



# **U.S. Dual-Use Export Controls for the Aerospace Industry**

**U.S. Department of Commerce  
Bureau of Industry and Security**

**17 October 2018**



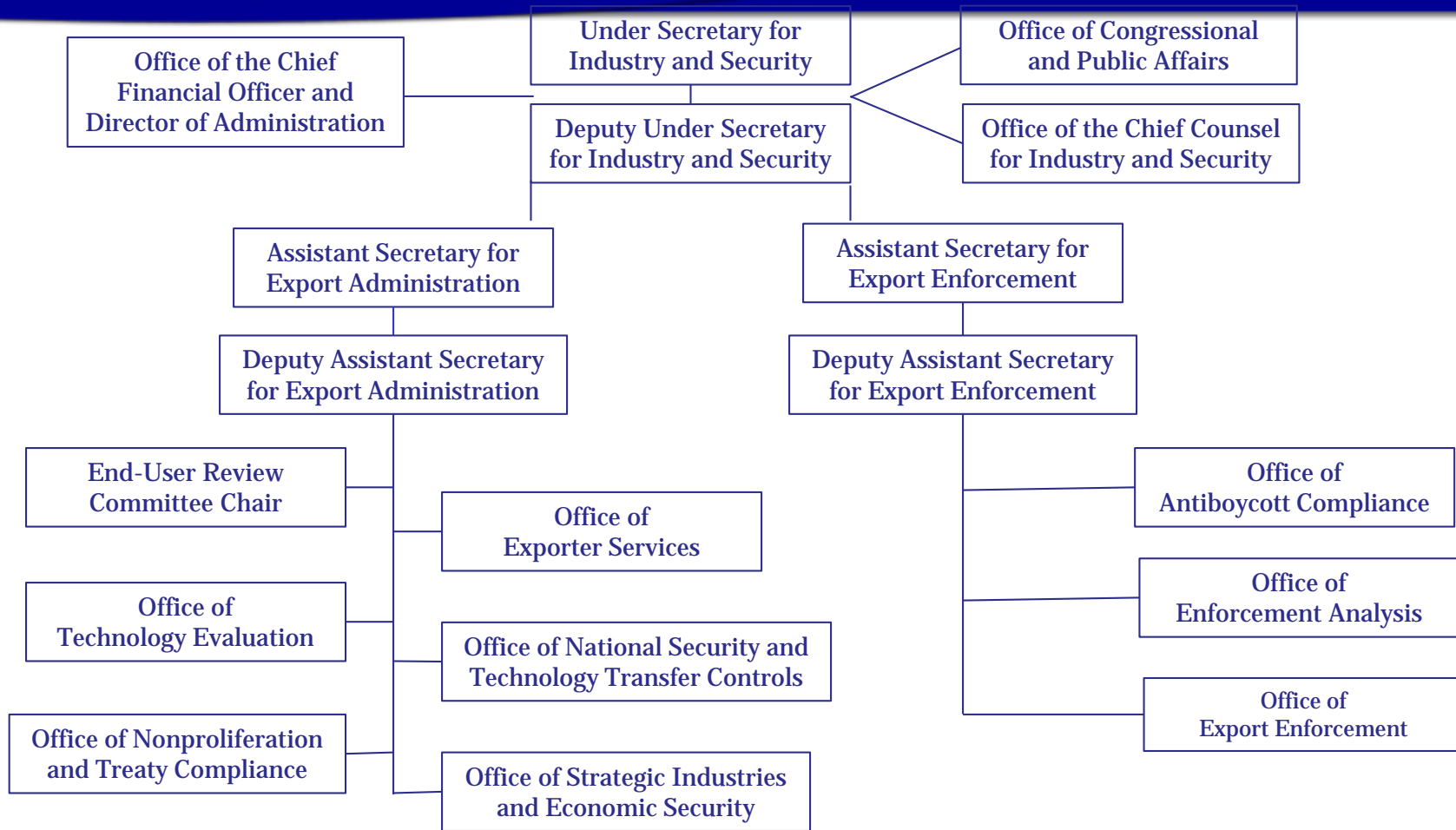
# Overview

- Who we are
- Four questions to ask before exporting:
  - What are you exporting?
  - Where are you exporting?
  - Who will receive your item?
  - What will be the end-use of your item?
- Export/Reexport controls
- BIS licensing process
  - License review and escalation
  - Applying for a license: Who and When?
  - Crafting a license application and supporting documentation



