

# Export Control Reform: Frequently Asked Questions

## QUESTIONS ON ITEMS THAT WERE PREVIOUSLY EXPORTED PURSUANT TO THE CCL BUT ARE NOW ENUMERATED ON THE USML:

**Q: Are there any items that will become ITAR-controlled that were previously EAR-controlled?**

**A:** In reviewing and revising the USML, our intent was to avoid inadvertently causing items that are now subject to the EAR to become ITAR controlled. To date, the only EAR-controlled items the Administration has intentionally moved to the USML are certain electric motor described in USML Category XX(b). In the future, other items may be moved from the EAR to the ITAR. If you believe that an EAR item has inadvertently been included within the scope of one of the newly revised USML categories, you should submit a Commodity Jurisdiction request consistent with the procedures described in ITAR section 120.4 and on our website.

**Q: My Company has been exporting our items as EAR99 (no license required) for years. The revised USML now enumerates our item. Why is my item now controlled on the ITAR?**

**A:** Unless you have a Commodity Jurisdiction determination that specifically states your item is subject to the EAR, it may be that it was in fact always ITAR-controlled under a “catch-all” provision and is now specifically enumerated as such. If you believe otherwise, you should submit a Commodity Jurisdiction request consistent with ITAR section 120.4 and the procedures on our website. In addition, if you have exported items subject to the ITAR under EAR authorizations, you should review the ITAR’s provisions pertaining to voluntary disclosures at section 127.12

## QUESTIONS ON THE LEGACY LICENSES:

*(e.g., how to treat items that transitioned from the USML to the CCL but were exported under an ITAR license or are currently authorized for export under and ITAR license)*

**Q: I have a valid ITAR authorization for the export of items transitioning to the CCL. Do I need a new authorization?**

- A:**
- Not immediately. However, the DSP 5 or other authorization may expire more quickly if it has items in it that have transitioned to the CCL. And remember, if you export CCL items under an existing State Department authorization, you continue to be subject to all the provisos and other limitation of the authorization. *Also see related FAQs on transitioning from a State Department license to a Commerce License and use of paragraph (x)*
  - The below chart outlines how existing authorizations are affected by transitioned items:

	Contains only items transitioning to CCL	Contains both transitioning and non-transitioning items
<b>DSP-5</b>	May use for up to 2 years after effective date of transition unless license expires, is otherwise invalidated, or is returned. May amend (through a DSP-6) after effective date on case-by-case basis.	Valid for all items until expiration. May amend (through a DSP-6) after effective date on case-by-case basis.
<b>DSP-61 DSP-73</b>	Valid until expiration. May amend (through a DSP 62 or 74) after effective date on case-by-case basis.	
<b>TAA MLA WDA</b>	May use for up to 2 years after effective date of transition unless agreement expires. May amend after effective date if defense services are being provided and an agreement is necessary.	May use for up to 2 years after effective date of transition unless agreement expires. Agreement may be kept valid beyond the 2 year period by submitting amendment to authorize transitioning items under §120.5(b).

**Q: Do I need to amend my DDTC authorizations if they only contain items moving from one USML Category to another?**

**A:** No. Both agreements and licenses are valid until their expiration. However, if a license is to be amended for reasons unrelated to ECR, then the category designations must be updated, as well. For agreements, if a major amendment to an agreement is submitted, category designations must be updated; but if a minor amendment is submitted, category designations do not necessarily need to be updated. Furthermore, during the transition period, when information on an IFO license does not match that which was presented in its parent agreement, then the applicant should note the disparities on the cover letter (15.1) for that license. For example: “Gas turbine engines formerly designated USML Category VIII(b) here designated as Cat XIX(a).”

**Q: How should items be classified in the Automated Export System (AES) for items transitioning to the CCL but being exported under a legacy State Department authorization?**

**A:** You should enter the USML category as indicated on your license, not the new ECCN.

## **USE OF THE NEW PARAGRAPH (x):**

**Q: What is this new paragraph (x) in the USML?**

**A:** The revised USML Categories will have a new (x) paragraph, the purpose of which is to allow for ITAR licensing for commodities, software, and technical data subject to the EAR, provided those commodities, software, and technical data are to be used in or with defense articles controlled on the USML and are described in the purchase documentation submitted with the application.

