# Export Control Reform

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# Office of Defense Trade Controls Policy (PM/DTCP)

## Core Responsibilities

- Maintain and update the ITAR/ECR implementation
- Respond to requests from industry and USG for Commodity Jurisdiction determinations
- End-use monitoring of exports, research and risk analysis support to licensing
- Develop and implement policy and guidance for exporters, USG, and foreign partners

# Export Control Reform

- In August 2009, President Obama directed U.S. export control agencies to conduct a broad-based review of export controls to identify additional ways to enhance U.S. national security.

*"While there is still more work to be done, taken together, these reforms will focus our resources on the threats that matter most, and help us work more effectively with our allies in the field. They'll bring transparency and coherence to a field of regulation which has long been lacking both. And by enhancing the competitiveness of our manufacturing and technology sectors, they'll help us not just increase exports and create jobs, but strengthen our national security as well."*

- President Obama, Department of Commerce Annual Export Controls Update Conference, August 30, 2010

"The United States is thought to have one of the most stringent export regimes in the world. But stringent is not the same as effective." – SecDef Gates

"He who defends everything defends nothing." – Frederick the Great

# New ITAR Concepts

- Identifying the specific items on a **more positive** USML that warrant individual license reviews
- Amending the EAR and CCL to control former USML items so they are still controlled as military items, but in a more flexible way
  - Items removed from the USML are <u>not</u> "decontrolled" but export control is moved to the Department of Commerce under the new "600 series" or other ECCN.
  - Paragraph X: licensing of items subject to the Department of Commerce's jurisdiction
  - Order of Review: specifies how to apply the ITAR and EAR
  - Specially designed: control based on design intent and use

# USML: Old vs. New

- Current USML Category VIII(h) – "catch all":

  "Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraph (a) through (d) of this category, excluding aircraft tires and propellers used with reciprocating engines."

- Sample Revised USML Category VIII(h) – "positive control criteria":

  "(h)(8) Threat-adaptive autonomous flight control systems;"

  "(h)(13) Lithium-ion batteries that provide greater than 28 VDC nominal;"

  "(h)(23) Fuel cells specially designed for aircraft controlled in this category or controlled in ECCN 9A610;"

# 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*)

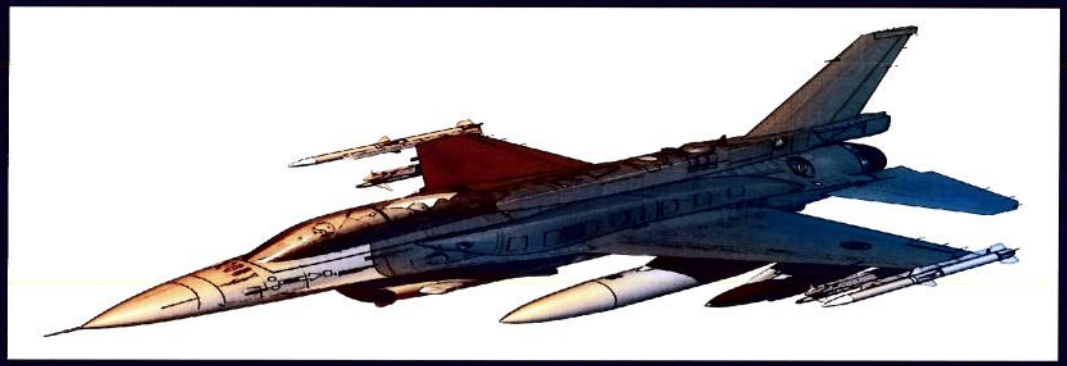
. . . . . ⇐ Technical Data

. . . . . ⇐ [Reserved]

(x) ⬅ Commodities, software and tech data subject to the EAR used in or with defense articles controlled in this category

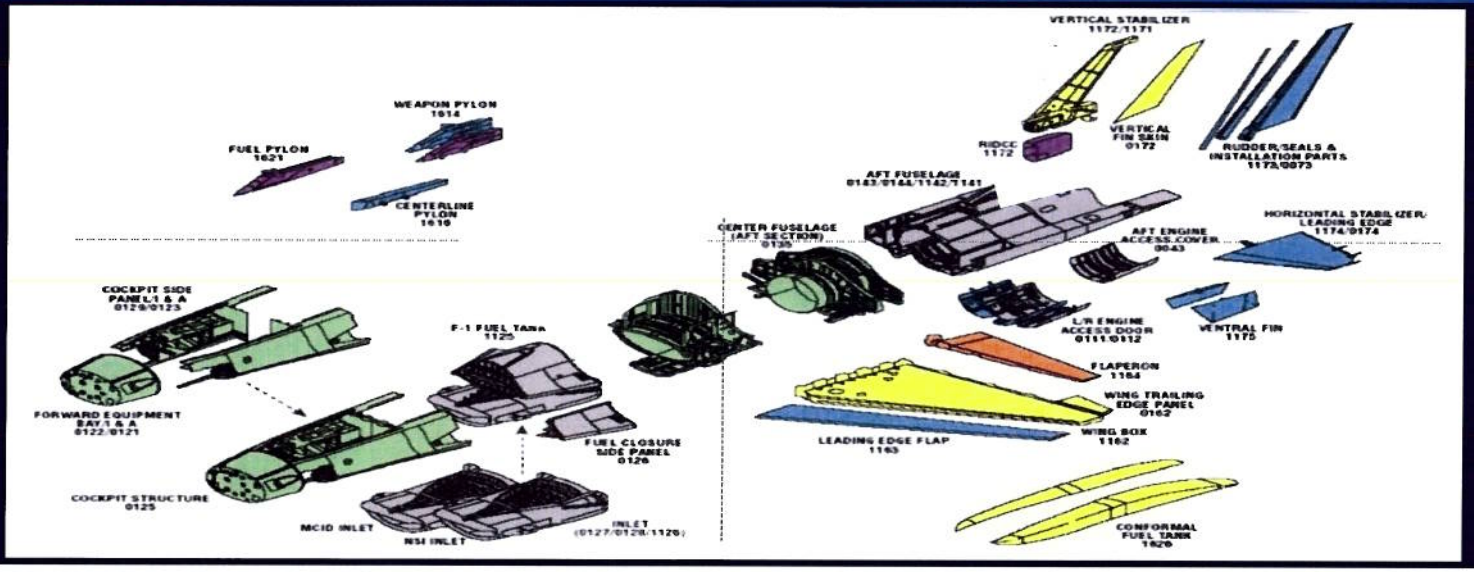
**"Specially Designed" embedded throughout.**

