Part 772 of the EAR.

8 Items subject to "AT" (Anti-Terrorism) controls, and no other reasons for control, are eligible for export without a license to all destinations except for Cuba, Iran, North Korea, Syria and Sudan.

In sum, subparagraphs .a through .w are positive ECCN provisions for specific items with strict license requirements, as noted below; subparagraph .x is a catch-all with equally stringent license requirements; and subparagraph .y is another positive list for items specially designed for USML or 600 series items, but which have been specifically identified for less restrictive export controls.

BIS concedes that the .x subparagraphs will yield a revised CCL that is not as "positive" and specific as exporters would like regarding the former USML items. This, BIS says, is because the USML's catch-all provisions were so inclusive. Without the .x paragraph, according to BIS, the CCL could not cover all the items moving from the USML without unintentionally decontrolling some USML items entirely.

Subparagraphs .x and .y – "Specially Designed" Parts, Components, Attachments, Accessories and Software Versus Items Called Out for AT-Only Controls

The difference between the .x and .y subparagraphs of the 600 series ECCNs is crucial to allocating the immediate benefit that exporters of parts, components, attachments, accessories and software will reap from ECR. While the .x subparagraphs will appear first in each 600 series ECCN, exporters looking to reclassify items moved from the USML to CCL should begin with a review of the .y paragraphs of the applicable ECCNs. If the part, component, accessory or attachment in question is covered by the .y subparagraph, then it is classified as "xY6zz.y" and is subject only to AT controls, allowing exports to nearly all destinations without a license. Conversely, if the part, component, accessory or attachment is not listed in the .y paragraph, then the exporter must consider whether it is "specially designed" and therefore classified in the .x subparagraph, making it subject to strict export license requirements.

One of the stated goals of ECR has been to move away from "design intent" as the basis for the control of end items, parts and components since this standard has resulted in broad and nebulous interpretations of the USML by industry and DDTC. Thus, the definition of "specially designed" in the EAR for parts moved from the USML is another key component of the ECR framework. After multiple revisions, the final definition of "specially designed" that will take effect in October employs a two-part "catch and release" approach that attempts to enable the classification of parts, components, attachments, accessories and software without overreliance on the troublesome notion of design intent. This definition will reside in Part 772 of the EAR. The first part, the "(a) paragraph," captures items specially designed for military use, while the second part releases a number of those items from control under six different exclusions or "releases." Beginning in October, an item qualifies as "specially designed" for a military application if:

1. as a result of "development," it has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions described in the relevant ECCN or USML paragraph; or
2. it is a part, component, accessory, attachment or software for use in or with a commodity or defense article "enumerated" [9] or otherwise described on the CCL or the USML.

If one or both of these criteria describes an item, it potentially qualifies as "specially designed." As BIS explained in its Final Rule, the first paragraph is generally applicable to all types of items except for "technology," since technology is instead subject to the definition set forth in the General Technology Note.[10] The second paragraph—applicable by its own terms only to parts, components, accessories, attachments and software—is intended to be a simplified "catch" for items that are "in any way for use in or with (regardless of the perceived insignificance) a commodity or defense

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[9] A note in the definition explains that "enumerated refers to any item (i) on either the USML or CCL not controlled in a 'catch-all' paragraph, and (ii) when on the CCL, controlled by an ECCN for more than AT reasons only."

[10] 15 C.F.R. Part 774 Supp. No. 2.

article enumerated or otherwise described on the CCL or USML."[11] The enormous breadth of this second "catch" will make the interpretation and application of the "release" clauses critical to unleashing the potential benefits of reform.