Paragraph (x) was created to address concerns raised by the exporting community. The concerns focused on the fact that certain transactions that had once required one license from State would now require two different authorizations from two different agencies. In response to this, paragraph (x) was created.

**Q: How do I use paragraph (x)?**

**A:** When you are submitting an application with paragraph (x) items listed, it must:

1. Include purchase documentation (*e.g.*, purchase order, contract, letter of intent, or other appropriate documentation) that contains *both USML and CCL controlled commodities*;
  2. The CCL items must be for use “in or with” a defense article(s) proposed for export; and
  3. Must separately list, with the ECCN, the CCL commodities, software, and technical data on the license application.
- The following language will be applied to all licenses exporting paragraph (x) items:  
*The U.S. exporter must provide to the end-user and consignees in the purchase documentation or other support documentation submitted with the Department of State license or other approval request the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List “(x)” paragraph. This includes the appropriate ECCN or EAR99 designation.*

**Q: Do I have to get a reexport/re-transfer authorization from State for paragraph (x) items that were previously exported under a State Department authorization?**

**A:** No. USML reexport/re-transfer controls do not apply to paragraph (x) items. Reexport/re-transfer authorizations for paragraph (x) items will be processed by BIS and subject to EAR controls.

**Q: Will the value of the paragraph (x) items be used to decrement the authorization or count toward congressional notification threshold?**

**A:** No, however applicants must include the appropriate value of the Paragraph (x) articles on the license applications.

**Q: What do I do if I need to file a disclosure for paragraph (x) items?**

**A:** For compliance matters, the Paragraph (x) items remain subject to the EAR, however, as they were exported under State Department Authorizations, Voluntary Self Disclosures related to the to any aspect of the authorization should be submitted to the Department of State’s Compliance office. They will coordinate with the Department of Commerce, as appropriate.

**Q: Can I get an authorization for only paragraph (x) items?**

**A:** No.

**Q: How should I account for the value of EAR controlled items (i.e., paragraph (x) items) in the paragraph (a)(6) table of my TAA?**

**A:** Items controlled by the EAR should not be included in the valuation of Technical Assistance Agreement or Manufacturing License Agreements. When it becomes necessary to amend your agreement, the (a)(6) table should be “de-valued” accordingly to reflect USML-associated costs only.

**Q: Will DDTC authorize “deemed exports” of EAR technology or software source code? What about deemed reexports?**

**A:** Use of paragraph (x) is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR. To the extent that this requirement is met, DDTC will authorize “deemed exports.”

**Q: Do TAA Transmittal Letters need to indicate the ECCN for paragraph (x) items?**

**A:** No, but including ECCNs may speed up processing times.

**Q: Does the requirement to supply a purchase order as support documentation for a TAA extend to paragraph (x) items?**

**A:** Per Part 123.1(b)(1), a purchase order (or the like) must be supplied as support documentation for licenses containing items subject to the ITAR and EAR, whether IFO or not. It is not required for the agreement itself.

**Q: Can I submit a minor amendment to my existing agreement to make use of paragraph (x) or does this require a full amendment?**

**A:** A minor amendment is sufficient for updating an agreement to reflect paragraph (x) components. However, during the transition period, it is not necessary to update an agreement to “make use” of paragraph (x). Authorizations in furtherance of items listed in the agreement may be requested from DOS and/or DOC during this transition phase without amending the parent agreement.

## **TRANSITIONING FROM AN USML AUTHORIZATION TO A CCL AUTHORIZATION:**

**Q: Do licensing conditions and provisos on existing licenses continue to apply to items that have transitioned to the 600 series?**

**A:** Yes. All items previously exported under a USML authorization continue to be subject to any limitation, proviso, or other requirement imposed by the authorization. Details on how you transition from a State to a Commerce authorization are below:

- *Inactive/expended authorizations:* Provisos continue to be valid, however, reexport/retransfer authorizations will be subject to the EAR and therefore processed by the Department of Commerce.
- *Active legacy authorizations:* Provisos continue to be valid, however, if the exporter wishes to transfer eligible items to an EAR (Commerce) authorization they must upload a statement into the additional documentation for the license in DTrade that notes they will no longer be using the State Department authorization for the following items/end-users. Items should be listed by their new nomenclature and ECCN.