# Example: USML Elements of the F-16



- Assembled engines
- Weapons pylons
- Mission systems
- Bomb racks
- Missile launchers
- Fire control computer
- Radar
- Radar warning receiver
- Radar jammer
- Laser/Missile warning system
- Countermeasures dispensing system
- Aerial refueling receptacle
- Helmet mounted displays/sights

# Example: 600 Series Elements of the F-16




- Wings, Rudder, Fin, Panels
- Fuselage – forward, center, aft
- Cockpit structure
- Forward equipment bay
- Horizontal stabilizer
- Conformal fuel tank
- Cartridge Actuated Device, Propellant Actuated Device (CAD / PAD)
- Control surfaces, activation and control systems
- Internal and exterior fuel tanks
- Engine inlets and ducting
- Wing box
- Flaperon
- Static structural members
- Exterior skins, fairings, radomes, access doors, leading edge flap
- Landing gear
- Technology associated with above items

# 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
- 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/re-transfers, voluntary disclosures, etc.

# "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

# "Specially Designed"

Specially Designed Decision Tool:

http://pmddtc.state.gov/licensing/dt_SpeciallyDesigned.htm

# 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

# ECR Implementation (USML Revision Status

| USML | Description | Status |
|---|---|---|
| I | Firearms | Proposed rule TBD |
| II | Artillery | Proposed rule TBD |
| III | Ammunition | Proposed rule TBD |
| IV | Launch Vehicles/Missiles | Effective 7/1/14 Rule III |
| V | Explosives/Propellants | Effective 7/1/14 Rule III |
| VI | Vessels of War | Effective 1/6/14 Rule II |
| VII | Ground Vehicles | Effective 1/6 /14 Rule II |
| VIII[1] | Aircraft and Related Articles | Effective 10/15/13 Rule I |
| IX | Training Equipment | Effective 7/1/14 Rule III |
| X | Personal Protective Equipment | Effective 7/1/14 Rule III |
| XI | Electronics | Effective 12/30/14 Rule V |

# ECR Implementation (USML Revisions cont'd)

| USML | Description | Status |
|---|---|---|
| XII | Fire Control/Sensors/Night Vision | Proposed rule published |
| XIII | Miscellaneous | Effective 1/6/14 Rule II |
| XIV | Toxicological Agents | **Effective 12/31/16** |
| XV | Spacecraft/Satellites | Effective 11/9/14 Rule IV |
| XVI | Nuclear | Effective 7/1/14 Rule III |
| XVII | Classified Articles | Effective 10/15/13 Rule I |
| XVIII | Directed Energy Weapons | **Effective 12/31/16** |
| XIX | Gas Turbine Engines | Effective 10/15/13 Rule I |
| XX | Submersible Vessels | Effective 1/6/14 Rule II |
| XXI | Articles Not Enumerated | Effective 10/15/13 Rule I |

# Recent/Upcoming Rules

- Destination Control Statement harmonization final rule
- Definitions harmonization final rule
- Category XV final rule
- Category XII final rule
- Category VIII/XIX (second revision) final rule

# Upcoming Related Rules

- Definitions: Interim final rule published
  - Became effective September 1, 2016
    - 120.17 Export
    - 120.19 Reexport
    - 120.50 Release
    - 120.51 Retransfer
- Definitions revisions rule
  - Effective Sept 8th, 2016
    - Slightly revised definition of "Retransfer"
    - Administrative changes (pertaining to the incorporation of the new definitions in other parts of the ITAR, etc)

# USML List Review

- Regular review of revised USML (beginning with Categories VIII and XIX)
- Second review effort: Categories VI, VII, XIII, and XX

# Concluding Thoughts

- ECR Implementation: Major objectives to reach before end of Administration
- Continued harmonization of USG export controls infrastructure, regulations, policy
- Ongoing review of revised sections of the ITAR

# Contact Information

## Questions?

- My email: McCoyRL@state.gov
- DDTC's website: www.pmddtc.state.gov (lots of resources)
- Generic Questions: DDTC Response Team, 202-663-1282 DDTCResponseTeam@state.gov.