# Who We Are

## U.S. Department of Commerce, Bureau of Industry and Security





# **What Are You Exporting?**

**Licensing Jurisdiction  
and  
Commodity Classification**



# STEP 1: Establishing Licensing Jurisdiction

- Is my item subject to the ITAR?
  - Review the relevant USML categories
  - If your item is not listed or otherwise identified, it is not subject to the ITAR
- What if I have a prior ITAR Commodity Jurisdiction (CJ) determination?
  - If the item has moved from the USML to the CCL, the CJ is superseded
  - No need for an additional CJ unless there is doubt



## STEP 2: Commodity Classification

- A commodity's classification, together with the destination, determines:
  - Whether a license is required
  - Whether any License Exception(s) may be available

Proper classification on the CCL,  
down to the subparagraph level,  
is essential!



# **Export Control Classification Number (ECCN)**

- A description of the technical parameters of a particular item or type of item
- The control(s) associated with the item
- Any list-based License Exception(s) for which the item is eligible



# Construct of an ECCN: 9 A 515



## **CATEGORY**

- 0 = Nuclear materials, facilities, and equip. (and misc. items)
- 1 = Materials, Chemicals, Microorganisms and Toxins
- 2 = Materials Processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecom and Info Security
- 6 = Sensors and Lasers
- 7 = Navigation and Avionics
- 8 = Marine
- 9 = Aerospace and Propulsion

## **PRODUCT GROUP**

- A. Systems, Equip. and Components
- B. Test, Inspection and Production Equip.
- C. Material
- D. Software
- E. Technology

## **TYPE OF CONTROL**

- 0: National Security
- 1: Missile Technology
- 2: Nuclear Nonproliferation
- 3: Chemical & Biological Weapons
- 5: Civil Spacecraft transferred from the USML ("500-series")
- 6: Items transferred from the USML ("600-series")
- 9: Non-regime and unilateral





# Case Example: ECCN 9A515.a

9A515 “Spacecraft” and related commodities, as follows (see List of Items Controlled)

- a.1. Have electro-optical remote sensing capabilities and having a clear aperture greater than 0.35 meters, but less than or equal to 0.50 meters;
- a.2. Have remote sensing capabilities beyond NIR (*i.e.*, SWIR, MWIR, or LWIR);
- a.3. Have radar remote sensing capabilities(e.g., AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz;
- a.4. Provide space-based logistics, assembly, or servicing of another “spacecraft”;
- a.5 Are not described in ECCN 9A515.a.1, .a.2, .a.3 or .a.4.

**Note:** ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, planetary rovers, planetary and interplanetary probes, and in-space habitats, not identified in ECCN 9A004 or USML Category XV(a).



# “EAR99”

- Items that do not fit within the technical parameters of any ECCN on the CCL
- Generally consist of low-technology consumer goods and do not require a license in most situations . . . Look out for catch-all controls!