**Q: If an exporter has an approved agreement authorizing IFO licenses for EAR and ITAR commodities, may the exporter choose to later utilize BIS licenses for the EAR commodities instead of utilizing the DDTC IFO licenses?**

**A:** Yes, you may choose to replace your DDTC IFO license with a BIS license for items that have transitioned to the CCL. Applications to BIS for such licenses will generally be processed more quickly if you inform BIS that the application is in furtherance of an existing, identified State authorization.

## **LICENSES IN PROCESS WHEN USML CHANGES COME INTO EFFECT:**

**Q: The published transition guidance does not address how DDTC will handle export license requests that are still pending once the transition period has passed. Will DDTC issue these licenses or RWA them?**

**A:** DDTC will continue to process and issue licenses for applications submitted prior to the effective date as “pre-ECR licenses.”

## USE OF ITAR EXEMPTIONS FOR TRANSITIONED ITEMS:

**Q: If a U.S. company received a part for repair using an exemption (e.g., 123.4(a)(1)) and that part transitions to the 600 series while still under repair in the U.S., can the U.S. company export the repaired part using 123.4(a)(1) or, will the U.S. company need to use the Commerce regulations to export the part?**

**A:** In such instances, the company may continue to use the exemption authority under which the part was imported for re-export or the company may use an EAR authorization.

**Q: If a U.S. company exports a part under §126.5 to a Canadian company, can the Canadian company return the part to the U.S. under the authority of §126.5?**

**A:** Yes, the U.S. party may continue to use the exemption authority under which the part was previously exported for re-import.

## RECORDKEEPING REQUIREMENT AND ECR:

**Q: What happens to record-keeping requirements for items that transition to the CCL?**

**A:** Records must continue to be maintained for a period of five years following the last transaction, regardless of jurisdiction.

## SPECIALLY DESIGNED:

**Q: Will DDTC issue an opinion as to whether an item is “Specially Designed”?**

**A:** Absent doubt, as described in ITAR section 120.4, this is a determination that the exporter or manufacturer must make. DDTC has provided a tool on our ECR website that will help you make such determinations. DDTC will answer questions concerning the application of the specially designed criteria. Those that desire a formal written response from DDTC on general issues regarding the definition should submit a request for advisory opinion. If there is doubt about the application of the definition to a particular item, then, consistent with the provisions of ITAR section 120.4, one may submit a request for a commodity jurisdiction determination. However, DDTC will not issue CJ determinations that confirm the accuracy of self determinations made pursuant to the Specially Designed criteria in ITAR §120.41.

**Q: When can I use the new Specially Designed criteria?**

**A:** You may only use the criteria when the term is used in an ECR-revised USML category (*i.e., Specially Designed applies to USML Categories VIII and XIX as of October 15, 2013*) and when the term is used in the control text of a specific USML entry (*e.g., Cat. VIII(h)(1): Parts, components, accessories, attachments, and equipment specially designed for the following U.S.-origin aircraft:...*). If the USML entry does not use Specially Designed in the control text, then §120.41 does not apply. Please note that Specially Designed is not the same as and does not replace “specifically designed or modified” so they cannot be used interchangeably. Also, Specially Designed criteria CANNOT be used to remove from the USML those items that are specifically enumerated elsewhere on the ITAR.

## REGISTRATION EXTENSION FOR COMPANIES NO LONGER REQUIRED TO BE REGISTERED AFTER IMPLEMENTATION OF ECR:

**Q: My items are currently controlled on the USML; however, due to ECR efforts they will be transitioning to the jurisdiction of the Department of Commerce. May I extend my ITAR registration until the effective transition date?**

**A:** Registrants (*i.e., manufacturers/exporters/brokers*) who determine they will no longer be required to register with DDTC after the effective date of the final rule transitioning the registrant’s items to the jurisdiction of the Export Administration Regulations (15 C.F.R. Parts 730-744), who have registration renewal dates that occur after publication of the final rule but before its effective date, may request to have their registration expiration date extended to the effective date of transition and not be charged a registration fee. Registrants should submit a certification letter to DDTC, and will receive a letter confirming extension of their registration. (Insert Hyperlink for detailed instructions).