NWX-DOC ITA

Moderator: Linda Abbruzzese
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1:30 pm CT

Coordinator: Welcome and thank you for standing by. At this time your lines have been placed on listen-only until we open for questions and answers. To ask a question you may press star one on your touchtone phone. Please be advised today's conference is being recorded. If you have any objections, you may disconnect at this time.

I would now like to turn the call over to Mrs. Linda Abbruzzese. Please go ahead.

Linda Abbruzzese: Thank you. Good afternoon for those of you joining on the east coast and good morning for those of you joining from the west coast. Thank you for joining us for our Exploiting Control Reform Webinar with Assistant Secretary Kevin Wolf. I'm pleased to note that we had more than 540 people registered and joining us for this program today.

My name is (Linda Arizari). I'm a senior international trade specialist for the global knowledge center for the US Department of Commerce Foreign Commercial Service and I will be today's moderator. This webinar is being brought to you by the US Department of Commerce Foreign Commercial

Service and the Bureau of Industry and Security and I'd like to welcome all of you for joining us from all across the United States to learn about the initial implementation rules of the Export Control Reform initiative and the structure of the specially designed part of this reform.

In a moment I'll turn the presentation over to Kevin Wolf, Assistant Secretary for Export Administration. He will be the main speaker for today's webinar. He will also be available at the end of this presentation to answer your questions. Contact information will also be provided to everyone.

Now for those of you who just joined, you can still log onto this webinar. We do have a few housekeeping details that will make sure everyone gets the most benefit from today's webinar. You will be able to hear this presentation via your telephone and simultaneously via your computer. So if you're not hooked up through both, please take a moment to do this. And if you are experiencing any technical difficulties, please press star zero any time during this presentation.

During this webinar we will be taking voice and written questions. To ask a voice question, please press star one. And to ask a written question we do invite you to type in your questions as they occur to you during this presentation. There is an icon with the letters Q and A on the upper left hand side of your screen. Q&A stands for question and answers where you can click and type in your questions any time during this presentation.

We will compile these questions and present them as time allows and we will answer them. Questions which are not answered during this webinar due to time constraints, we will get back to you via a personal email. Now I'd like to introduce live online Assistant Secretary for Export Administration - Kevin Wolf. Kevin thank you very much for joining us.

Kevin Wolf: And thank you Linda and ITA for hosting us. This is perfect. Obviously the interest in this is high given the number of people who are logging in and for those listening in and logging in, this won't be the first time we do this. As you know, we do the weekly conference calls where we answer - historically answering written questions about the proposed rules.

And now that we have actually published - as of yesterday - the first final rule with a late effective date - the first final rule of the reform effort. We'll start doing these calls on a weekly basis still to discuss specific topics, answer questions that have come in over the week and otherwise use this Wednesday timeslot as sort of an educational opportunity.

Today given the volume, we can't obviously capture, discuss or explain every aspect of the rack. So what I'll try to do is sort of set up the purpose of the structure for those that may be new to this and then start going into a few more details. I'll stop talking in about 40 minutes and answer any questions about the initial implementation rule.

And then - as we advertised - at 3:30 then I'll start fresh with the discussion of the different slide deck and the topic of the new definition of specially designed. And similarly I'll stop talking about 40 or so minutes into that and open it up for questions and we'll take you to the end of the hour and end at 4:30.

So - these are the topics I'm going to try and cover. And if I don't get to everything here today, we'll eventually - as I said - be doing other sessions. So don't worry if I don't get to your topic today. But essentially I wanted to get through the background and the summary of what the reform effort is about, get to the key issue of determining changes in jurisdictional status of products,

some authorization issues in terms of items that are not now under our control but will be in the future and what your options are. Also. export clearance issues with AES and reexport considerations.

So for those who have been following this and listening to the various speeches and talks we've been doing the last couple of years, you'll know that, what we published yesterday is a result of instruction by President Obama to review the export control system to find ways to fundamentally enhance national security. And this was further manifested in a speech by former Defense Secretary Gates in 2010 about how the export control system should be revised and reformed in order to enhance national security.

And on this slide essentially what he said - it's much better in his speech. I would encourage you all to read it. But he said that national security in this context meant three things - that we needed to reform the system in order to increase interoperability with NATO and our other multilateral partners, reduce the current incentives that exist largely for companies in non-embargoed countries to design out or avoid U.S.-origin content. And frankly to allow the administration to focus its resources on transactions of greater concern.

Those are terrific objectives and instructions from the president and secretary, and in order to bring this about - in order to implement these - we needed to do several things. The primary thing that we needed to do as a government was to look to the U.S. Munitions List and determine those types of items that actually warrant the controls of the Arms Export Control Act.

And as I said many times in the past, this is a significant Defense Department-led effort where they went through literally hundreds of thousands of individual items to determine what are the types of items that should be listed

on a new specific positive U.S. Munitions List. And when I say positive, what I mean by that is instead of the broad catch-alls that exist now on the U.S. Munitions List where they control for example any specifically designed or modified part or component to actually identify what those items are.

And the other thing that needed to be done was that we needed to create a structure to amend the Export Administration Regulations' Commerce Control List to allow for the continued control over those items under the Commerce system. So they would still be controlled as military items, but in a more flexible way in order to implement the national security objectives identified by the secretary.

So in essence what the reform brought about is right now this rule that we published yesterday is on this page. Essentially anything that is today a defense article, you know, it's listed or it's otherwise within the scope of the USML categories. But it's no longer listed on the revised USML category. And the ones we're dealing with here today as Category VIII dealing with military aircraft and military aircraft engines.

Anything that's their defense article that's not listed on the new revised USML categories the State Department has published will become subject to the EAR, will become subject to the licensing jurisdiction of the Commerce Department under the Export Administration Regulations in what are called 600 series ECCNs. And I'll explain a little bit what a 600 series ECCN is in just a moment.

All such items with very few minor exceptions - that we'll get to during the discussion - will require a license worldwide except for Canada unless a license exception is available. The principal new license exception is a new

one in the last couple of years. It's called STA - Strategic Trade Authorization.

And as I'll go into a little bit more detail, all of these items - with very few exceptions - that move over will be eligible for export under this exception, which means that they can authorize - the exception will authorize the export and reexport to 36 countries for one of three purposes.

If ultimate end use by governments of one of those 36 countries or the United States government, for return to the United States, or in connection with an existing authorization that State or Commerce issue authorizing the use of STA, and I'll explain all of these.

The policy objectives behind this effort again will be to make defense trade of items for which we less concerned about and for ultimate end use by the governments of these countries more efficient. And these largely go to the parts and components and other items that are on the supply chain for other localities.

There comes with this change, however, some significant new compliance obligations and responsibilities on the part of the exporter with respect to the obligations to educate, for example, the foreign parties, and then certifications to be made by the foreign parties to the transaction as a condition of using STA.

So take a breath. This is actually my slide that I inserted, you know, from the first draft. I realize that this is all going to be a little bit intimidating. I realize this is going to - when you first see - it's very intimidating. But in reality the regulations will seem far more complex than they actually are. And we realize that people will take time or will need time to get comfortable with them.

And I was talking to another exporter - I went ahead and put this on the slide - who sort of summarized it well, I thought, which is the current system is sometimes arbitrary and over-controls things. But I understand it. And the future system is intelligent and tailored and will help my exports to non-embargoed countries, but I don't really understand it.

So what we're going to be doing with this call, and again, all these other calls and as many sort of outreach and education events as we can do, is help people understand it. So we're going from the clouds down to the treetops here a little bit better and a little bit more. As I said, the framework of this effort is to create a more positive U.S. Munitions List category and then establish the new 600 series structure in the Commerce Control List. The new ECCN to capture what was moved over to the Commerce side.

We will - over the course of 2013 - be publishing proposed and final revisions to each of the remaining USML categories. Next in the queue for example in terms of beginning the congressional notification process will be the rules pertaining to vehicles, ships, materials/miscellaneous items, and submarines. That will be the next final rule that we start the congressional notification process.

And in the next proposed rule you'll see is the one pertaining to the revision for satellites in Category XV and then corresponding new ECCNs on the Commerce Control List to control all those satellites and items that will no longer be subject to the ITAR.

Specially designed - the key element of all of this was to come up with a definition that would come in for the EAR and ITAR and that will be applicable to new items that move over. And then there are all sorts of

transition and implementation aspects in terms of a delayed effective date and a transition period for example. And changes that we've made to license exceptions within the EAR and also the structure of existing licenses to accommodate and actually be more like how the State Department does it.

Some of you may have seen an executive order that was published a couple of weeks ago. Basically that was the setup for this regulation which gave to the Secretary of Commerce the authority to make certain delegations, and in another session, I'll discuss this more in detail. But in essence it deals with what was referred to as the dual licensing issue about situations where someone might be exporting something under a State license and in connection with that be exporting something that was subject to the EAR.

And we've come up with a way in order to reduce the overall burden on the exporter by still giving the US government the same visibility by allowing the State Department authorization to count as authorization for items that are subject to the EAR under certain circumstances.

So your first question when doing a jurisdictional review is pretty much exactly the same first question that you do now which is, is my item subject to the ITAR, except now you ask is my item still subject to the ITAR. And the way in which you do that - we're going to limit today's discussion to aircraft and aircraft parts and engine and engine parts since that's the only final rule that we published.

If you're dealing with items that historically were or that otherwise should have been subject to USML Category VIII, the first question is, is my item still listed. Is my particular kind of end item aircraft still listed or are any of my parts, components, accessories or attachments or other items on the new

U.S. Munitions List. If so, effectively very little changes for you. You continue having those items subject to the ITAR.

But if it's not listed in the subparagraphs pertaining to aircraft then you go to the new 600 series entry 9A610 and I'll describe in a moment what that means. But that is the new ECCN that will control any end items or parts, components, accessories or attachments that are today ITAR-controlled in Category VIII but tomorrow - after the 180 day effective date period is run - would no longer be subject to the ITAR under Category VIII.

For Category VIII(h), which is the large catch-all for aircraft parts and components, if your item is not specially designed for one of the low-observable aircraft listed in VIII(h)(1), then the next thing you do is - with respect to your part or component - if it's not in another part of the USML Category VIII, read through the subparagraphs of paragraph VIII(h).

So essentially what we've done and what the State Department has done is it is expanding out that one sentence in USML paragraph VIII(h), which is that parts, components, accessories or attachments specifically designed or modified and giving generally a positive list of what the new items are that will be in VIII(h).