# Commodity Classification Process

- **Commodity Classification options:**
  - **Classify the item on your own**
  - **Check with the item's manufacturer or exporter**
  - **Submit a classification request to BIS**
- **Anyone can submit a Commodity Classification Request**
  - **Submitted and issued electronically via the Simplified Network Application Process Redesign (SNAP-R) on the BIS website**
  - **Registration to use SNAP-R, at no charge, is required**



# **Where Are You Exporting?**

**Reasons for Control,  
Commerce Country Chart  
and  
License Exceptions**



# Reason(s) for Control

**Each ECCN indicates the reason(s) the item is controlled**

## Regime/Convention-based

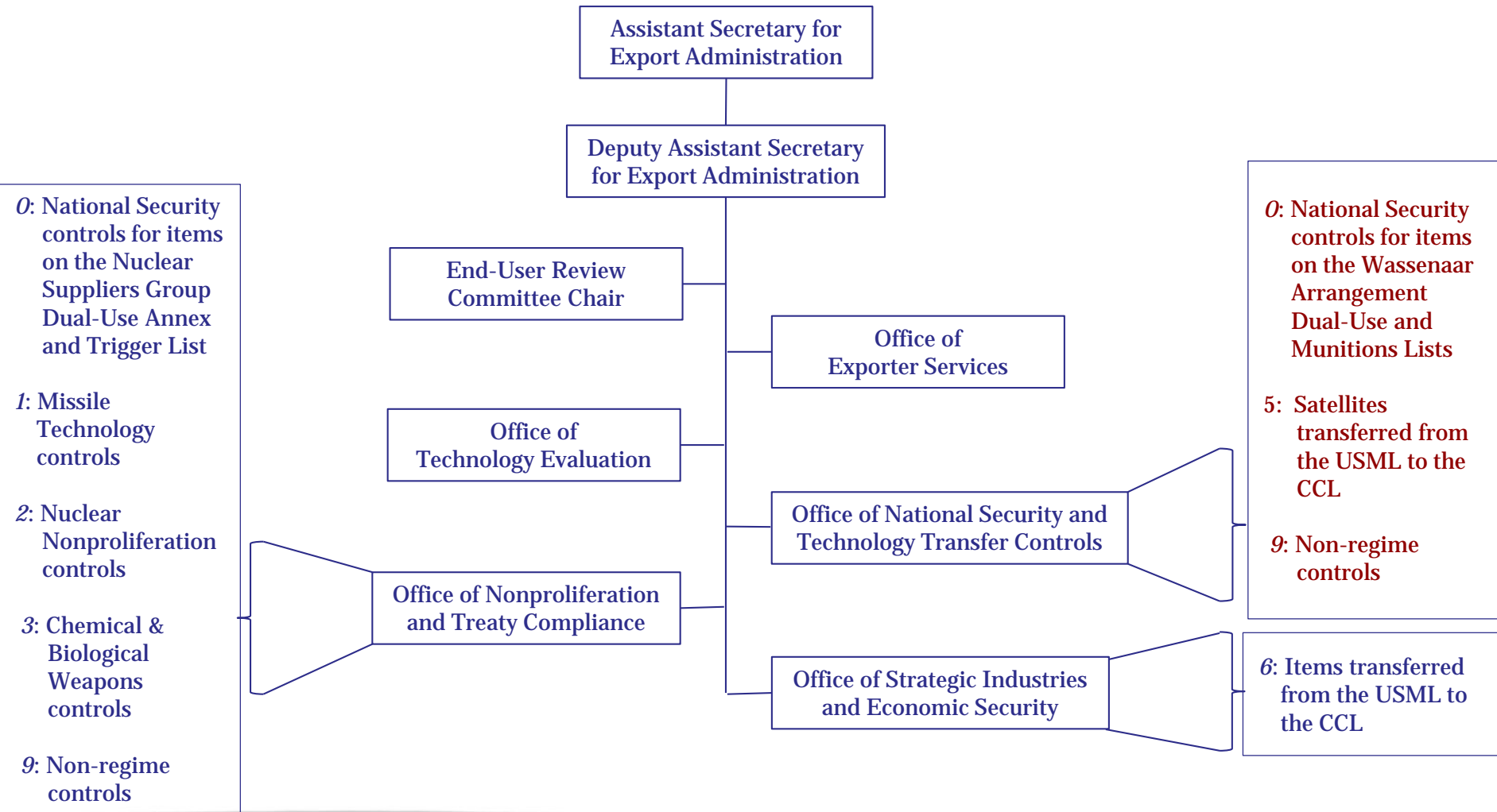
CB: Chemical &  
Biological Weapons  
CW: Chemical Weapons  
Convention  
EI: Encryption Item  
FC: Firearms Convention  
NP: Nuclear  
Nonproliferation  
NS: National Security  
MT: Missile Technology  
UN: United Nations

