U.S. Defense Trade Controls and Export Control Reform

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U.S. Arms Exports

- **Foreign Military Sales (FMS)**
  - Government to Government transfers subject to approval by Department of State; administered by Department of Defense
  - Subject to Arms Export Control Act (AECA) and Foreign Assistance Act (FAA)

- **Direct Commercial Sales (DCS)**
  - Commercial arms sales subject to export authorization by Department of State
  - Subject to AECA and International Traffic in Arms Regulations (ITAR)

- **Dual-use**
  - Commercial sales of dual-use items subject to control by Department of Commerce
  - Subject to Export Administration Act (EAA) and Export Administration Regulations (EAR)

Legal Authorities

Reference	Subject
AECA (Arms Export Control Act), Sections 3(g), 38(g)(7), and 40A	**Establishes DDTC and legal authority for defense trade controls; requires end-use monitoring of defense articles and services**
ITAR (International Traffic in Arms Regulations)	**Implementing regulations for AECA, specifies the United States Munitions List (USML)**
FAA (Foreign Assistance Act), Sec 505 **FAA, Sec 515(a)** **FAA, Sec 623**	**Permits observation of use of articles, services, and training** **Overseas management of assistance and sales programs** **Requires supervision of end-use of FAA grant items**
EAR (Export Administration Regulations)	**Regulate the export and re-export of most commercial items, specifies the Commerce Control List (CCL) of dual-use items**

Legal Authority

- Arms Export Control Act (AECA)
    - Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services.
        - Authority delegated to the Secretary of State by Executive Order 11958, as amended.
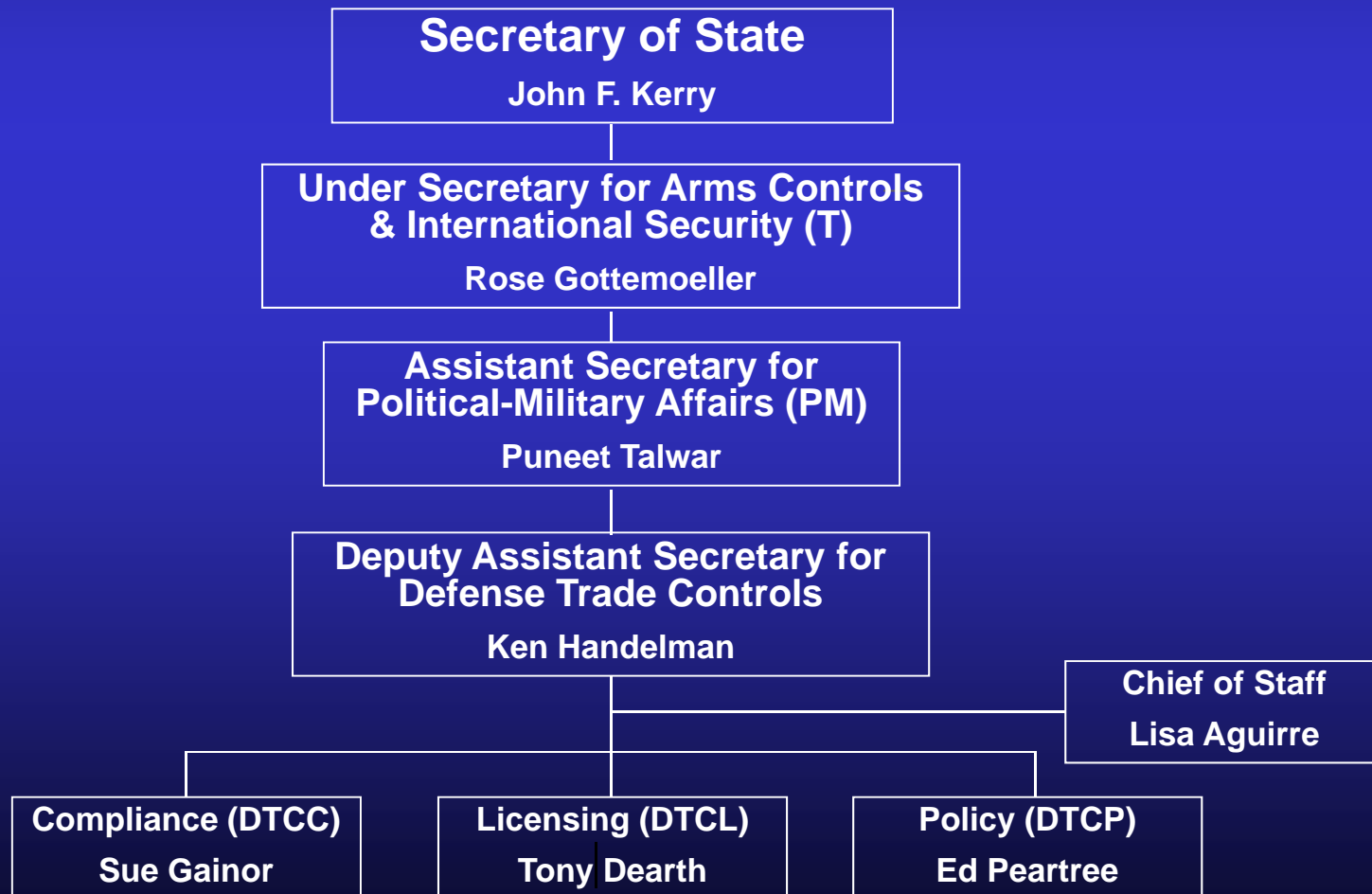
International Traffic in Arms Regulations (ITAR)