The second part of the definition of "specially designed," the "(b) paragraph," is the "release" portion. Items that are described by one or both criteria in the (a) paragraph are released from subparagraph .x of that particular ECCN and, therefore, classified elsewhere on the CCL (or as EAR99) if the item is described in one of six release categories. The six release or exclusion provisions can be summarized as follows:

1. ***A grandfather release***. This is for items that have been the subject of a commodity jurisdiction (CJ) determination by DDTC or commodity classification determination (CCATS) by BIS that classified the item in an ECCN paragraph that does not contain "specially designed" as a control parameter, or as EAR99. This was added to the Final Rule based on comments from industry.
2. ***A fastener release***. This releases all fasteners (*e.g.*, screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washers, spacers, insulators, grommets, bushings, springs, wires or solder, *regardless of form or fit*. By removing the form and fit criteria, DDTC and BIS are finally releasing from strict control all those fasteners and related items that were slightly modified for a military aircraft but were otherwise equivalent to commercial aircraft fasteners.
3. ***A production release***. This releases items that are—or have the same function, capabilities and equivalent form and fit as—a commodity or software used in or with a higher-order item that is or was in "production" (*i.e.*, not in "development") *and* is either EAR99 or in an ECCN controlled only for AT reasons. There is no need to know the development history of the commodity or software in order to make a determination that it is released from subparagraph .x under the *production* release. Rather, once a part, component, accessory, attachment or software (or its equivalent) is used in the production of a higher-order EAR99 item or a higher-order item described in an ECCN controlled for AT reasons only, whatever its original design significance, the part, component, accessory, attachment or software has "crossed over into broader commercial applicability and would no longer warrant control as 'specially designed.'"[12]
4. ***An under development for multiple use release***. This releases items being developed "with knowledge" they would be for use in or with commodities or software in an ECCN controlled only for AT reasons or classified as EAR99. These would be items being developed for multiple uses, including, potentially, uses with 600 series or USML items, but also for common commercial applications. In that regard, BIS notes that this release is intended to "align […] closely with the structure and terminology used in paragraph (b)(3)."[13]
5. ***An under development for general purpose use release***. This releases items being developed as general purpose commodities or software with no knowledge they are for use in or with a particular commodity (*e.g.*, a particular aircraft) or type of commodity (*e.g.*, something used in all aircraft or a machine tool). This release is necessary because some such items may be "used in or with a commodity or defense article enumerated or otherwise described on the CCL or the USML," and therefore caught in the (a) paragraph of the definition of "specially designed."
6. ***An under development for EAR99/AT-only use release***. This releases items being developed with "knowledge" that they would be for use in or with commodities or software described in an ECCN controlled for AT reasons only and also EAR99 commodities or software.

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[11] BIS Final Rule, 78 Fed. Reg. at 22,685.

[12] BIS Final Rule, 78 Fed. Reg. at 22,687-88.

[13] BIS Final Rule, 78 Fed. Reg. at 22,691.

Items that are released through one of these six exclusions would be classified elsewhere on the CCL or as EAR99, but not in subparagraph .x or .y of the relevant 600 series ECCN.

The regulation defining "specially designed" in the ITAR is similar in nature, but only applies to revised categories and otherwise does not replace the phrase or meaning of "specifically designed" as currently used in the ITAR and USML.

License Requirements and License Exceptions – Which Items Will Truly Benefit from the Switch from the USML to the CCL?

Items classified in the .a through .w and .x subparagraphs of the new 600 series ECCNs will be subject to a very restrictive set of reasons for control.[14] Unless they are eligible for one of the EAR's license exceptions, these items will require licenses for export to all destinations except Canada. By contrast, items identified in a subparagraph .y, would be subject to AT controls only, and subject to license requirements only for exports to embargoed destinations. Consequently, the benefits of ECR for items moving from the USML to the CCL will flow most immediately and generously to exporters of items (1) classified in a .y provision of a 600 series ECCN; (2) classified as EAR99 or in an ECCN subject to few controls outside the 600 series (*i.e.*, for those items not covered in the .y paragraph, but also not "specially designed" and covered by the .x paragraph); or (3) the .a through .w items and .x "specially designed" items that are or will be eligible for EAR license exceptions.

The license exceptions available for "600 series" items are "LVS" (shipments of lesser value), "TMP" (temporary imports, exports, re-exports and transfer), "RPL" (servicing and replacement of parts and equipment), "TSU" (technology and software – unrestricted), "GOV" (governments and international organizations; only available for a small set of 600 series items); and "STA" (strategic trade authorization). STA is of particular importance, as it will authorize a number of 600 series .a though .w and .x items for export to 36 countries without a license if the items are for end use by a government of those countries. However, some items, notably aircraft in ECCN 9A610.a, will require BIS approval to use STA—specifically a license that, when issued, will also approve use of STA in the future. Some 600 series ECCN items will not be eligible for the STA exception at all, which will be reflected in the appropriate ECCNs.