Technology and software controls will largely remain the same since they will track and follow the jurisdictional status of the item to which they directly relate. So USML Category VIII(i) and then the new category for engines that we created to separate out engines from aircraft just for administrative reasons, XIX(g), that will still be the same in the sense that any services or technology or data or software that are directly related to something on that USML category will continue to be ITAR-controlled.

However, if the technology or software is not directly related to something on USML Category VIII but rather it's for the production, development, operation, etc. of something in the new 600 series, then those will be controlled under the new D or E provision in the 600 series.

So for example, software for the production, development, operation, etc. of a 600 series item in 9A610.x will be controlled under 9D610, which is the structure and the ECCN for determining software controls.

So far I've not said anything new with respect to the structure of the EAR. In fact I've actually made a point in this effort to try and maintain as much of the existing EAR structure as possible while at the same time accomplishing the objective of harmonizing terms and definitions.

So a couple of questions that have come in. So first question - what if I have a prior CJ determination - commodity jurisdiction determination? And that could be one of two ways. You have a CJ saying that the item was subject to the ITAR or a CJ saying that it was subject to the EAR.

If you have an item - if you've ever done a CJ in the past that says your widget is ITAR-controlled and that widget is no longer listed on USML Category VIII. Well we're talking about aircraft and related items, so if your widget or that aircraft is no longer listed on the new USML Category VIII, then these new rules - once they become effective in 180 days - so I guess 179 days - will supersede that CJ. That is you have a CJ saying something is ITAR-controlled. If it's not listed on the new USML category, you don't need to come in for another CJ unless described in ITAR section 120.4.

Rather you can make the self determination that the State Department asks you to make that the item is now a 600 series item. If you have a CJ in the past

for something that, you know, it had to be ITAR–controlled, and it's still on the list. Well what then changes? It's still ITAR-controlled.

On the flip side, if you had a CJ in the past for a particular item that was subject to the EAR and was not classified in one of the existing -018 ECCNs, and the -018 ECCNs were those that described military items on the CCL. Then that item is not a 600 series item. So what we're basically trying to do is preserve the status quo. If you have a CJ in the past saying it clearly wasn't military because it wasn't on the ITAR or it wasn't in one of the -018 entries controlling military items. Then you can rely on that past determination for that item.

That item described within the scope of the CCL will not be within the scope of the 600 series, and you continue to abide by and apply whatever the classification status of that item was - through self-determination or through CCATS or through the advice you got in the original feedback.

Similarly, if you have a CJ saying that something was not ITAR-controlled and it wasn't listed on the Commerce Control List, and thus it was an EAR99 item. Then it remains an EAR99 item. We're not upsetting the status quo with respect to something that was determined through a CJ to be an EAR99 item.

Let's say you've gone through the new USML category, you see that your item isn't listed. And so what you have to do first is look to the 600 series to see if your item is there. So you will look to first whether it's in one of the enumerated paragraphs of the new 600 series entry, and if not, then you ask yourself whether it's in the specialty designed catch-all.

So I promised you that I would explain what the 600 series meant. So for those of you that are familiar with the EAR, this will all make sense to you.

But those that are brand new, I thought I would sort of walk through what an Export Control Classification Number is and what it is made up of.

They are all in - they're all five digit characters. The first digit tells you the category that it comes from in the Commerce Control List. And each of those categories covers certain items, and Category 9 is the one that covers aircraft and propulsion systems. So in order for people to be able to find on the Commerce Control List where these new military aircraft engine items are, we captured them in the aircraft and propulsion system category.

The second digit will be the product group digit - I guess letter or placeholder. This will be the same structure we use throughout the EAR or the CCL where the A is an end item or component, and the B is production equipment, and the C is materials. D is software for any of those items and E will be technology for the production, development, operation, etc. of any of those items.

And then the "6" - as I said - will be the designator for something that is moving over from the USML. And the 600 series - the way we're structuring it, are only those things that were former USML items or otherwise were historically military items in the -018 entries on the Commerce Control List are moving into one series.

This was a little awkward I admit because we have - within the CCL - a structure and order of review where you look at the third digit and you start with the zero hundreds and the 100's and the 200's and the 300's. Since those spots were already taken we had to use an empty series, which is the 600 series.

Essentially the way it's going to work for you is in the order of review and we have a new supplement that describes within the final rule that you do your USML review first. If it's not on the USML, then you go to the 600 series in the CCL category that's most relevant. You determine which of the product groups that might apply - A,B, C, D or E - and if it's not specifically enumerated in one of those new 600 series entries then you check the specially designed catch-all in the "dot x" for that 600 series ECCN.

And if it's not there then you continue on and review the CCL as you always did and go through the same order of review for determining whether something is on the CCL. And if it is not listed on the CCL, the same rule as is the case now, go to the EAR99 designation.

So anyway, within 9A610 and -619, which is the new entry that we're doing for turbine engines, and every other 600 series that comes along - they will follow the same approach that's on the right hand column of this slide, which is that we will list the major end items or the major item under the "dot a". The 9A610.a will track and correspond with USML Category VIII(a) to control end item military aircraft that are not listed on the USML VIII(a) but were otherwise essentially designed for military applications.

And then .b, .c, .d, and the subparagraphs below that will enumerate and list out specific types of items that are either moving or that we want to identify explicitly from the bottom of our munitions list or that are moving more directly from a subparagraph in the existing US Munitions List.

Then there will be a space generally and down at the bottom, each of these categories will be the catch-all that I referred to – "dot x". And that will be the same pretty much throughout all of the new 600 series ECCNs and will

control parts, components, accessories, and attachments specially designed for an item in that 600 series entry or the corresponding USML category.

So for example, you have a military aircraft part. You don't need to determine the jurisdictional status of that end item military aircraft part. All you need to do is ask yourself is that part listed on the USML somehow? Is it captured within the text of any of the Category VIII entries - the new ones - or somewhere within the scope of the new USML VIII(h).

If the answer is yes, you stay on the ITAR or you abide by the ITAR. If the answer is no, it's likely going to be tossed under 9A610.x. And I'll explain what that means when we get to it in a little bit. But essentially what it means for purposes of this effort is that license exceptions will be available for export if conditions are satisfied. The primary one - as I mentioned - is STA.

Also in each of the categories - in many of the categories will be a "dot y" paragraph which whereas "dot x" is a catch-all, the "dot y" may have dozens of specifically enumerated items. "Dot y" will be a specific listing of particular parts - not representative examples but actual, you know, exclusive lists. And if your item is there and it was specially designed for a military item in one of the 600 series or any other item in the 600 series around the USML - corresponding USML categories.

Then it has a much lower reason for control which is the anti-terrorism reason. And for those that know the Commerce Control List, that's at the lowest level of control and that requires authorizations for export and reexport to Iran, Sudan, Syria, North Korea, and Cuba. And then as we described - because these are all by definition items specially designed for military application, the China military end use rule would apply as well.

So that's the structure of each of the new ECCN's. Where's a clock? 3:00, okay. Well that went quickly. So we're going to keep going here onto the slides. As evidenced by this, there is going to be a need to keep doing these. And with the assistance of ITA and our conference call system, we'll keep setting up these conferences on a going forward basis. So don't worry if I don't capture or cover something today that you're wondering about.

As I mentioned for the "dot x," they will have a catch-all concept with specially designed. In the second hour of this exercise I'm going to walk through the new definition of specially designed which has what we're referring to as sort of a catch and release approach. I'm just going to leave all of my commentary on that as well.

So let's save that until we start up at 3:30. I have items that are moving from the USML to the CCL and what are your options for this? As described in the State rule, there's going to be a two year grandfathering period for existing DDTC authorizations or State department authorizations. And by the way, when I said the effective date, what I mean by that is although the rule was published yesterday, it wasn't implemented yesterday. It was just published so that everybody could read it and understand it and digest it and implement and make changes to internal compliance systems and get used to it.

And then at industry's request, we delayed the effective date out for six months so that it won't actually become law until I think October 15th or 16th - October 15th which will be - and then it will become operational. So when I refer to the grandfathering period, it's actually for two years after that 180 days wherein if you have an existing State authorization, you can continue to use that authorization as you like such as a TAA or MLA.

But you also have the option of turning it in or amending it or starting fresh. And for items that have transferred over to the 600 series then starting fresh with the new Commerce rules. And if a license is required - coming in and applying for a license. Or if an exception is available, abide by and apply the conditions for use of the exception and export or reexport.

As also described in our rule, we're giving folks an opportunity to pre-position licenses so that if you have particular exports that you know you'll want to kick in once that 180 day period has expired. You can apply to the Commerce Department in the usual way the Commerce Department accepts applications through the SNAP-R system.

We will process that application internally. We will review it internally along with the other agencies, and then hold that license and not issue it until the new regulations become effective.

There's also a new twist in the last bullet there where to deal with the double licensing issue that I referred to a moment ago. In a new ITAR section 120.5(b) they describe that exporters - if they are shipping the ITAR controlled items and there are going to be also items that are subject to the EAR that are going to be used in or with this ITAR controlled item. If you would call those out in the (x) paragraph of your State Department authorization, that one State authorization will be the authority by which you can export again those items that are subject to the ITAR or the EAR.

To the extent you're dealing just with EAR items or to the extent that there's an export or other transaction involving only the use of 600 series items then you can't use that. You have to work with the Commerce Department or otherwise abide by Commerce license exceptions. But what we have done is

to improve efficiency with respect to licensing when transactions involve both ITAR items and 600 series items going forward.

Again, any one of these topics - we can have the discussion and answer lots of questions. But right now I'm trying to give you the structure of the whole thing for this first meeting.

So this is a slide that sort of summarizes the State Department's transition plan. And I'm not going to go into and describe the State transition plan. So I'm encouraging you all to read it. But effectively it says what I just said from a moment ago that lays out requirements specifically for DSP-5s, TAAs, MLAs and the few WDAs that exist.

For DSP-61s and 73s, it was determined to be too complex to try to create any sort of arrangement. And if you have a -61 or -73 for temporary export or temporary import then those continue to be used for, you know, however long they would otherwise be valid. That seemed to be the simplest approach for it and for industry.

Alright so for those who are familiar with how the Commerce controls this structure, this will be old news for you. For those that are not, I wanted to have this slide up here to show you what the various things that you're going to see.

Now on the State Department list it's very easy if everything requires a license for a destination. You don't need to get into too much complexity. When you are creating a situation where authorizations are required for some destinations on some conditions then on other destinations that other conditions are applied - you have to break out what you mean by that.