## Unilateral

AT: Anti-Terrorism  
CC: Crime Control  
RS: Regional Stability



# Office Responsibilities According to Controls





# Case Example: ECCN 9A515

9A515 “Spacecraft” and related commodities,  
as follows (see List of Items Controlled).

## License Requirements

*Reason for Control: NS, RS, MT, AT*

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry, except .e and .y.	NS Column 1
RS applies to entire entry, except .e and .y.	RS Column 1
RS applies to 9A515.e.	RS Column 2
MT applies to microcircuits in 9A515.d and 9A515.e.2 when “usable in” “missiles” for protecting “missiles” against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects).	MT Column 1
AT applies to entire entry	AT Column 1



# Case Example: ECCN 9A515

Destination	ECCN	Control
Spain	9A515.a	NS1, RS1
	9A515.e.1	RS2
Sri Lanka	9A515.e.1	RS2
Sudan	9A515.e.1	AT1

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738 page 14

## Commerce Country Chart

### Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
	Spain <sup>3</sup>	X					X		X	X						
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan <sup>1</sup>	X	X		X		X	X	X	X	X		X		X	X	X





# License Exceptions

- A License Exception is an authorization to export or reexport, under stated conditions, items subject to the EAR that would otherwise require a license.
- License Exceptions are optional
- See EAR Part 740 for all License Exception eligibility requirements and restrictions.
- Two types of License Exceptions:
  - **List driven**
  - **Transaction driven**



# ECCN 9A515 List Driven License Exceptions

**9A515 “Spacecraft” and related commodities, as follows (see List of Items Controlled).**

## License Requirements

*Reason for Control:* NS, RS, MT, AT

**List Based License Exceptions** (See Part 740 for a description of all license exceptions)

*LVS:* \$1500

*GBS:* N/A

*CIV:* N/A

## Special Conditions for STA

*STA:* (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for “spacecraft” in ECCN 9A515.a.1, .a.2, .a.3, or .a.4, or items in 9A515.g, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and “600 series” items). (2) License Exception STA may not be used if the “spacecraft” controlled in ECCN 9A515.a.1, .a.2, .a.3, or .a.4 contains

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry, except .e and .y.	NS Column 1
RS applies to entire entry, except .e and .y.	RS Column 1
RS applies to 9A515.e.	RS Column 2
MT applies to microcircuits in 9A515.d and 9A515.e.2 when “usable in” “missiles” for protecting “missiles” against nuclear effects (e.g. Electromagnetic Pulse (EMP),	MT Column 1
X-rays, combined blast and thermal effects).	
AT applies to entire entry	AT Column 1



# Determining STA Eligibility

- Web-based interactive decision tree tool to assist in determining License Exception STA eligibility
- Go to [WWW.BIS.DOC.GOV](http://WWW.BIS.DOC.GOV)
  - Click on “Exporter Portal”
  - Click on “Decision Tree Tools”
  - Click on “STA”



# **ECCN 9A515**

## **Transaction Driven License Exceptions**

- **GOV** – Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station
- **RPL** – Servicing and Replacement of Parts and Equipment
- **TMP** – Temporary Imports, Exports, Reexports, and Transfers



# **Catch-all Controls:**

**Who Will Receive Your Item?**

**For What Will Your Item be Used?**

**End-User and End-Use Based  
License Requirements**



# End-User Lists

- BIS maintains restrictions on certain exports, reexports or transfers of items to the following lists of parties:
  - Denied Persons List
  - Entity List
  - Unverified List
  - Specially Designated Nationals List
- The Departments on Commerce, State and the Treasury consolidated end-user list screening:
  - Go to [WWW.BIS.DOC.GOV](http://WWW.BIS.DOC.GOV)
  - Click on “Consolidated Screening List”