De Minimis Calculations for 600 Series Items

The last key element of the USML-to-CCL regulatory reform framework is the unique set of rules for 600 series items when conducting *de minimis* calculations to determine when foreign-made items are subject to the EAR. The Final Rules that take effect in October will maintain the EAR's 25 percent *de minimis* rule for reexports to most countries for items classified in 600 series ECCNs, but would apply a zero percent *de minimis* level for countries subject to an arms embargo (these countries will be listed in a new D:5 column to Country Group D in Supplement No. 1 to part 740 of the EAR). That means the ITAR's prohibition on exports of USML items to the "Section 126.1" countries will continue to apply even after items move to the CCL.

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[14] National Security Column 1 (NS1), Regional Stability Column 1 (RS1), Anti-Terrorism Column 1 (AT1) and United Nations Embargo (UN) reasons for control. In addition, end items moving from the USML that are controlled by the Missile Technology Control Regime, Australia Group and Firearms Convention would be controlled for Missile Technology Column 1 (MT1), Chemical and Biological Weapons Proliferation Column 1 (CB1) and Firearms Convention (FC) reasons, respectively.

Transition Plan

The BIS and DDTC Final Rules outline a number of transition processes with regard to items currently under a DDTC authorization that will transfer to the CCL and BIS's licensing jurisdiction and with regard to items that would potentially be subject to double licensing requirements after the transition, such as an end item on the USML that incorporates content from the CCL.

With regard to items already subject to DDTC authorizations at the time the Final Rules take effect in October, BIS is creating General Order No. 5 in Supplement No. 1 to Part 736 of the EAR. General Order No. 5 describes the transition process and licensing options for items moving from the USML to the CCL when such items are under DDTC licenses and agreements, including the validity period of such licenses. Existing DDTC authorizations for items moving from the USML to the CCL can be used for up to two years after the Final Rules take effect, or exporters may return them to DDTC and obtain new authorizations from BIS. BIS will not issue new licenses for items moving to the CCL until after the Final Rules take effect. DDTC authorizations that cover items remaining on the USML, as well as items moving to the CCL, will remain valid until they expire, but license holders may also opt to replace those licenses as well.

To resolve the double licensing issue, BIS is amending Section 734 of the EAR to note that DDTC has licensing authority over the export, re-export or in-country transfer of items subject to the EAR if used in or with items subject to the ITAR and authorized by DDTC. DDTC, for its part, is adding a new subparagraph (x) to each of the USML categories to cover items subject to the EAR that are to be used in or with a licensed USML defense article.

Initial Changes to the USML And CCL Provisions – Aircraft, Turbine Engines and Aircraft Equipment

It is not practical in this advisory to summarize all of the changes proposed to the USML and CCL as a result of the BIS and DDTC Final Rules, but noted below are a number of highlights from the revised control lists that are likely to be of significance to a number of manufacturers and suppliers in the aircraft industry:

- USML Category VIII(a) is being revised to more specifically identify the covered aircraft, which are fighters; fighter bombers; fixed-wing attack aircraft; turbofan- or turbojet-powered trainers used to train pilots for fighter, attack or bomber aircraft; attack helicopters; unarmed military unmanned aerial vehicles (UAV) and armed UAVs; military intelligence, surveillance and reconnaissance aircraft; electronic warfare, airborne warning and control aircraft; air refueling aircraft and strategic airlift aircraft; target drones; aircraft incorporating any mission system controlled under USML; aircraft capable of being refueled in flight; and optionally piloted vehicles (OPV).
- Certain gas turbine engines for military aircraft are moved to a new USML Category XIX, as previously proposed by DDTC.
- All parts, components, accessories, attachments and equipment specially designed for B–1B, B–2, F–15SE, F/A–18 E/F/G, F–22, F–35 and future variants thereof, or the F–117 or U.S. government technology demonstrators, remain on the USML at Category VIII(h)(1).[15]
- A variety of specific parts, components, accessories and attachments for all USML aircraft (*i.e.*, not just those listed in the previous bullet) remain on the USML at Category VIII(h), ranging from certain gearboxes to UAV control systems. Manufacturers and exporters of more specialized equipment for military aircraft should carefully review the new USML Category VIII(h) list.