And the structure of how the EAR and the Commerce Control List are put together are, you know, after the ECCN has determined that there are reasons for control that are applicable to every type of item that's otherwise listed. And every reason for control has different scopes of authorizations and license requirements and exceptions that are available to it.

For all of the 600 series they will generally track the structure of this reason for control box on this slide where you'll see NS and RS - national security and regional stability - in column one for both. And those are the default controls for 600 series items unless we change otherwise.

And the significance of that is that anything that is NS or RS controlled - national security column one or regional stability column one controlled - requires a license for export and reexport worldwide except for Canada, unless an exception is available and we're going to get to what the exceptions are in a moment which is the essence of this part of the reform effort.

There are some items however since what the Commerce Control List does is to implement what the US government has agreed to with respect to various multilateral regimes and unilateral requirement. There are some items that have different levels of control and there's something called the Missile Technology Control Regime, which obviously controls missile systems and related items.

And to the extent that an item that we described is also on that Missile Technology Control Regime - we've identified it using to the extent possible the Missile Technology Control Regime text and identified it as an MT-controlled item. And the significance generally of something being MT-controlled is that unlike with NS and RS 1, there are not license exceptions that are available for it.

So for example, the license exception STA which is the biggest of all the exceptions and I'll describe in more detail later. That is not eligible. And again, this MT control is not eligible if the export is under the license exception STA.

You'll see also on the same reason for control box that AT - antiterrorism applies for the whole column. Again that is applicable only to the five embargoed countries and China. And then in order to sort of signal and clear the door that we're abiding by our UN obligation to the extent of UN embargoes, we identified the UN reason for control.

For the 600 series controls, that will not mean much because the UN embargos and controls are subsumed within the NS1 and the RS1 controls. So you don't have to worry too much about the implications that they're dealing with.

So then a little bit lower on the left hand side will be the available license exceptions and you see that we're adopting - it's similar to what is in the ITAR of $500 but we've adjusted for inflation in the nature of the items and created a Limited Value Shipment exception available for these 600 series items.

As different categories come out, that dollar value will change depending on the nature of the item or not exist at all. But for the military aircraft parts, a $1500 limited value shipment exception we made available. You'll need to look at section 740.3 to see what the scope and limitations are on LVS. I mean, for example, it can't be exported or used for exports to embargoed countries or the new D:5 list. Or if you're in the ITAR business, you may know this as 126.1 - once developed can't be used for other countries as well.

In another discussion later we'll - we can do perhaps an hour on the LVS exception. But we amended it totrack – 123.16(b)(2), which is in the ITAR now. GBS is another exception but is not eligible. And CIV is not available, which means exports for civil induced. And also APR, which isn't listed here, is additional permissive reexports. That exception is not available.

And here what we have at the bottom - the lower left hand of this page which will be at the top of each of these new ECCNs. We have a license exception STA is eligible. And you'll see that in paragraph (c)(1) of STA where it says it may not be used for any item in "dot a" and "dot a" is just the end item military aircraft that would move over.

And in that case there's a process by which someone could come in and ask permission under paragraph (g) to start using that license exception for end item military aircraft.

But with respect to everything else in these new ECCNs - most importantly I think in terms of volume the "dot x" controls the parts and components. STA is automatically eligible but for some entries we carved out saying it's not eligible, which does happen from time to time and did happen in the engines category with some kinds of software and technology.

You'll see in that second commentary there - that little number - it says paragraph (c)(2) is not eligible. And (c)(2) is the reference to the group of eight countries that STA may be used to export certain items controlled for NS reasons only. So for 600 series items for STA, it is in essence really just for the 36 STA countries which in one of our follow-on slides I think. So here - this goes through and describes what I just said already.

A couple of general restrictions on the use of any of the license exceptions for 600 series. As I mentioned a moment ago, only those exceptions that are identified in 740.2(a)(13) may be used and I've got a slide here on another page that will identify what those are. 600 series items may not be exported or reexported to Country Group D:5 under a license exception.

Now D:5 is using our existing country group structure in the EAR to basically track the 126.1 list. So if you know your ITAR and you know your list of embargo countries, it's either United Nations or United States arms embargoes.

What we've done in the Commerce Department is simply adopt the ITAR's 126.1 list and use it as in part of our list structure with the same group of countries and we will draft along behind and to the extent that there's a change in the State Department list, our Commerce list will follow that exactly the same way. So D:5 in our list and 126.1 in the State list is going to be the same.

You can't and this shouldn't happen very often but in the unlikely event that some item of major defense equipment would move over such as end item aircraft of certain value that meets the MDE definition under a contract exceeding certain values. Then STA can't be used and there will be congressional notification obligations.

And as I mentioned a moment ago, things that are MT-controlled can't be used for any of these exceptions. So here's the list I was referring to - a good summary on one page of the exceptions that will be available for the new 600 series. I mentioned LVS which will change from category to category depending upon the nature of the items.

TMP - you'll see a lot of text with respect to the new TMP in 740.9. A lot of it is not new. We just reorganized it to make it a little bit more clearer because over the decade, the exception has sort of piled on top of itself from various changes. And so we use this as an opportunity to streamline it more than certainly it was before. But we also adopted concepts that are in the ITAR and expanded its scope out for certain kinds of exports of items to a US subsidiary, affiliate, or affiliate abroad.

Again, I'm not going to go through the details of each of these. Right now I'm just listing out the exception. The only changes again other than the organizational changes. But for this one we did make it more like a similar ITAR exemption. And we'll have a translation chart for you at the end.

RPL stands for replacement parts. Again this is also implementing something that the State Department was working on and planning to implement into the ITAR and we've just done it first with revisions to 740.10. It shouldn't allow - it has various limitations on it but the philosophy behind it is to allow for the export of that which was already authorized such as on a one-for-one replacement basis or that upgrade or improvement for items that was already previously authorized for export.

GOV again is another one of those exceptions that over the years has become very difficult to read and we streamlined it as much as we thought we could and then adopted some of the concepts that are either now in the ITAR or that will soon be in the ITAR with respect to shipments for and on behalf of the US government or shipments that have been directed or instructed by the US Department of Defense.

TSU - we made a change here again to correspond mostly with an existing State Department exemption with respect to technology and source code in the

United States to bona fide full time regular employees at universities. So a lot of these changes were largely as a part of our ongoing effort to start harmonizing the structure and the content and the words and the text to the extent possible between the ITAR and the EAR without us actually having one single export control list.

So this exception STA, which is new to the 600 series, but it's been around for a couple of years because we first published it I think in June of 2010 with respect to most dual-use items that otherwise required a license for export to the 36 countries, or in some cases, the eight countries.

And so we left here the group of the 36 countries that are in the scope of Country Group A:5. Again some of the comments that came back and said why didn't you use existing country group structures. So we created a new A:5 to identify the 36 STA countries and then we created a new country group – A:6 - to identify the eight other countries. And that group again is not eligible for exports under the license exception STA for 600 series items.

So when using STA, this is really one that you'll want to focus on to actually start implementing and making real. When you have an item that has moved to the 600 series and it is ultimately destined or is destined rather for one of the 36 countries, there are obligations that come along with this. And these obligations have several purposes - to create a paper trail for enforcement and follow-up and compliance, to put parties on notice as to the fact of what's being exported, why and under what conditions and what the limitations are for a reexport.

So essentially in order to use STA, and all of these comments by the way that I've said today and are on these slides are just summaries. I should have said this right up front. You know, any final determinations with respect to any

decisions to export under an exception to the license needs to be made upon reviewing the actual regulations - not just the slides and not just providing in a summary fashion these talking points.

Anyway, so the obligations for the use of STA are for the US exporter that they provide the company with the ECCN. In this case for example, you have a military aircraft part. You'll have to notify the foreign company that it is a 9A610.x item. This is a new requirement and we are to tell these parties of the control.

Also, to obtain the company statements that I'm going to get to in just a moment on the right hand side. And to notify the company that this item is being shipped out under license exception STA and to keep all the records associated with that shipment, identifying how it shipped under STA.

And then the foreign company is going to need to take this certification back to the US exporter. Are they aware that these items are being shipped out under this exception? Have they been informed about what the new ECCN is. That they won't use APR to reexport this item outside of the group of 36 and that they agree to provide documentation associated with the use of this exception to the US government when requested.

And once these certifications have been received and are in order, that then constitutes the authority for the US exporter for one of the reasons that I will describe in just a moment to one of the 36 countries. Export without a US government license but rather under the authorization of this new license exception.

So these are the three primary elements for when the 600 series license exception STA can be used. One, if it's for ultimate use by the US

government or government of one of the 36 countries and by ultimate I mean if it goes to an intermediate party, so long as they certify, and there's no red flag suggesting otherwise, that it is actually for ultimate use by the governments of one of those 36.

So if you know you're developing something for the governments of France and it ships to England and it's to be built in England but for the ultimate use of the governments of England and France then for example STA - that would be a valid authorization. It doesn't have to be by that country's government but by any of the governments in the group of the 36 or the United States.

Or if it's a return to the United States such as a part of a joint development operation or - and this is news since the proposed rule - if the US government has otherwise authorized the use of STA. There were some fact patterns in some of the commentary that we can address later. But let's say in a license either from State or from Commerce - it will explicitly authorize the use of shipment of items to the 36 countries under STA for other types of activities.

We just gave the government a good degree of flexibility to issue those authorizations. So those are the three reasons when STA could be used if the other requirements have been satisfied.

There's some other obligations that apply for STA shipments for 600 series items only and this is also relatively new from the earliest versions of this, which is that the non-US parties to the authorization that will be involved in the transaction under the license exception had to have - at some point in the past - been on a license that was approved by either the State Department or the Commerce Department.

It doesn't have to be with respect to that particular item but they had to have been approved by either State or Commerce in a previous license. And it would be the obligation of the parties in the transaction to make that certainty or to confirm that.

Now if you're dealing with regular parties which the objective of the sector primarily is to apply to companies that are a regular supply chain, a regular relationship of parts and components for end item by NATO and other close allies. This won't be an issue because by definition you will have received - in the past - licenses for these parties. If it's the one off - shipments or brand new customers or brand new parties - then one would need to confirm whether the new party was on a license from State or Commerce.

There also needs to be in the company statement, the statement that they agreed to an end use check. And again as I mentioned earlier - if in limited circumstances when there might be an end item aircraft that they've received permission from the US government to use STA.