# Aerospace-related End-Use Controls

- Restrictions on certain rocket systems and UAV end-uses (*see* EAR §744.3)
- Restrictions on certain exports to and for the use of certain foreign vessels or aircraft (*see* EAR §744.7)
- Restrictions on certain military end-uses in the PRC and military end-uses and end-users in Russia and Venezuela (*see* EAR §744.21)
  - All 600 series and 9x515 items require a license



# **Export/Reexport Controls**





# Exports vs. Reexports

## § 734.13 EXPORT

**(a)** Except as set forth in §§ 734.17 or 734.18, Export means:

- (1)** An actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner;
  - (2)** Releasing or otherwise transferring “technology” or source code (but not object code) to a foreign person in the United States (a “deemed export”);
  - (3)** Transferring by a person in the United States of registration, control, or ownership of:
    - (i)** A spacecraft subject to the EAR that is not eligible for export under License Exception STA (*i.e.*, spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country; or
    - (ii)** Any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country.
- (b)** Any release in the United States of “technology” or source code to a foreign person is a deemed export to the foreign person's most recent country of citizenship or permanent residency.
- (c)** The export of an item that will transit through a country or countries to a destination identified in the EAR is deemed to be an export to that destination.



# Exports vs. Reexports

## § 734.14 REEXPORT

**(a)** Except as set forth in §§ 734.18 and 734.20, Reexport means:

**(1)** An actual shipment or transmission of an item subject to the EAR from one foreign country to another foreign country, including the sending or taking of an item to or from such countries in any manner;

**(2)** Releasing or otherwise transferring “technology” or source code subject to the EAR to a foreign person of a country other than the foreign country where the release or transfer takes place (a deemed reexport);

**(3)** Transferring by a person outside the United States of registration, control, or ownership of:

**(i)** A spacecraft subject to the EAR that is not eligible for reexport under License Exception STA (i.e., spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country; or

**(ii)** Any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country.

**(b)** Any release outside of the United States of “technology” or source code subject to the EAR to a foreign person of another country is a deemed reexport to the foreign person's most recent country of citizenship or permanent residency, except as described in § 734.20.

**(c)** The reexport of an item subject to the EAR that will transit through a country or countries to a destination identified in the EAR is deemed to be a reexport to that destination.



# Exports vs. Reexports

- For exports, transfers, and reexports of U.S.-origin items:
  - Same licensing requirements
  - Same License Exceptions, plus Additional Permissive Reexports (APR)
  - Same license application
- For foreign-produced items, these rules extend to:
  - Items having more than the *de minimis* amount of controlled U.S. content
  - Certain items that are the direct products of U.S.-origin technology
- BIS published guidance on reexports:
  - Go to [WWW.BIS.DOC.GOV](http://WWW.BIS.DOC.GOV)
  - Click on “Reform”
  - Click on “Publications”
  - Click on “Guidance on the Commerce Department's Reexport Controls”



# Exports vs. Reexports

**Note:** Per § 734.18 of the EAR launching a spacecraft, launch vehicle, payload, or other item into space is not considered an export, reexport or transfer.



# Special Requirements for 500- and 600-Series Items Located Outside the U.S.

- If a U.S.-origin item:
  - Remains subject to the EAR, regardless of how many times it is reexported, transferred or sold
  - Any subsequent reexports or transfers (in-country) must be done in accordance with the EAR
  - No “see-through” rule in the EAR; controls extend to foreign-made items located outside the U.S. as a result of the *de minimis* and direct product rules