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[15] However, parts, components, accessories, attachments and equipment of the F–15SE and F/A–18 E/F/G that are common *to earlier models* of these aircraft, unless listed in Category VIII(h), are moved to the CCL and subject to the EAR.

- A new ECCN 9A610.a covers aircraft specially designed for a military use that are not enumerated in the revised USML Category VIII(a).
- The other ".a through .w" paragraphs of ECCN 9A610, which would be subject to license requirements for all destinations except Canada, cover the following: ground equipment; life support systems and safety equipment; parachutes and paragliders, canopies, harnesses and release mechanisms; systems for parachuted loads; ground effect machines; military instrument flight trainers and combat simulators; non-USML UAV and drone control equipment; radar altimeters; and non-USML flight control systems.
- The new ECCN 9A610.y provision, which describes items that are subject to AT reasons for control only, cover the following: aircraft tires; analog cockpit gauges and indicators; audio selector panels; check valves for hydraulic and pneumatic systems; crew rest equipment; ejection seat mounted survival aids; energy dissipating pads for cargo; filters and filter assemblies for hydraulic, oil and fuel systems; galleys; hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, nutplates and brackets; lavatories; life rafts; magnetic compass and magnetic azimuth detectors; medical litter provisions; cockpit mirrors; passenger seats, including palletized seats; potable water storage systems; public address (PA) systems; steel brake wear pads (does not include sintered mix or carbon/carbon materials); underwater beacons; urine collection bags/pads/cups/pumps; windshield washer and wiper systems; filtered and unfiltered cockpit panel knobs, indicators, switches, buttons and dials; lead-acid and Nickel-Cadmium batteries; propellers, propeller systems and propeller blades used with reciprocating engines; fire extinguishers; flame and smoke/CO2detectors; and map cases.
- As noted earlier, "fasteners" and similar items are off the USML and, unless classified in a .y paragraph of a 600 series ECCN or specified elsewhere on the CCL (*e.g.*, 9A018 as a "nut plate"), will be classified as EAR99.

These initial USML and CCL revisions perfectly highlight the significance of precisely how items will be classified as they move to the CCL.

Fasteners, for example, will in many cases wind up classified outside the USML and the 600 series ECCNs after years of control by USML Category VIII(h) because of slight modifications to form and fit to make them useful in various military aircraft platforms. And, while crew rest equipment and fire extinguishers are listed in the .y paragraph and eligible for export to most destinations without a license, harnesses and aircrew safety equipment are called out for stricter control and will require licenses to nearly all destinations unless a license exception applies. As these examples demonstrate, Defense, State and Commerce Department personnel have made very particular judgments in the development of the new USML and CCL provisions, and those judgments have an impact on the extent of the benefits different suppliers can yield from this reform effort. Exporters seeking the maximum benefits of reform should consider strategies that include formal (*e.g.*, comments to rules, classification requests, advisory requests) and informal channels of communication with these decisionmakers as more rules are issued and, after in force, considered for revision.

III. Adjusting to These and Forthcoming Final Rules Advancing the ECR Initiative – What Every Exporter Should Consider

The revisions to USML Category VIII (and the new Category XIX) and corresponding CCL revisions are now in Final Rule form. State and Commerce have also published twelve other sets of proposed USML and CCL revisions in the Federal Register,[16] with another seven sets of USML and CCL revisions drafted, but not yet completely through the interagency and Office of Management of the Budget review processes. In addition, there have been a number of proposed revisions to the ITAR published as proposed rules that will, presumably, be made into Final Rules, including a revision to the ITAR's definition of "defense services." State and Commerce Department personnel continue to stress that these ECR Final Rules will be published on a rolling basis throughout 2013, meaning there will be a number of additional changes for exporters to monitor and analyze. As we understand it, each set of Final Rules proposing to move items from the USML to the CCL or addressing any other aspect of ECR will be subject to the same 180-day delay in the effective date as the Final Rules issued on April 16.