We're almost near the end. What time is it? Oh, we're good on the timing here because we're about to the end here. And again, we're going to be doing this other Wednesdays. I realize I'm sailing through his. So if I didn't touch on a topic that you might have or other topics that we want to get into, don't worry. There's a lot of Wednesdays left as far as I know.

This is a little cheat sheet. Remember when I said earlier we were trying to conform the ITAR exemptions to the exceptions - I'm sorry - the EAR exceptions to the ITAR exemptions. And so we went through and listed out the exemptions that are in the ITAR and have identified the new EAR license exceptions or the amended license exceptions, with the content of those.

So another way of thinking about it. I had a State authorization under an existing ITAR exemption. That will be exportable under your EAR license exception tomorrow with very, very few variations. What we did also is to apply some of these same concepts - not just - most of the same concepts not just with respect to the 600 series but to have it apply more broadly for all items subject to the EAR.

So if you do need a license - we'll say you're shipping something to a country that is not in the group of 36. So you can't otherwise satisfy the conditions of one of the exceptions or for whatever reason you don't intend to use the option of a license exception. Then the authorizations follow the same process we have now. You use our SNAP-R system. Unlike the State system, there's no cost to apply for a license. We've modified our systems to be more like State's in the sense that we will have a four-year validity period. You can have a license that authorizes export and reexport to more than one party. You can have multiple end users. And the way in which the structure is going to work.

If you have authorization license - we'll say for example - with ten end users and you identify the scope and the value and the quantity. So long as that license is valid, it can authorize exports and reexports between the identified parties.

You don't require a specific purchase order. So if you have a belief of a sale or anticipation of a purchase order, you can come in and preemptively upfront to get your authorization. We will review it. If we agree with you that it's the kind of thing we would approve, we would issue a license. We may condition it or deny it. But you don't have to wait until you actually get the purchase order in hand. You can come in and get the authorization from the US government.

Again - by the way I should have said this earlier - as the first applications come in through the Commerce Department, just like they were when we went to the State Department, they will be reviewed by the relevant officials within the various bureaus of the State Department and then also by the Defense Department.

And we will largely adopt many of the same insurance policies that State now adopts. So there shouldn't be any change in long term policies for those items that do require an authorization and what we're doing now is making that within this larger EAR structure which allows for more flexibility with the various discussions that I just described.

Unlike the State Department system under the ITAR, we don't have the complexity of requiring Technical Assistance Agreements and Manufacturing License Agreements.

We do still have controls on the export of software and technology for the production, development, operation, etc. of items. And however it's released - either through the service or orally or electronically - that comes in the form of the same license application form and then ultimately a license that you would have for an actual hardware export.

And the Commerce system is - in terms of the authorizations, we believe is actually simpler and the paper you get back vastly shorter where it describes the end use, the destination, the value, the duration, etc. And as I mentioned earlier - we're giving people the option to grandfather licenses.

Let's see here. I mentioned already most of the things here where under the new State system - 120.5(b) for example. You can get under State license

authorizations and export EAR items that are used in or with the ITAR items. I think I've already covered everything on this slide given the timing.

For export clearance issues - as I mentioned earlier - you need to identify the 600 series ECCN on the export controls documents. All exports, except "dot y" items, below a certain value require an AES filing regardless of destination. So if you're using license exception STA to ship to one of the STA countries, you still need the AES filing. And then I've already referred to 120.5(b). I'm sailing through just a little bit to leave time for questions.

One of the other big differences between the Commerce regulations and the State regulations is that foreign-made items incorporating a certain amount of U.S. content may not be subject to the EAR. And so what we've done with this new 600 series rule is to apply for most of the world the same 25% de minimis rule that exists.

On the State Department system, it's a zero de minimis rule for everything. So any item, no matter how insignificant, if it's specifically designed and modified for military items and it's incorporated into a foreign made item or a civil item, it remains ITAR-controlled forever, requiring US government authorization for its reexport even if the other 99.9% of the item was foreign made.

And under the current system - what we've gotten under this new system - we've set the minimum rule for 600 series items will still be available and calculated in the same way. However, there's an exception to that which is that we're maintaining the State Department's embargo and see-through rule with respect to exports and reexports to the D:5 countries, or in the ITAR, the 126.1 countries, such as China.

So a foreign made item containing US origin 600 series content destined for China - even if it's less than 25% -- would still require authorization from the United States for that reexport, and it would be presumptively denied.

There's also - and we're adopting and expanding on another topic. We can get into this, but essentially, foreign made 600 series items that are the direct product of US origin 600 series software or technology will require US government authorization if reexported to any of the countries in the country groups that are identified there – D:1, D:3, D:4, D:5 and then E:1 (the embargo countries). In terms of scope, it doesn't include any European countries, for example, in those lists.

And wow, I think I made it within time. We have here a list of people you can contact for questions. The director of the new division who's going to be processing the licenses when they come in and otherwise dealing with classification requests is Todd Willis. That's his work related email. As we get more comfortable, I'll give you his home number and his cell number that you can call later.

Anyway, so for technical questions on aircraft or gas turbine engines it's Gene Christiansen in the Office of National Security and Technology Transfer Controls, and Jeffrey Leitz from the new division. And then for issues with respect to interpretation or other regulatory issues, it's our Regulatory Policy Division, and Steve Emme in my office.

And then for training and outreach, Rebecca Joyce. And then in the Western Regional Office side, Michael Hoffman). So what I'm going to do is stop there and open it up for questions. And after answering a few questions for 10 or 15 minutes then I'll start with the second slideshow and we'll walk through the specially designed definition.

Coordinator: Thank you. And at this time if you would like to ask a question, please press star one on your touchtone phone. To withdraw your request you may press star two. Once again, if you have a question, please press star one at this time. And one moment for the first question.

Our first question comes from (Natasha Finnerty). Please go ahead. (Natasha) your line is open. Please go ahead with your question. We'll move onto the next question. Our next question's from (Janet Pierce). Your line is open.

(Janet Pierce): Hi. I just had a question regarding your comment about the VIII(h) series and the catch-all controls. You mentioned that you had to look to see if you were captured in another category and I think you mentioned brake pads or something that might be captured in other category. What do we do in the interim since the other category's final rules aren't out yet?

Kevin Wolf: It remains ITAR-controlled. So let's say for example you have a military vehicle part or component. Then until the State Department has made changes to the ITAR and we've implemented corresponding CCL changes, those items remain ITAR-controlled.

(Janet Pierce): Okay. Thank you.

Kevin Wolf: Yes. So, you know, we're going to - we're going to be rolling out the changes to the other categories over 2013 with respective dates and some effective dates going to 2014. By the way, you will see another electronics rule. We've gone through - we have had eight full days, long days, all day, very productive interagency meetings going through the public comments on category VIII - I mean sorry - category XI - the electronics category.

And State, Commerce and Defense now are working on putting together the proposed changes based on our review of those public comments. So electronics will be coming out again later for public comments.

Coordinator: Thank you. Our next question's from (Gary Stanley). Your line is open.

(Gary Stanley): Kevin will an exporter still require a technical assistance agreement to provide technical assistance to integrate a 600 series item into a military system?

Kevin Wolf: If the - another way of saying it for others on the phone - if someone is still providing a defense service to a foreign person as defined in 121 of the ITAR and the physical item at issue in that service is now a 600 series item, will an authorization under the AECA still be required from the State Department? And the answer to that question is yes.

However, the State Department is going to propose changes to the definition of defense service to deal with the issue of incorporation and integration. And those proposed changes will be part of the State Department's proposed revision to the USML Category XV - the satellite rule, which will be the next proposed rule that we get out the door.

So I know what you're getting at which is a situation where all we're doing is exporting our now 600 series widgets and plugging it in to a, you know, foreign made defense article such as a military aircraft. And are we now going to need both a State and a Commerce authorization, the State authorization for the service and the Commerce authorization for the 600 series or maybe the availability of a license exception.

That right now today would require two authorizations from the State Department, the TAA and the DSP-5 for the actual hardware shipment but

tomorrow it would still require, to the extent an exception wasn't required, two licenses. So two authorizations - the TAA and the Commerce authorization. So again - as I mentioned - the State Department is going to propose changes in that definition for defense services to allow for circumstances where just the mere act of installing without anything pertaining to, you know, changes, etc. to the impact of the defense article won't count as a defense service.

I don't want to speak or get into the nuance of that yet because it hasn't been proposed. The State Department hasn't actually proposed it. I'm just giving you a heads-up for that question to pay attention to what did come out and then for you and everybody else, review it and make public comments on it and we'll take it from there.

Coordinator: Thank you. Our next question's from (Doug Jacobson). Please go ahead. (Doug Jacobson) your line is open. Please check your mute feature.

(Doug Jacobson): Yes, hi Kevin - (Doug). Just thanks very much for everybody's efforts at BIS and DDTC for getting this done. A couple of practical questions. One, you mentioned that no purchase order would be required. There is some discussion of that in the preamble to the comments. But what about other supporting documents with respect to technical data, product brochures that would have to be required to be submitted with a license application.

In many cases DDTC does not require that information but it may only require a PO or a letter of intent.

Kevin Wolf: Right. We haven't made any changes with respect to the supporting documents or the documents required to describe the nature of the transaction. It's not our goal to suddenly become more burdensome than DDTC in that

regard. But we - the short answer is saying we have community changes. If there is a fact pattern wherein an obligation under the EAR is somehow more significant or more burdensome than the ITAR, let us know. We'll think through it.

No one's raised that with us just in any of the public comments. So we haven't made any changes to any of the other standard requirements for describing the technology or the item that would be exported in the supporting documents in order to support that application.

So if you have particular fact patterns, you know, let's put them together and maybe get them into the next series of public comments on a proposed rule that we come out with. And that's something to think about but to date, no one's mentioned that in any of the comments and we haven't made any changes to any of the supporting document requirements.

(Doug Jacobson): Okay, thanks. And then what about the - you mentioned also Category XV. That'll be the next proposed rule to be published. Any thoughts on timing as far as when we will see that in the Federal Register?

Kevin Wolf: As soon as I get done with this conference call.

(Doug Jacobson): Okay.

Kevin Wolf: No, we have to - we're right now in the last stages of finishing EAR clearance on the text and getting OMB permission to then send it to the Office of the Federal Register to publish that.

(Doug Jacobson): Alright, thank you. And then lastly you may want to mention something about the CCATS - alternative CCATS that you mentioned - you've referred to as

"CDOGS" as far as the alternative CCATS for obtaining information on commodity classification for some of these new items.

Kevin Wolf: Yes, I'll get to that when I do specially designed.