Implementing regulations of the AECA (22 CFR Parts 120-130)

- Part 121 contains the U.S. Munitions List (USML)

  - 21 USML Categories classifying all defense articles under ITAR jurisdiction.

- Also includes regulations on: registration, licensing, licensing exemptions, agreements, brokering activity, proscribed destinations (embargoed states), violations and penalties, and reporting of political fees and contributions.

Department of State

Secretary of State

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Chief of Staff

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Compliance (DTCC)

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Licensing (DTCL)

Tony Dearth

Policy (DTCP)

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Directorate of Defense Trade Controls

- **DDTC Mission**: Advance U.S. national security and foreign policy interests through licensing of defense articles, and the development and enforcement of export control laws, regulations, and policies.

    - Registration of manufacturers and exporters
    - License reviews and issuance
    - End-use monitoring
    - Enforcing ITAR and AECA compliance
    - Issuance of guidance to exporters, foreign partners
    - Managing and revising regulations

Federal Agencies Involved in Review Process

State Department
- Political Military Affairs (PM)
- Regional Bureaus/Country Desks/Posts
- Int'l Security & Non-Proliferation (ISN)
- Intelligence & Research (INR)
- Democracy, Human Rights & Labor (DRL)
- Oceans, Environment, and Science (OES)
- Economic Bureau (EB)
- Coordinator of Cyber Policy (S/CCI)
- Legal Advisor (L/PM)
- Regime Compliance (MTEC)

Defense Department
- Defense Technology Security Admin (DTSA)
- Defense Security Cooperation Agency (DSCA)
- Uniformed Military Services (Army, Navy, Air Force & JCS)
- National Security Agency (NSA)
- Defense Intelligence Agency (DIA)

Department of Homeland Security
- Immigration & Customs Enforcement (ICE)

Department of Justice
- Federal Bureau of Investigation (FBI)

Commerce Department
- Bureau of Industry and Security (BIS)

Other U.S. Government Agencies
- National Security Council (NSC)
- National Aeronautics and Space Admin (NASA) – Space-related applications
- Department of Energy (DOE) – Nuclear-related applications

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Export Control Reform

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

"While there is still more work to be done, taken together, these reforms will focus our resources on the threats that matter most, and help us work more effectively with our allies in the field. They'll bring transparency and coherence to a field of regulation which has long been lacking both. And by enhancing the competitiveness of our manufacturing and technology sectors, they'll help us not just increase exports and create jobs, but strengthen our national security as well."
- President Obama, Department of Commerce Annual Export Controls Update Conference, August 30, 2010

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

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

New ECR Concepts

- Identifying the specific items on a **more positive** USML that warrant individual license reviews

  - "Higher walls around fewer, more critical items"

- Amending the EAR and CCL to control former USML items so they are still controlled as military items, but in a more flexible way

  - Items removed from the USML are <u>not</u> "decontrolled" but export control is moved to the Department of Commerce under the new "600 series" or other export control classification number (ECCN)

  - Paragraph X: licensing of items subject to the Department of Commerce's jurisdiction

  - Order of Review: specifies how to apply the ITAR and EAR

  - Specially designed: control based on design intent and use

USML: Old vs. New

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

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

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

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

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

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

ECR Implementation
(USML Revision Status)