For manufacturers and exporters of aircraft and related equipment, the challenges—and, ultimately, the potential opportunities via license exception STA and other features of the EAR—are now standing before you. For manufacturers and exporters of other USML items slated for transition to the CCL, ECR will be a reality at some point in the months ahead.

While many U.S. manufacturers and exporters are not engaged in defense trade, and are not registered with DDTC, the implementation of ECR still presents an opportune moment to take stock of how U.S. export controls work and how they should be addressed in compliance manuals and business practices. Below is a set of recommended considerations for exporters to consider as ECR becomes a reality.

For All Exporters

Any U.S. exporter should have a compliance manual and employee training program that is current with regard to U.S. requirements. Even exporters that are not registered with DDTC should, therefore:

- review and update compliance manuals so that any explanation of the export jurisdiction and classification process and references to the USML/ITAR and EAR/USML are accurate and up-to-date, particularly any regulatory definitions and citations included in manuals that may be changing as a result of ECR;
- update training materials; and
- communicate any changes in compliance practices or procedures to affected business functions.

For Exporters of Items Impacted by ECR

In addition to the above, manufacturers and exporters of USML items should consider the following steps:

- In addition to the updates to manuals noted above, modify licensing determination, license application and license implementation procedures to accommodate for differences in DDTC and BIS licensing requirements.
- Update training materials as to new licensing determination, license application and license implementation procedures and deliver the training to affected employees as soon as possible to prepare for the changes coming in October and beyond.

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[16] The proposed rule changes that have been published to date pertain to USML Categories IV (missiles), V (explosives), VI (naval vessels), VII (military vehicles), VIII (aircraft; now in Final Rule); IX (simulators), X (protective equipment), XI (military electronics), XIII (materials), XVI (nuclear weapons), XIX (turbine engines; now in Final Rule) and XX (submersibles).

- Plan and execute a prioritized review of jurisdiction and classification of items impacted by ECR. For those in the aircraft industry, this could potentially be approached as follows:
  - Begin with the "positively" identified .y items and the fasteners and similar articles in your catalog, which would benefit from a tremendous reduction in licensing burdens.
  - Then proceed to identify the other positively identified .a through .w items that will continue to require licenses for most destinations, but from BIS instead of DDTC.
  - Lastly, review product and technology catalogs for the .x items that are specially designed for a 600 series ECCN and see if they are "released" by any of the six release or exclusion clauses into another ECCN or EAR99 status.
- Based on the jurisdiction and classification review conducted, develop a plan to review existing licenses and decide which options available under General Order 5 will be followed for each existing license.
- Test new internal license determination and license application procedures by identifying transactions that will move to the licensing jurisdiction of the EAR in October and preparing draft applications to BIS (and, if desired, submitting them and waiting until October for BIS to begin processing the applications).
- Communicate export jurisdiction and classification changes to appropriate internal and external audiences, including forwarders and brokers, other parties, signatories to your licenses and affiliate companies, so that they understand and can prepare for ECR themselves.
- Consider the scope of the .y subparagraphs in ECCNs that are relevant to your products, and keep a dialog open with BIS regarding items not listed in the .y subparagraphs that may warrant AT-only controls.

The publication of the Final Rules described in this advisory is significant because it clearly establishes the path for ECR implementation that many more rules will follow, and suggests that the Administration's detailed category-by-category review efforts will finally come to fruition. However, from industry's perspective, success will be judged by actual reduction of export license obligations and related compliance burdens. By that measure, the treatment of aircraft fasteners and the 600 series paragraph .y items clearly represents an immediate benefit for exporters. For other items, the benefits of regulatory reform depend on a number of other questions, such as the availability of license exceptions for certain tightly controlled items and the ability of part and component manufacturers to find relief in the "release" clauses governing the scope of the .x subparagraphs. Exporters can certainly look forward to the publication of additional Final Rules, and should consider proactively working to secure regulatory certainty about the lifting or reduction of licensing burdens for their items.

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