(Doug Jacobson): Okay, perfect. Thanks so much.

Coordinator: Thank you. Our next question comes from (Tammy Hire). Your line is open.

(Tammy Hire): So quick question regarding Category VIII products again. One of our products that we make are seats that are designed specifically for military helicopters and they're seats that are just made out of material. I understand they'll probably go to the CCL.

But then we also have seats that have armor in them for the military helicopters. I'm wondering if it'll be clear how I should look at that in order to assign it the appropriate category.

Kevin Wolf: I don't want to speak for State and I don't have in front of me the new VIII(h), but I don't believe there's any form of seats that might be specifically listed in VIII(h), unless specially designed for one of the stealth or low-observable aircraft. And so...

(Tammy Hire): I wouldn't have to look at an armor category either?

Kevin Wolf: No. It would be - there's nothing where we make a distinction for armor for a seat. So if it's specially designed as we're going to discuss the definition of it, that would presumptively fall to 9A610.x.

(Tammy Hire): I appreciate it. Thank you.

Kevin Wolf: Again, I would follow-up with DDTC specifically on the State Department rule. You'll sort of want to look through that and maybe contact State for further information. But from memory, I don't think that there's anything pertaining to seats where the addition of armor to a seat would change the jurisdictional status.

(Tammy Hire): I will definitely look it over. Thank you.

Coordinator: Thank you. Our next question comes from (Larry Christiansen). Your line is open.

(Larry Christianson): Good afternoon. My question has to do with applying for a CCATS. Let's assume this is after all the lists are revised. If someone applies for a CCATS and gets a determination from BIS of a particular ECCN or EAR99. In those circumstances in the future, will there be any type of risk that DDTC will later claim jurisdiction or prosecutors will claim jurisdiction without new enumeration of items on the USML - first question.

And secondly, if there is such risk that will remain - and I hope not - will the prosecutors and State be permitted to apply that retroactively as they have in the past?

Kevin Wolf: Well the way in which we're structuring the new USML categories - and by we I mean the US government - is that they won't have a lot of subjectivity built into them. They're going to be, to the extent humanly possible, more objective lists. So the issue of difficult CJ determinations that lend themselves to dispute should be reduced.

Also, the catch-all phrases on the USML we believe over time will be dramatically reduced. And it won't be a question of subjectivity but whether something is or isn't tied to our control. You would just look to see whether it's on the new USML or not.

And lastly I think going back to your first question, a classification determination from Commerce as our regs say - I'm blanking on the exact section - 734 I think. It says that a classification determination is only a statement about where something would be or not on the Commerce Control List if it were subject to the EAR.

And so a CCATS is only a statement about the classification of an item. It isn't a statement about whether it is or isn't tied to our control. So you get to the CCATS either after you've made a self determination that your item is no longer or isn't listed on the US Munitions List. Or if there was a CJ with date confirmed that the item was not on the US Munitions List.

Again - to go back to one of the primary points of this effort - you have to get to the point where, you know, industry and government and prosecutors and judges or juries or whoever can look at the list of items and make that determination about whether something is or isn't on the ITAR by what's listed on the USML as opposed to a more subjective determination.

(Larry Christianson): And then what about retroactive decisions by DDTC?

Kevin Wolf: The question would be whether it is or isn't on the list at the time the export occurred. I mean so for example if, you know, the previous example of the seat. We're exporting prior to the 180 day effective period. That would be in ITAR - I'm under VIII(h). But based on the fact to provide it after the 180 day effective date, the export of it would be subject to the EAR. So the

retroactivity would be with respect to where the item fell at the time the incident or the transaction in question occurred.

(Larry Christianson): Thanks a lot.

Coordinator: Thank you. Our next question is from (Karen Murphy). Your line is open.

(Karen Murphy): Hey Kevin. Quick question on the license process. You mentioned earlier we're going to get four year licenses. Will there be an amendment process during the four years or do folks anticipate replacement licenses as facts change during the period?

Kevin Wolf: We've not caused any changes allowing for the creation of a new process for existing authorization.

(Karen Murphy): Okay.

Kevin Wolf: So to the extent that there was a change in facts or circumstances that warranted or required rather a new authorization and the same rules that exist today would apply which would be a new authorization.

(Karen Murphy): Okay.

Kevin Wolf: That's something we've been thinking about but it's not something that we have put to paper completely for a proposed going forward basis. It's just ideas right now.

(Karen Murphy): Okay, thanks.

Coordinator: Thank you. The next question is from (Lynn Twiss). Your line is open.

(Lynn Twiss): Hi Kevin. We have current export licenses with the Department of State and they're valid through 2016 and 2017 with the determination are these going to be grandfathered? Do we need to reapply for a new license with Commerce?

Kevin Wolf: Well if they - if your items don't move from the USML at all then those authorizations remain and you can use it to the extent the authority will go.

To the extent that you need a - to engage in a transaction involving one of those items. As we said - after the 180 days for two years thereafter you have the option of continuing to use that existing authorization for items on the State license. So you could just not do anything and keep working within the scope of your State authorization.

But at the end of that 180 days plus two year period, if your item has moved over and become subject to the EAR, any future transactions involving those items would require the use of a Commerce license or a Commerce license exception.

(Lynn Twiss): Thank you.

Coordinator: Thank you. Our next question's from (Joyce Able). Please go ahead.

(Joyce Able): The production of ITAR products invoke certain restrictions on a business. When items move from that list, does that remove those controls such as controlled access and foreign visitor restriction?

Kevin Wolf: To the extent that the - you satisfy the obligations and the State Department regulations and I would encourage you to contact DDTC. That's for turning in or ending your State authorization.

And on a going forward basis - if a license is required by Commerce such as for example if not to one of the STA-36 countries, then whatever conditions or limitations that would be on that license would apply. They may or may not be the same as what historically had happened with the State license. It would just depend.

If a license exception were eligible for the export of that item to one of the 36 countries then I've already described what the scope of the obligations are with respect to utilizing one of those exceptions.

(Joyce Able): Okay, thank you.

Coordinator: Thank you and at this time we have no further questions.

Kevin Wolf: That's perfect and by the way, I swear I'm not making any of this up. It's all true. What I'll do now at the end of the questions is start the second topic.

So this is the definition of "specially designed." And normally, you know, you wouldn't pull out an individual definition for its own topic but this one has generated over the decade literally a significant amount of attention and it's really quite critical to this whole exercise. So I wanted to have just the special - no pun intended - presentation.

And again, with all topics that we've raised today, if there are particular ones you want us to go through in more detail and obviously given by the attendance, people are willing to call in and we will do so over time. But the first thing you should do is actually read the new definition which is on page 22728 and sort of flows over into 22729 of the Federal Register notice that we

published yesterday. You can also look at the State Department notice and definition which came just after ours.

Now you'll see that they both substantively track one another and are similar to the extent possible. The wording of the definition is slightly different in certain places to make the definition EAR specific and ITAR specific, such as the (b)(6) paragraph in the EAR definition. Our goal with the definition is to come up with something that if, you know, you gauged the same facts with ten different people, they would all come to the same answer with respect to something that was or wasn't "specially designed."

And remember what I said when I was describing earlier the order of review. First you look at the USML. If your item is specifically numerated then you're caught. If it's not specifically enumerated, you then see whether it's caught within one of the "specially designed" catch-alls on the USML and there should be very few. We're trying to draft those out to the extent humanly possible.

If your item is not "specially designed" under USML then you go and you look to the 600 series that's relative to your type of item. You see whether your item is or isn't enumerated in the 600 series 9Y6zz. (A, B, C, D, E). If it's not there then you go to the catch-all – 9Y6zz.x - and ask the question of whether you're a part, component, accessory or attachment "specially designed" for one of those 600 series items or in regards to the corresponding USML category.

And if the answer is no then you go onto the rest of CCL and you review the CCL for to determine whether the item is described in an ECCN outside the 600 series.. You always will follow the same steps of analysis. But in that order of review process you have to go through the definition of specially

designed twice. So what I wanted to talk to you about in this area is if you've gone through the USML, and you determined your item is not on the USML and you're now reviewing the 600 series, and you determined it's not listed in the 600 series but you're asking yourself is my part, component, accessory or attachment "specially designed" for - in this case - a military aircraft either in 9A610 or USML Category VIII.

And we needed to come up with a definition because this catch-all concept is really quite essential to the whole effort because we didn't want to let anything inadvertently drop out of control from the USML which has these broad catch-alls. So we made the USML as positive as possible. But we needed to maintain the catch-all phrases on the CCL to catch everything else.

Similarly or in addition rather we needed to maintain the catch-all concept because those concepts - those phrases are used on the Wassenaar Arrangement Munitions List. And one of the other aspects of this effort is to maintain consistency with our international regime obligations which in this case for example uses controls on items "specially designed" for military aircraft.

Frankly also we wanted a definition that would allow for evolution and clarification over time as individual fact patterns presented themselves so that it becomes easier to apply.

As we were working on this and the reason we came about with the structure and by working on this, I mean over the course of the last two or so years. And we went through hundreds of evolutions or iterations rather and two proposed rules and hundreds of public comments came back in on it. And lots of work with the DTAG and the TACs.

What we found was that it was really very difficult to articulate in one sentence exactly what the term meant because it left too much room for ambiguity and subjectivity. But what we did find in working through this is that it became possible to state more clearly about what the term didn't include.

And so this lead conceptually to a very different approach which is to have a catch and release structure wherein the broad paragraph (a) to the definition of "specially designed" would catch items with very open ended phrases. And then much more specific criteria would exist in paragraph (b) to refine the parts, components, accessories and attachment that are "specially designed."

And so this is a slide I enjoy. Take a breath because I realize that this may be intimidating and it's going to seem complicated to you at first because it's more than one sentence. It has notes and definitions and when you get to - printing out the Federal Register, you've got, you know, a lot of pages of preamble that you have to work through.

But based on hundreds of tests or examples of working through this with particular companies and back patterns - it works out to be - for exporters at the end - very simple to use. The other thing about the definition is that it's really not a very radical idea. What we've done is take existing concepts that are spread throughout the USML and the CCL and based on what the US government has determined to be the right level of control in the good faith application of the term to accomplish our policies.

And quantify it - that is put it together all in writing all in one place. So you shouldn't be seeing anything - although maybe worded and ordered differently - substantively any different than what we believe is a good faith application

of the content now or the counterpart concept of specifically designed which is what just hearing in the USML and training in "specially designed."

