

**REPORT FOR CONGRESS:
COUNTRY EXEMPTIONS FOR LICENSING OF EXPORTS OF CERTAIN
SATELLITES AND RELATED ITEMS**

Introduction

Section 1263(a) of the National Defense Authorization Act for Fiscal Year (FY) 2013 (NDAA) provides that no later than 120 days after enactment of the NDAA, the Secretary of Commerce, in consultation with the Attorney General, the Secretary of Homeland Security, and the heads of other appropriate departments and agencies, shall submit to Congress an assessment of the extent to which the terms and conditions of exemptions for foreign countries to the licensing requirements and other authorizations to export satellites and related items subject to the Export Administration Regulations (EAR) as a result of the enactment of § 1261(a) of the NDAA contain strong safeguards.

In consultation with the Departments of Defense, Homeland Security, Justice, and State, the Department of Commerce has developed a regulatory framework, and a compliance and enforcement plan, to ensure strong safeguards apply to exports and reexports of satellites and related items transferred from the United States Munitions List (USML) to the Commerce Control List (CCL), as authorized by § 1261(a) of the NDAA, including those under license exceptions.

Commerce's plan for controlling exports of satellite items is based on the establishment of a new series of Export Control Classification Numbers (ECCNs) within the CCL—the 515 series—that contains tailored controls to implement the prohibitions of § 1261(c) of the NDAA, other restrictions related to destinations subject to U.S. arms embargoes and end users of concern, and safeguards for the export of relevant items under License Exception Strategic Trade Authorization (STA). These controls, including the terms and conditions of available license exceptions, support law enforcement efforts to detect, prevent, and prosecute criminal, administrative, civil, and other violations of the EAR and related laws.

Regulatory Framework

As proposed to Congress in the April 2012 report by the Departments of Defense and State pursuant to § 1248 of the NDAA for FY 2010, all satellites and related items transferred to the CCL's 515 series will require a validated BIS license for export to all countries, with three primary exceptions: 1) exports to Canada; 2) exports to the governments of 36 NATO allies and multilateral export control regime partner countries pursuant to License Exception GOV;¹ and 3) certain exports to consignees in these 36 countries pursuant to STA.²

¹ As specified in Part 740 of the EAR, the 36 countries eligible for the use of license exceptions GOV and STA are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

² License exceptions are not available for 515 series items controlled for Missile Technology reasons.

Transfers of satellite items from the USML to the CCL will increase the resources available for enforcing controls on exports of such items. The Departments of Homeland Security (DHS) and Justice (DOJ) exercise law enforcement authorities over exports of satellites and related items controlled under the International Traffic in Arms Regulations (ITAR). DHS and DOJ also exercise law enforcement authority in connection with the export of items subject to the EAR, to include satellites and related items that are transferred to the EAR, including those exports authorized by the aforementioned license exceptions. In addition, the Department of Commerce, which has 150 law enforcement agents (trained as criminal investigators) and analysts, will have law enforcement authority over such transactions, thereby *increasing* the resources available to the U.S. Government to enforce the terms and conditions of these license exceptions.

Assessment of Safeguards Contained Within Relevant License Exceptions

Similar to enforcement of the ITAR exemption for exports to Canada of current USML Category XV items that will transition to the CCL, the Departments of Commerce, Homeland Security, and Justice are authorized by law to enforce controls on license-free exports of satellite-related items to Canada. Similarly, the close foreign policy and national security relationships that the United States has with the allies and partners eligible for License Exception GOV, as well as U.S. Government authorities to enforce the EAR, provide adequate protections to safeguard U.S. exports to such government end users.

BIS, working with interagency partners, has developed strong safeguards under STA to deter, prevent, and prosecute violations under this license exception. STA safeguards under § 740.20 of the EAR establish export control knowledge and chain-of-custody requirements. These safeguards include requirements that: 1) the exporter inform the ultimate consignee of the ECCN classification; 2) prior to export, the ultimate consignee certify to the exporter, in writing, the ultimate consignee's knowledge of applicable ECCNs; compliance with the requirements of License Exception STA; prohibition of subsequent reexports under License Exception Additional Permissive Reexports; agreement not to export, reexport, or retransfer to any destination, use, or end user prohibited by the EAR; and agreement to retain relevant records; and 3) prior to export, the exporter report STA transactions, regardless of value, in the Automated Export System (AES). The regulatory requirements applicable to the initial consignee also apply to any subsequent consignee if the goods are in the hands of other third parties prior to reaching their ultimate end user. In complying with these requirements, each consignee agrees to an end use check.