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

1. Cat VIII(h)(4) revision effective 8/15/14
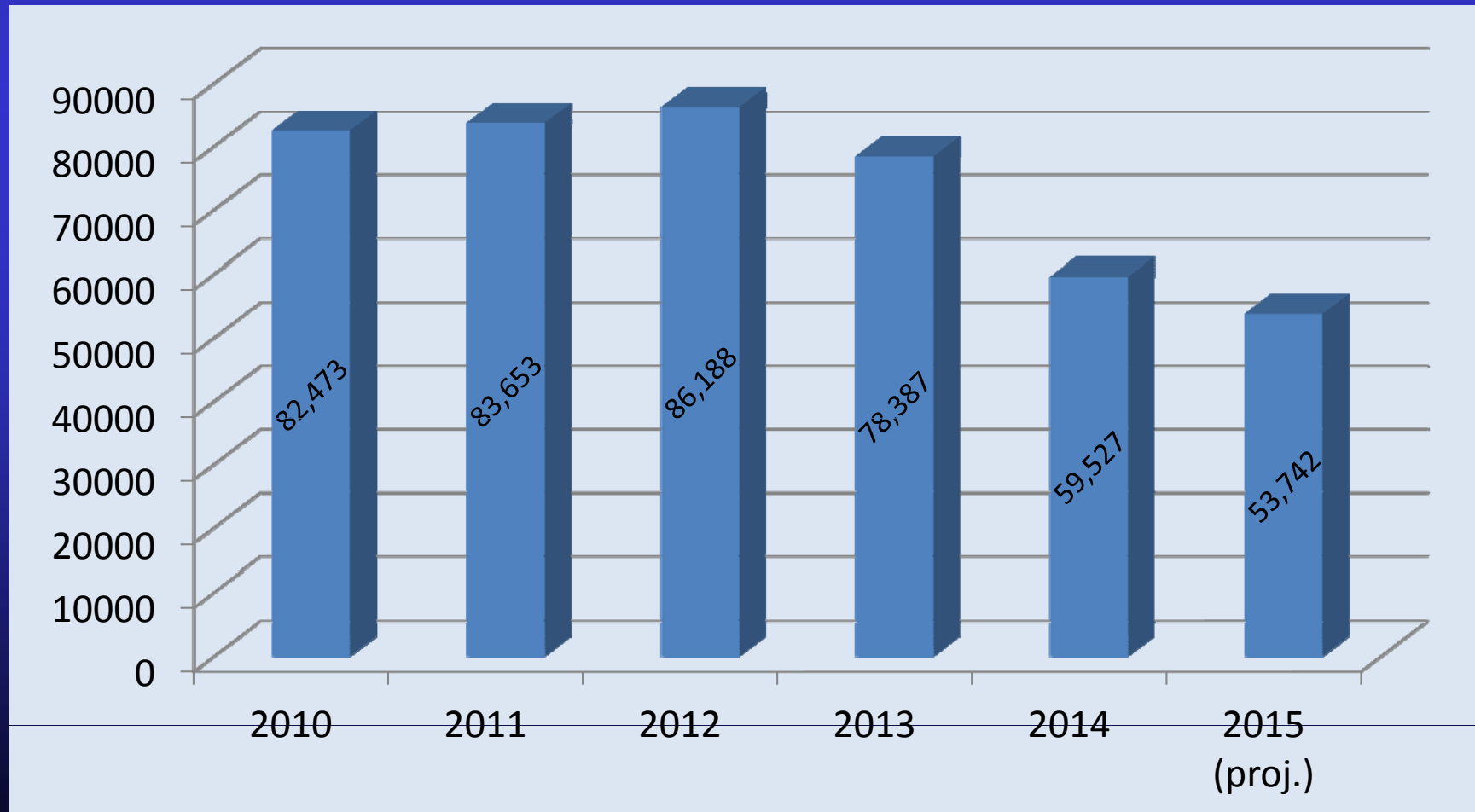
ECR Implementation
(USML Revisions cont'd)

USML	Description	Status	
XII	Fire Control/Sensors/Night Vision	In work	
XIII	Miscellaneous	Effective 1/6/14	Rule II
XIV	Toxicological Agents	In work	
XV^2	Spacecraft/Satellites	Effective 11/9/14 Rule IV	Rule III
XVI	Nuclear	Effective 7/1/14	Rule I
XVII	Classified Articles	Effective 10/15/13	
XVIII	Directed Energy Weapons	In work	Rule I
XIX	Gas Turbine Engines	Effective 10/15/13	Rule II
XX	Submersible Vessels	Effective 1/6/14	Rule I
XXI	Articles Not Enumerated	Effective 10/15/13	

2. Cat XV(d) effective 6/27/14. In addition, microelectronic circuits and software and technical data related to these circuits are transferred to the CCL on 6/27/14, as well.

Licenses Submitted to DDTC by Calendar Year

ECR Implementation
(What's Next?)

- 2015 Priorities
  - USML: 15 of 21 USML Categories revised and effective by end of 2014
  - Remaining USML categories under interagency review
  - Definitions: Review under way
    - 120.9 Defense Services
    - 120.10 Technical Data
    - 120.11 Public Domain
    - 120.17 Export (including intangible/electronic)
  - Annual review of revised USML (beginning with Categories VIII and XIX)
- Increased harmonization, common IT infrastructure, dynamic process

Contact Information

Questions?

- DDTC's website: www.pmddtc.state.gov (lots of resources)

- Generic Questions: DDTC Response Team, 202-663-1282
  DDTCResponseTeam@state.gov.

- Case status: http://elisa.dtsa.mil/