The way we structured it also so as to get away from a subjective design intent focus where you have to try to figure out what was in the mind of a particular engineer or company in knowing whether something was designed for a controlled application or a military application or dual use application or uncontrolled application. That level of subjective intent would be difficult to discern for whether something was or wasn't "specially designed" and where you can get reasonable people to disagree.

We wanted to come up with a structure that allowed for a series of yes, no, objective fact based questions. And I think we've done that and I'm going to walk through them here in just a moment.

By the way and also in drafting the definition we wanted to use as many already existing and defined terms that are in the EAR and the ITAR as possible. So when you see phrases and words like the "development" or "production," you'll know that we're using the EAR definitions of those terms. And in fact the ITAR has adopted the EAR's definitions of a lot of terms including development and production. And knowledge is another phrase that is a well-defined, well-tested, well-practiced definition in the EAR.

Similarly the EAR is adopting many definitions that were in the ITAR such as parts, components, accessories, attachments and so with this cross fertilization of common definitions or existing definitions to make them common and then using that existing structure within these new definitions, we're not trying to reinvent the review wheels.

So as I mentioned a moment ago there are two paragraphs- in this catch and release construct. A very broad catch is broken up into two paragraphs in paragraph (a)(1) and (a)(2). And if either paragraph (a)(1)1 or (a)(2) applies to a particular item that you're doing a classification analysis of, then it's caught. Now it doesn't mean that's where you end the analysis as we described because if it is a part, component, accessory, attachment or software because it may be released if any one of the paragraph (b) paragraphs apply.

So what we've done is one of the catches for paragraph (a.1) is to say that an item "specially designed" is as a result of development, if it has properties peculiarly responsible for achieving or exceeding the performance level, characteristics or function in the relevant ECCN that you're looking at or for the corresponding USML category.

This is essentially the definition that we proposed in 2011 as one of our catches. And industry, you know, generally understood it and has very few comments on it. And it hasn't really changed much at all since the beginning.

And because of the way it's worded in that it refers to any item, it would also capture any item such as an end item machine tool or end item aircraft as opposed to a component or any kind of material. Because remember, in the EAR the word item includes anything - any component, any end item, any system, any material, any software. And so this (a)(1) is meant to apply to any item as that term is applied very broadly in the EAR.

And so if you're dealing with just an end item or if you're dealing with just material then this will be the beginning and the end of your analysis (paragraph (a)(1) of "specially designed"). You ask yourself this question. Is there something about it? Does it have properties that are the result of development? Did somebody intentionally do something to it so that it has the

characteristics of the control of the ECCN or the characteristics in the ECCN that causes it to be controlled.

And this is not also radical or a new concept. Essentially what we've done is to adopt the existing definition of required in the EAR that comes from the EAR definition that's been around for a couple of decades now and apply it to this definition as well.

But let's say for whatever reason an item doesn't meet that. I think everything that I just said a moment ago is on this second slide. What I'm about to say is here on this third bullet point. If you have a part, component, accessory, attachment or software you have to make sure that you review paragraph (a)(2) because again if either (a)(2) or (a)(1) applies then an item is presumptively caught.

And what we've done here is to say that any part, component, accessory, attachment or software - we need to fix our slide here a little bit - that is - and this is a very broad concept - is for use in or with a commodity or defense article listed or enumerated or otherwise described on the CCL or USML is presumptively caught.

So if you've got a widget and you know it's going to an F18 overseas - you know that – you don't ask yourself at this stage or have to ask yourself at this stage why was it designed. All you have to know at this stage is, is it for use in or with a military item or defense article or 600 series item or if you're talking about a dual use item or one of the other controlled dual use items. They are very, very broad captured.

And this we believe is a much simpler approach than asking a question about what was in the mind of the engineer or the company which designed it

because all you're asking is, is it for use in or with. If it's actually going into a controlled item, that answers your question and your initial analysis.

But it's not the end of the analysis because if we were to end there it would flip export controls on its head and basically mean that anything that is used in a controlled item or anything that is used in a military end item becomes caught itself and that is not our intention with this exercise. And that's why we created each of the various specific carve-outs which we think you get more precisely at what is "specially designed." That's exactly what we want to control within these "specially designed" catch-alls.

So what one does is if you have a part, component, accessory, attachment or software and you go through each of the paragraph (b) carve-outs or releases and any one applies, then your item is not "specially designed." And to the extent it's controlled will depend upon whether it's somehow listed elsewhere explicitly on the commerce controls on the CCL. But it won't be within the scope of one of the "specially designed" catch-alls.

By the way, there's a little bit of a nuance here in that - on the commerce list there are a handful of ECCN's where the phrase "specially designed" is used as a de-control note. That is something "specially designed" for civil applications is not controlled such as in Category 1 on some of the composite structures.

If you're dealing with one of those ECCNs, then you can end your analysis with paragraph (a). And if it's for use in or with a civil item for example then you'd know that it's not going to be controlled and you don't need to worry about paragraph (b).

But most of the uses of "specially designed" - certainly on the ITAR and throughout the rest of the CCL following with respect to a situation where something would be controlled - would be caught.

What we've done on this slide is to basically put on one page each of the releases, each of the paragraph (b) carve-outs. And again for parts, components, accessories, attachments or software, if any one of these releases apply then your item will not be caught - will not be considered "specially designed."

There's also another aspect of this as suggested by the title to this slide. Let's say you don't know or don't want to ask a question - the question set out in paragraph (a). You don't want to look into or don't know enough to be able to ask what's purely responsible or you don't know enough to be able to ask if it's for use in or with a controlled item.

If any one of these paragraph (b) releases apply, then you know with certainty that the item will not be considered "specially designed." I'll work through that shortcut. Here are a few examples in just a moment.

But so again, there are six on the EAR and the sixth one is just to deal with AT issues. They correspond to the ones on the ITAR as well. But the first one - the first release – (and again, all of these will have a yes/no type answer to them that are objective) which is if the item is identified in a commodity jurisdiction determination. Actually it should not say past right there. It should say any commodity jurisdiction whether - well I guess pass would be correct but this is meant to apply both with respect to CJ's issued before this rule and also after this rule.

If you have a CJ that says an item is not ITAR controlled and it's not otherwise identified, you know, on the CCL, you can rely on that. We're not trying to change the status quo with respect to any CJs and we're continuing what exists now for CJ determinations where a CJ can declare with confidence if something is not within the scope of a "specially designed" catch-all.

Or if you have - and this is a new concept and (Doug) referred to it earlier as a CDOG. I had - in the beginning of this process - thought about using a whole new phrase to deal with the cats and dogs called C cats and C dogs but the lawyers wouldn't let me use that phrase. So they're all just addressed in this existing classification concept.

If you have an item that let's say for example would otherwise be within the scope of essentially a catch-all in one of the 600 series items. And it's within the scope of a catch of paragraph (a) and none of the other releases apply in (b2), (b)(3), (b)(4), (b)(5) and (b)(6) that I'm going to get to in a moment.

Just like you can now with a CJ, you will be able to come in, in the future and request a classification request asking that that item not be considered "specially designed" or making your case as to why that's not "specially designed."

And we established a new process in section 748.3(e) that says there will be an interagency review process where Commerce stated the intent of these requests and if there's consensus among the three agencies that it shouldn't and doesn't need to be treated as "specially designed" then it won't be. If there is not a consensus, then it remains within the scope of "specially designed" where precisely you can't use paragraph (b)(1) as a release for that kind of item.

So first question - do you have a statement from the US government - a CJ or CCAT - saying it's not "specially designed." If yes, you're done. If no then you can keep going on with asking the other questions.

Paragraph (b)(2) is substantially smaller in scope than it was in the proposed rule. We had lists of representative examples and other types of items that regardless of why they were designed or modified would not be considered "specially designed." And we saw from the public comments a lot of confusion over that approach and too much subjectivity that we had introduced into the system with one of the other rules.

So we - as described in the preamble - scaled that back to a specific positive list of particular items - fasteners as described, washers, spacers, spacers, insulators, grommets, bushings, springs, wires and solder. Now those items just simply aren't "specially designed." To the extent that there's a type of item in this category that warrants control, then it's the obligation of the US government to list it somewhere on the USML or the CCL.

But so your second question is let's say (b)(1) doesn't apply because you don't have a statement from the US government that is not "specially designed." The second one is am I dealing with a washer, spacer, insulator, grommet, bushing, spring, wire or solder? If yes, you're done. If no, you're not. You have to keep going.

The third question and these are just summaries of what the actual text of the rules are by the way for the sake of walking through a little bit. Is the item that you're attempting to classify being used in or with an item in production (in terms of no longer in development). There has to be an item in production that is at the lowest level of control on the EAR, on the CCL - either an AT only item or an EAR99 item.

Is it common to a military vehicle and a Ford F150 pickup truck which is an EAR99 item? If the answer to that question is yes, it's not "specially designed." If the answer is no and I'm going to go through nuances on the (b)(3) carve-out when I get to that page in a little bit. Then you can't use the exemption.

And I'll describe when we get to (b)(3) that this was not a radical concept, but basically just adopting existing concepts from the ITAR and moving them and making them more generally comfortable to both the ITAR and the EAR.

The fourth carve-out - so when we proposed this rule the first time, we ended our analysis with essentially those being the three carve-outs. And as we described in our preamble, a lot of the comments came back and said what about items in development. As the way which the definition ended the first time, it's jurisdiction or a classification status would be determined by what its first use was. If the first use was a military or controlled item in production it would get caught and if it wasn't, it wasn't. And that didn't make any sense and so that was a gap in our first definition.

So in response to public comment to clarify what we intend for the control status to be for items in development, we created paragraph (b)(4) and (b)(5) and into the EAR the addition of (b)(6). And essentially what (b)(4) says is adopted what the current rule now is for a dual use item in the sense that was it or is it being developed for use in or with both controlled and uncontrolled items. Was it or is it being developed by both sets, you know, an ECCN and it's controlled above AT levels and also something that's either AT only controlled or an EAR99 item.

There are additional requirements associated with that however which is that there has to be knowledge of that other use as defined in the EAR particularly. And also there has to be contemporaneous documents to evidence that intent and that understanding. And if those documents exist then you can rely upon this paragraph for a carve-out. If they don't then you can't - again, another yes/no type approach.

Paragraph (b)(5) deals with some of the other public comments that we got about things that aren't necessarily developed with particular applications but instead are developed with no application in mind or no particular type of commodity. And the same sort of approach applies with (b)(5) in that if it's like something where you just make it at two meters or two millimeters and four millimeters and six millimeters and eight millimeters and sell it without any particular application in mind and during the development of those items then it's not considered or as a result of the development of those items with that in mind, they're not going to be within the scope of the "specially designed definition."