# Items Incorporating U.S. Content: *De Minimis*

- A foreign-made item located outside the U.S. incorporating controlled U.S.-origin content that exceeds the applicable *de minimis* percentage for a particular country is subject to the EAR:
  - 10% for Cuba, Iran, North Korea, Sudan, and Syria
  - 25% for all other destinations
- For 500-series .a-.x and 600-series items:
  - 25% for items with U.S. content reexported to all countries, except Country Group D:5 countries (see also ITAR §126.1)
  - 0% for Country Group D:5 countries (U.S. arms embargo)
- For ECCN 9A515.y content only:
  - Not subject to the EAR when reexported to all countries except Country Group E:1 countries and China
  - 0% for Country Group E:1 countries and China



# Direct Products of U.S.-Origin Technology or Software

- Direct products of U.S. controlled technology are subject to U.S. reexport laws if:
  - Foreign-made item is controlled for National Security (NS) reasons, and
  - Foreign-made item is the direct product of U.S. technology or software that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception Technology and Software Under Restriction (TSR) (*see* EAR §740.14)
- Foreign produced direct products require a license for reexport to destinations in Country Groups D:1 and E:2 (*see* Supplement No. 1 to EAR Part 740)



# Direct Product Rule: 9x515 Series

## The 9x515 series direct product rule

Is the foreign-produced direct product of: (i) U.S.-origin 9x515 technology or software <u>or</u> (ii) a plant or major component of a plant that is a direct product of U.S.-origin 9x515 technology or software?	Yes?
Is the foreign-produced direct product a 9x515 item?	Yes?
Is the foreign-produced direct product being reexported or exported from abroad to countries listed in Country Groups D:5 or E:1?	Yes?

Note: If “yes” to all three questions, then the foreign made item is subject to the EAR.





# Help with *De Minimis* and Direct Product Rules

- Web-based interactive decision tree tool to help you determine if your non-U.S.-made item, which is located outside the U.S., is subject to the EAR
- Go to [WWW.BIS.DOC.GOV](http://WWW.BIS.DOC.GOV)
  - Click on “Exporter Portal”
  - Click on “Decision Tree Tools”
  - Click on “De minimis & Direct Product Rules”



# **The BIS Licensing Process**



# License Review Process

## Days 1-9

- BIS reviews the license application
- BIS registers its recommendation
- BIS refers it to the other reviewing agencies:
  - Defense
  - Energy
  - State

## 30 Days

- Reviewing agencies must respond with recommendations



- If the reviewing agencies concur, the license application will be:
  - Approved
  - Approved with conditions
  - Denied
- If interagency concurrence is not possible, the license application will be escalated for resolution



# Dispute Resolution Process

- **Operating Committee (OC)**
  - Career government employees from the reviewing agencies
  - Chaired by BIS
- **Advisory Committee on Export Policy (ACEP)**
  - Presidentially-appointed officials (Assistant Secretary level)
- **Export Administration Review Board (EARB)**
  - Cabinet level
- **President**



# License Denials and Reconsiderations

Notification of an intent to deny (ITD)  
provided in writing to the applicant

**Within  
20 Days  
of ITD:**

Applicant may  
request  
reconsideration  
of denial

**Within  
45 Days  
of ITD:**

BIS will advise  
whether the  
decision to deny  
has been changed

**Within  
45 Days of  
Final Denial:**

Applicant may  
appeal to the  
Under Secretary  
for Industry and  
Security



# A License Application: Who and When?

- Who can apply for an export license?
  - Only a person in the U.S. can apply for an export license
- Who can apply for a reexport license?
  - U.S. or foreign principal party in interest (FPPI)
  - Other duly authorized U.S. agent of the FPPI
- When Can I Apply for a License?
  - ANYTIME!
  - No sales documentation (e.g., purchase order, letter of intent, etc.) is necessary
  - No license requirement for marketing (unless controlled technical data will be transferred)



# Crafting a License Application

- License applications need not be limited to a single shipment
  - May represent a reasonable estimate of items to be shipped throughout the validity of the license (four years unless otherwise requested/justified)
- BIS licenses authorize exports/reexports to and among the end-users listed on a license
- Reexport authority may be requested by the U.S. exporter in the export license application