For exports to countries identified in § 1261(c) of the NDAA, a license will be required and be subject to a presumption of denial. Additional restrictions will apply to proposed exports of 515-series items to countries listed in § 126.1 of the ITAR.³ BIS and its interagency partners will apply the current ITAR license review policy of denial, as detailed in ITAR § 126.1, when adjudicating license applications for the export of 515 series items to countries listed in that section of the ITAR. In addition, to address the possible reexport of 515 series items to ITAR §

³ The current ITAR § 126.1 countries are: Afghanistan, Belarus, Burma, the People's Republic of China, the Democratic Republic of the Congo, Cote d'Ivoire, Cuba, Cyprus, Eritrea, Fiji, Haiti, Iran, Iraq, North Korea, Lebanon, Liberia, Libya, Somalia, Sri Lanka, the Republic of the Sudan, Syria, Venezuela, Vietnam, and Zimbabwe. The scope of the embargoes vary from country to country and range from partial to comprehensive embargoes.

126.1 countries via incorporation into finished foreign products, the EAR's *de minimis* exclusion will not be available for such transfers. As a result, a BIS license will be required for the export to ITAR § 126.1 countries of foreign products containing *any* 515-series items subject to the EAR. These policies provide for additional restrictions on satellite-related exports to a more extensive group of countries than specified in § 1261(c) of the NDAA. Moreover, part 744 of the EAR requires a license for any export, including exports of 515 series items, destined for persons or organizations designated by the State or Treasury Departments as terrorist organizations or as providing support for international terrorism.

Monitoring Compliance with and Enforcing Safeguards on Satellite-Related Items

The transfer of certain satellites and related items from the USML to the CCL will not diminish the U.S. Government's ability to ensure compliance with export control requirements and take appropriate enforcement action when those requirements are violated. DHS and DOJ can exercise existing enforcement authorities over current USML items once they are transferred to the CCL. Commerce also will utilize existing authorities, including a broad range of export control-related monitoring and enforcement, to ensure compliance with and enforce safeguards on 515 series items. These include: 1) outreach and education to U.S. exporters and foreign companies on EAR requirements; 2) utilization of Intelligence Community assets under the auspices of the interagency Information Triage Unit (ITU) to evaluate the *bona fides* of foreign transaction parties to license applications and export transactions; 3) Automated Export System (AES) audits, exporter compliance reviews, and end-use monitoring, in coordination with the Departments of Defense and State, with an emphasis on STA-based transactions, and 4) enforcement investigations, in coordination with the Export Enforcement Coordination Center (E2C2), to redress diversion and violations through criminal and administrative means (e.g., seizure and forfeiture, imprisonment, fines, denials of export privileges, and proscribed-party listings such as the Entity List and Unverified List).

The ITU is responsible for assembling and disseminating relevant information, including intelligence, from which licensing agencies can make informed decisions on proposed exports requiring a U.S. Government license. This multi-agency screening unit coordinates the reviews of separate processes across the government to ensure that all departments and agencies have a full data set, consistent with national security, from which to make decisions on license applications. Such screening contributes to more timely, predictable, and consistent processes that U.S. exporters engaged in global trade have confirmed are critical to their competitiveness. The ITU is housed at the Department of Commerce. Participating agencies are the Departments of Commerce, State, Defense, Energy, Treasury, and the Office of the Director of National Intelligence.

Established by the President under Executive Order 13558, the E2C2 is responsible for enhanced information sharing and coordination among law enforcement and intelligence officials regarding possible violations of U.S. export control laws. The E2C2 is housed at DHS with participation of 18 federal agency partners. Implemented as a mechanism for ensuring coordination across the interagency, this coordination and increased exchange of information will not only enhance specific investigations involving transactions of 515 series articles but will also facilitate the enforcement of the GOV and STA exceptions.

Thus, the enforcement tools available to the U.S. Government constitute strong safeguards that support law enforcement efforts to detect, prevent, and prosecute criminal, administrative, and other violations of law, including the EAR, involving satellite-related exports subject to Commerce Department licensing or a Commerce Department exemption, including efforts on the part of state sponsors of terrorism, organizations determined to have provided support for international terrorism, or other foreign countries and entities, to acquire satellites and related items illicitly from the United States.