And then (a)(6) or (b)(6) rather only deals with situations where something was developed for both AT controlled items and EAR99 items. Or exclusively for EAR99 items. We have the evidence indicating that it was developed exclusively for EAR99 items. Then (b)(6) will knock you out completely from it being considered "specially designed."

And again if you can't satisfy any of those releases – (b)(1), (b)(2), (b)(3), (b)(4), (b)(5) and (b)(6) and the item - the part or component for example- is for use in or with a controlled item then it's considered "specially designed."

So let me walk through a little bit more detail of each of these just to sort of - I'm going to repeat what I just said but with a little bit more detail. It's

4:02pm. So this is (b)(1). And again this is just repetition of what I just summarized by looking at that one page. You ask yourself yes or no - has it been identified? Suddenly you have a paragraph where there is a "specially designed" catch-all by the way. If you're dealing with an ECCN where there isn't a "specially designed" catch-all, then this is completely irrelevant. You don't need to do any of this analysis for ECCNs that do not use "specially designed."

But if you have a CJ saying it's in an ECCN that doesn't contain "specially designed" or is an EAR99 item and if yes - not "specially designed" - you're done. And you rely on that paper. Or in the future if something isn't on the ITAR and so a CJ wouldn't make any sense because the jurisdictional status is already determined. It's not listed on the USML. Do you have one of these new interagency cleared CCAT determinations and pursuant to 7483(e) that the item is not "specially designed." And if yes, you have the paper then you're done.

Again, all we're trying to do here - and this is in response to a lot of very good public comments - preserve the status quo. We weren't trying to create a new concept but rather we're adopting existing CJ concepts to the EAR particularly with respect to the 600 series items but the concept is equally available to any of the non-600 series ECCNs with "specially designed."

So you don't have that document and you ask is it a part or minor component specified in (b)(2). If yes, you're done. It's not "specially designed." If no, you can't rely upon this paragraph.

Paragraph (B)(3) - now this is the actual text from the definition. Does that part, component, accessory, attachment or software have the same function, performance capabilities and - it's in a conjunctive there - and the same or

equivalent form and fit as a commodity or software used in or with an item that is in production - i.e., it's not in development and is either not enumerated on the CCL or the USML and that's a long way of saying an EAR99 item. Or is it described in an ECCN that is controlled only for antiterrorism reasons.

Now for those that are new to the EAR, I mentioned earlier with these various reasons for controls we have a long list of items that are controlled for only AT reasons and those items don't require a license worldwide except for those embargo countries or in connection with the China military induced role that I mentioned.

So for example since we're talking about aircraft here, civil aircraft parts – 9A991.d are controlled only for AT reasons. So if you have something - a part, component, accessory, attachment or software - that has the same function and performance capabilities and the same or equivalent form and fit between a 600 series item, a 9A610 item and a 9A991 item, you know, civil aircraft. Then by definition, that item won't be caught in the "specially designed" catch of 9A610.x.

And you think wow, that's a radical concept. Actually not. All we've done with this definition is adopt and implement with fewer words and make it more generally available throughout the various controls. The concept that some of you may know is the 17c rule which gives - it was manifested or reduced in writing to a note to USML category VII(h)- I think around 2007 or so. Essentially saying that even for parts, components specifically modified for military aircraft, if they become standard equipment in an FAA certified civil aircraft then they are not category VIII items. They are not ITAR items.

So we're applying that same concept more broadly throughout the definition and in this case it's essentially exactly the same. Anything today that would not be ITAR controlled as a result of the note to VIII(h) – consistent with the 17c note - would not be 9A610.x as a result of this definition of "specially designed" under paragraph (b)(3).

Now you may have noticed - let's see - I'm on the comments page. Yes, I've not created - we've not created any new real concepts here because I mentioned the 17c rule - for those of you that know the ITAR - also under XI(c) dealing with electronics and several other places throughout the USML. There's a concept that says or rather there's a phrase that says the controls on any part or an accessory or attachment specifically designed or modified for one of the items listed above, accept those in normal commercial use.

And then in 120.3(b) of the ITAR, they have an expression there that the USML is not intended to capture those types of items that are in predominant civil application. So what we've done is take all these various different phrases and pulled them together to capture the same universe or to exclude the same universe from default in this definition of "specially designed" in paragraph (b)(3).

The other aspect of (b)(3) to keep in mind going back to our sort of yes, no decision tree and easy to apply in that just like is the case on XI(c) right now or the 17c rule for aircraft parts. It doesn't require you to do an analysis of the design intent. It doesn't require you to dig back into the history about why something was designed or modified originally in the first place. So but it does limit you to those items that are today in production.

What we didn't do with (b)(3) is to adopt the MTCR's definition of "specially designed" which is a unique or an exclusive use kind of concept where under

that definition if you have only one other use - even if it's just a prototype or a one off - that something would drop out of "specially designed."

And what we've done here is that we've tightened up these three a little bit to apply just to those things that are common or equivalent to something that's in production. So, you know, the 737 or, you know, the A320 - those are clearly aircrafts that are in production. And those parts that are - I promise you they have the same or equivalent form, along with the other (b)(3) criteria, are released. Those that do not are caught and not released under (b)(3).

Now you may have noticed that I used the word equivalent which was not a phase that was used in the proposed rule. We received lots and lots of public comments on this question where we had limited the focus of (b)(3) just to form, fit, and function.

So what we did in response is we created and to avoid some rather absurd fact patterns that were developed with the - with that situation - created a very, very limited carve-out from the exact form, fit, function concept to mean only by the word equivalent. And equivalent we wrote in a note to paragraph (b)(3). It means that its form has been modified solely - I can't express enough of the word solely - only for the sake of fit.

So you have an item and you have one kind of connector for the civil item and it's exactly the same item in terms of its performance capability but you attach a different connector to it for the military item. The only thing you're doing is changing its ability to fit with another item and you're not making any other changes to it in terms of performance capabilities or characteristics or function.

And that's the subtle change - one subtle change from the rule that we proposed originally. And by the way - with respect to form and fit - EAR has adopted the ITAR definition of those two concepts.

Paragraph (b)(4) - this has evolved a little bit in terms but not that much from what we originally proposed. And it asked the question was or is the part, component, accessory or attachment developed with knowledge that it would be for use in or with commodities that are both described in an ECCN and also a commodity that's not a enumerated on the USML or the CCL such as an EAR99 item or an item that's controlled for only AT reasons.

So if you develop something to be common for example between the, you know, the A400M which is a military cargo aircraft and, you know, the 737 civilian aircraft. During the development of that item - if you have knowledge that intended it to be for both just like now which is sort of a classic dual use item then that would not be "specially designed" by virtue of this paragraph (b)(4) carve-out.

What we're doing a little bit differently is that (b)(4), (b)(5) and (b)(6) that I'll come to in just a moment - this is a note that is applicable to all three of those paragraphs. And in order to rely on any of these paragraphs – (b)(4), (b)(5) or (b)(6) - this is very important - there must be documents contemporaneous with its development. Not after the fact - not after you shift - but at the time it was developed that in their totality must establish the elements of that paragraph – (b)(4), (b)(5) or (b)(6).

And we give examples of the types of documents that we felt were generally the type created that was evidence that good faith dual use or multi-use or no particular use design attempt such as a marketing plans, patent applications, ,

you know, where a company is putting together its plan to be able to make an item that's common to multiple applications.

And if you have those documents - if you have that evidence - then and this yes, no binary approach then you can rely on this carve-out. Now this is not again a radical concept. All we've done is really codify in the definition of "specially designed" the very concept of what a dual use item is. We've codified an item that is common to both a controlled CCL item and an EAR99 item. But we're doing it in a way that makes it more enforceable and more predictable by requiring the creation for documents that would otherwise be created in the ordinary course if there were a good faith effort to develop something for multiple use applications.

If those documents don't exist - if you either don't have them or your manufacturer doesn't have them - then you can't rely on paragraphs (b)(4), (b)(5) or (b)(6). This is where the yes, no approach comes in. It's quite straight forward.

Companies at this stage - they probably - I mean I anticipate one of the questions - what if my product was developed 20 years ago and I don't have access to any of those documents anymore? If it was developed 20 years ago and hasn't developed - entered into production of an item that's otherwise uncontrolled, you know, 100% of its use is for a controlled item either on the USML or somewhere in 600 series or another ECCN then it probably should be caught or it should be caught or will be caught under this definition.

So to keep distinction – (b)(3) applies to items that are today in production and (b)(4), (b)(5) and (b)(6) applies to items through which you have this information from the developmental stage. And the types of documents that we identified as requiring to exist for purposes of being able to rely on this for

the types of our - again to repeat items, documents that we believe would be clear in the ordinary course if there was indeed knowledge that something is being developed for both controlled and uncontrolled applications. It's a classic dual use item.

So, you know, (b)(5) - if it's developed with knowledge for no particular commodity or type of commodity - this is the two millimeter formula in our six millimeter example. And then (b)(6) is for something where you have knowledge that it was developed for both AT and EAR99 items or EAR99 items exclusively. It's just to sort of round up the logical range of possibilities for how the term "specially designed" is used on the CCL. But conceptually (b)(5) and (b)(6)6 are the same. We just have to deal with the existence of AT items.

And that's the end of my "specially designed" presentation for today. So it's 4:15pm. So why don't I stop talking now and open it up to questions?

Coordinator: Thank you. And at this time if you would like to ask a question, please press star one on your touchtone phone. Again, to withdraw your request you may press star two. And again, that's star one if you have a question. One moment please.

(Larry Christianson) your line is open.

(Larry Christianson): Kevin I would ask you to follow-up on the term equivalent a little bit if you could. I take the point that it's a narrow carve-out. Perhaps you can give another example of something that would meet the equivalent standard in aircraft parts or components. I'm thinking for example of a bearing or a gear that's got exactly - well let's say a gear - that's got exactly the same function,

the weight capacity, strength and so on. And it's changed to fit a space within a helicopter transmission or something.

But so the only thing left to figure out is whether it's the same form.

Kevin Wolf: No. We deliberately rejected the comments - and there were many of them - where the requested standard was that the function was the same between the controlled and the uncontrolled item. And even if you would go back to our slide here where I laid out the criteria from paragraph (b)(3), including the Note 2 to paragraph (b)(3) that defines equivalent for purposes of "specially designed."