# Crafting a License Application: Letters of Explanation (LOEs)

## **LOEs are Required for Technology Applications**

*(EAR Part 748, Supplement No. 2)*

- Who are the parties to the transaction?
- Where will the technology or software be used?
- ECCN for the technology or software
- Foreign availability of comparable technology or software
- Form in which the technology will be released and uses in which the technology will be employed
- Applicant's internal technology control plan





# Crafting a License Application: LOEs

## LOEs are Strongly Recommended for More Complex Hardware Transactions

- Many consignees/end-users
  - Relationship between consignees/end-users
  - Relationship between parties and items
- Many items
  - Application and need of each item for each of the end-users
- Complex end-uses



# **Crafting a License Application: LOEs**

- **A license authorizes the transaction as represented in the LOE only**
- **An export, reexport, or in-country transfer that materially differs from that described in the LOE requires another authorization**
- **LOEs provide an opportunity to place boundaries around, or “self-condition,” licenses**



# LOEs Should be Precise...

- An LOE should reflect the proposed transaction
  - Watch out for templates!
  - Review, tailor and update content
- Specifically address EAR concerns
  - A SOW, a grant proposal, etc., is not an LOE
  - Describe what items will and will not be exported, who will and will not have access to them, and how they will and will not be used



# ...But LOEs Should Not be Brittle

- Review your LOEs carefully
  - Carve-outs and other stipulations are binding
- Currently, no “revision” process for material changes to validated licenses
- If your transaction grows to exceed what is represented in the LOE, a new authorization is needed
  - Additional items, end-users or end-uses



# Common Reviewing Agency Concerns

## \*Target known agency concerns in your LOE\*

- Parties to the transaction:
  - What are their roles?
  - What do you know about the parties?
  - What is your source for information?
- End-use concerns:
  - Is there a balance between the product's capability and the proposed end-use?
  - Is there excess capability? Why?
  - What is the risk of diversion?
- Controls:
  - What controls are in place to prevent diversion?
  - Are the controls realistic?
  - Do the parties understand the controls?
  - Are the controls documented?
  - Who will conduct monitoring?



# License Conditions

- The applicant will have the opportunity to review and accept, or request and justify changes to, the license conditions before the license is issued.
- In accordance with EAR § 750.7(a), the applicant must inform the other parties on the license, such as the ultimate consignees and end-users, of the license's scope and of the specific conditions applicable to them



# Boilerplate License Condition Language

**Clarifies that licenses issued by BIS  
authorize the transaction(s) described in the  
license application and any LOEs:**

“Unless limited by a condition set forth below, the export, reexport or transfer (in-country) authorized by this license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant is responsible for informing the other parties identified on the license, such as ultimate consignees and end-users, of the license's scope and of the specific conditions applicable to them. BIS has granted this license in reliance on representations the applicant made in the license application, letters of explanation, and other documents submitted.”



# Dual-Use Export Controls: A Summary

- **What are you exporting?**
  - Establish licensing jurisdiction
  - Determine the proper classification, down to the subparagraph
- **Where are you exporting?**
  - The Commerce Country Chart and the destination fixes licensing requirements
  - Check for License Exceptions: list driven and transaction driven
- **Who will receive your item?**
  - Consult prohibited/restricted end-user lists
- **What will be the end-use of your item?**
  - Review end-use controls
- **BIS Licenses**
  - Submit specific and detailed information in the application
  - Address agency concerns in the application
  - Understand, communicate and comply with conditions





# How to Obtain More Information

BIS Website: [www.bis.doc.gov](http://www.bis.doc.gov)

**Michael Tu**

**Email: Michael.Tu@bis.doc.gov**

**Phone: +1 202 482 6462**

**Kelly Gardner**

**Email: Kelly.Gardner@bis.doc.gov**

**Phone: +1 202 482 0102**

**Dennis Krepp**

**Email: Dennis.Krepp@bis.doc.gov**

**Phone: +1 202 482 1309**