(Larry Christianson): Well and I take your point that you have to establish form changed only for fit. And I'm just wondering if you could go any further to give any other example besides connectors and hydraulic hoses.

Kevin Wolf: There really isn't any other example. I mean we explicitly - not this one - go back to the (b)(3) comment on slide 15 I think - one more page over. We were really quite specific in stating that the - I'm sorry - in the note to paragraph (b)(3) that equivalent means that the only change to the form is with respect to allowing it to fit into a different item. And any other characteristic or change may do it. Any other change in the form for reasons unrelated to fit is outside the scope of (b)(3). Any other change in performance capabilities or any of the other variables you cannot then use the (b)(3) carve-out.

(Larry Christianson): Okay, thanks.

Kevin Wolf: An example - one example that, you know, randomly came to mind. So a company makes - I'm using a truck example but it's just really what comes to mind. They make the cab for a dump truck and they want to use that same cab

for military vehicle - the same size, shape and everything. However for the military version they want to put, you know, four inches of armor around it or two inches of armor around it.

So the steering wheel now won't reach all the way through the cab because you have the additional thickness of the armor. And so the same steering wheel that was used for the dump truck, they're going to use for the military vehicle with the armor on it but they have to extend out the shaft by four inches so that it reaches through the armor. That is a change made solely for the sake of fit. There were no other changes to it in terms of performance and that's the only reason it was changed just so that the same steering wheel would fit into the new military vehicle where you have some other variable which caused - required they change the steering wheel.

Coordinator: Thank you. Our next question is from (John Preeko). Your line is open. (John) please check your mute feature or lift your handset.

(John Preeko): Yes Kevin I'm interested in the current status of the harmonization of terms and definitions between the EAR and ITAR. How's that going?

Kevin Wolf: Well I just described several dozen of them over the course of the last two hours. I mean there isn't going to be just one rule where we say here are all the new harmonized terms. There may be later in some but I think we've made rather extraordinary progress in harmonizing all of the ones that we have in this proposed rule and they'll be worked in over time. I mean we were trying to get the substantive changes out first which is primarily the list revisions which are the most difficult and most substantive and they will come over time. But I just thought we'd announced quite a few of them in this rule.

(John Preeko): Yes, you did mention quite a few. I just was interested in the specific status but thanks.

Coordinator: Thank you. Our next question's from (Ken Roul). Your line is open.

(Ken Roul): Yes. When you're applying the (a)(1) rule for the "specially designed," do you check both of the enumerated list in category VIII?

Kevin Wolf: So you're referring just to (a)(1) in your question?

(Ken Roul): Yes, yes.

Kevin Wolf: Alright, so repeat. I didn't actually follow it. If you could repeat your question.

(Ken Roul): Yes. There are two lists in category VIII. There's one in (a) and then one in (h). When you're trying to apply this rule, do you look at the VIII(a) as well as the list in VIII(h)?

Kevin Wolf: Oh, now I understand. Yes, it refers to anything that's on the USML category whether it's subparagraph (a), (b), (c), (d) - any of the paragraphs. So yes and it's not - I'm sorry. Now I understand why I didn't understand. Those aren't really separate lists. Those are just paragraphs within one list - within one category of one list.

(Ken Roul): Okay, alright. Thank you.

Coordinator: Thank you. Our next question's from (Michael Melashanko). Your line is open.

(Michael Melashanko): Hey Kevin. Question for you on the presentation which was very good - a lot of good information on the reforms. Can we access these files online so we can look at it at our leisure?

Linda Abbruzzese: We'll have a recording available for everyone to view after this webinar.

(Michael Melashanko): Okay, thank you.

Linda Abbruzzese: You're welcome.

Coordinator: Thank you. The next question's from (Robert Sae). Your line is open.

(Robert Sae): Hello Kevin. This question I guess pertains to all two hours of your excellent presentation. If - I know there's a six month, you know, countdown here I guess until the implementation of the rules. If a company has existing items that they already classified over the last several years - maybe thousands of items have gone through and we've classified certain items as ITAR. What would happen if we didn't either have the time or the resources over the next six months to reclassify all those thousands of items and maybe chose to over a period of one or two years not to take advantage of these new rules that are being implemented?

Would that be a problem from the government's perspective?

Kevin Wolf: Yes but I don't think it's necessary. And I realize, you know, the difficulty in reclassification which is why we extended out the effective date for six months. But let's say you made no effort to do anything any differently and, you know, a year or eight months from now you apply to the State Department for a DSP-5 to export the seat that was referred to a moment ago.

You know, clearly no longer listed on USML VIII(h) - assuming it's not specially designed for stealth aircraft.

And what State's going to do is return that license to you without action because they will say this isn't ours. We no longer have jurisdiction over it. You have to go talk to the State Department - I mean to the commerce department. So that's what would happen.

But with respect to the State classification - let me give a suggestion or a tip. Think not so much about everything that needs to change. Think about - in the aircraft category that we're dealing with, you know, for this example - think about everything that isn't changing. That is go through, you know, and I've done this task with a handful of companies and it's generally worked well and actually it's always worked well and light bulbs went off. Ask yourself not so much having to go through each of your individual items but look at the USML Category VIII and VIII(h) in particular and any other parts or components that may be listed in Category VIII. And ask how many of my items - if any - that I make or export are on that new list? How much of what I do is specially designed for stealth or low observable aircraft? Well nothing. I don't have any F-35 or B-1 and B-2 contracts.

How many of my items - if any - are listed in the specific VIII(h) list that are, you know, the bomb rack or an air-to-air refueling system or one of those specific items that is listed in VIII(h). And if you go through that list, all of the various parts and component references, specifically VIII(h), and you see that none of your items are there, you can presumptively treat those items as 9A610 items and you can do, you know, a global classification switch.

Now there are going to be little nuances after that. You know, you may have one or two items that are in the top list. But, you know, the safest thing to do

would be to simply do - let's say you've gone through VIII(h) - I'm oversimplifying here a little bit - but you've gone through VIII(h). You see that none of your parts are on it. You can do a global replace for all of those items that are now 9A610.x, assuming they're not somehow listed as, you know, in 9A610.a through .w, which is generally not likely for most cases.

So, you know, keep talking with us and let us know how this works. But that's a tip that I've given to people and it seems to have worked relatively well. But to go back to your question - if you just didn't do anything and kept applying to the State Department for licenses for items that were, you know, that are clearly not ITAR-controlled, they're not going to accept the application.

(Michael Melashanko): Okay, thank you.

Coordinator: Thank you. Our next question's from (Steve Hensley). Your line is open.

(Steve Hensley): Thank you for your time today Mr. Wolf. My question is concerning transition and if I may go back to that and specifically grandfathering of existing State Department licenses, and I'm trying to harmonize two sections of the ITAR - one that's a requirement that exporters return the license after initial export of all technical data. But secondly, a second section which allows exporters to export such data previously licensed under an exemption.

Will exporters be allowed to continue to export such technical data under the grandfathering provisions after the license has been returned?

Kevin Wolf: That's a fact pattern that hasn't been presented. And what I would encourage you to do is put that one in writing and send to the response team at DDTC because that requires sort of an interpretation of the implementation of State's transition role, not Commerce's role.

(Steve Hensley): Great, thank you sir.

Coordinator: Thank you. Our next question's from (Laura Molinari). Your line is open.

(Laura Molinari): Hi Kevin. I just wanted to - I was looking for confirmation regarding the release on specially designed as to whether or not it covers firmware.

Kevin Wolf: Well it depends upon is the firmware you're referring to within the scope of the definition of software or is it within the scope of parts and components?

(Laura Molinari): It'll probably be on their software. So if it would be on their software then I would apply that definition?

Kevin Wolf: Well actually now that I think about it, because the releases in paragraph (b) apply to both components and software, it doesn't matter how it comes out. And again, that's not something I've thought about in a while. So I look to the definitions of software and component and ask yourself whatever the firmware is, however you're defining it would be within the scope of one of those two definitions.

If so, then the releases in paragraph (b) may apply, but that's the first time someone's presented that question to me. That's why I don't have a ready answer but that's the approach I would give you for going through and answering that question.

(Laura Molinari): Okay, thank you.

Coordinator: Thank you. Our next question's from (Wendy Thorngate). Your line is open.

(Wendy Thorngate): I have a follow-up question regarding the release under (b)(3) regarding the equivalent concept. Would the process of merely cutting something to shape such as a gasket be considered modification solely for fit?

Kevin Wolf: When you're modifying its form only for its fit. You're not changing any other characteristic about it. The only purpose of the change to the form is in order to allow it to fit differently, correct?

(Wendy Thorngate): Correct. Say it's got a certain - it's die cut to fit a certain shape on the aircraft, etc.

Kevin Wolf: Yes, so long as nothing else about it changes - performance capabilities the function or any other characteristic. Then, you know, based on what you provided, it may be equivalent.

I want to emphasize with the note to (b)(3), this is all that's written. There is nothing else to it and it really is meant to be very limited as described here where a change in form - the modification is solely only for the fit purposes. So, you know, if there's particular doubt about that, you can ask. But we deliberately kept that to be a very short simple concept and not try to make it more complicated than necessary - not try to get into, you know, these complex, you know, function-based analyses which we rejected. It's just - it's narrow, you've made a change only and solely for fit purposes. Everything else is exactly the same.

So anyway I just - I see here - I'm getting pinged that we're at the end of our time and our conference call is going to end. So I'll stop there and turn it over to my host. Thank you very much.

Linda Abbruzzese: Thank you very much.

Everybody, this concludes today's webinar. I would like to let everyone know that we do note that you have submitted written questions and we will get back to you with an answer for those written questions. So please note the contact information that's in front of your slide.

So if you do have additional questions after today's presentation, you can also contact any one of these individuals for more information. I'd like to also let everyone know please check out the Bureau of Industry and Security website at www.bis.gov. On the bottom of that contact slide you will see it. You can also refer to www.export.gov/ecr. Also please check out www.export.gov for more information on upcoming webinars such as this one.

I'd like to thank everybody for joining us. A special thank you to Assistant Secretary for Export Administration, Kevin Wolf. Thank you very much Kevin for your time, expertise and presentation.

Kevin Wolf: I've got no jokes at this time. Next week - I'll work it in next week.

Linda Abbruzzese: Thank you very much. Also thank you to all of our participants and please check your email boxes for more information and upcoming webinars. Thank you everybody and goodbye.

Coordinator: Thank you and this does conclude today's conference. We do thank you for your participation and you may now disconnect your lines.

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