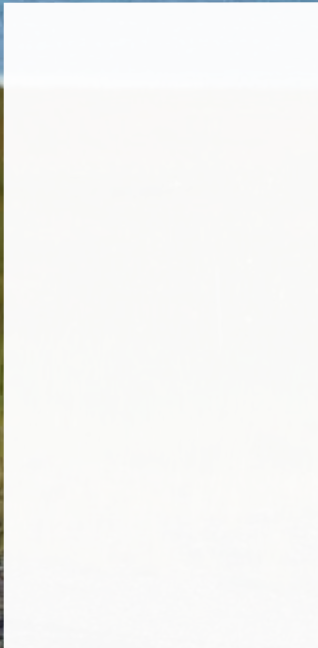


UNMANNED SYSTEMS



**OPTIONALLY
MANNED SYSTEMS
SHOW VERSATILITY**



By Eric McClafferty and Robert Slack

Export control reform is fundamentally retooling U.S. export control rules by transitioning less sensitive military items from the restrictive International Traffic in Arms Control Regulations to the more permissive Export Administration Regulations.

The ITAR will now cover exports, reexports and transfers of the most sensitive military, space and intelligence items using a positive list of controlled items versus the prior catchall approach. The EAR, which had focused on exports, reexports and transfers of dual-use items —

commercial items that could also be useful for a military or weapons proliferation end use — is expanding to cover many less sensitive military parts and components.

The first phase of export control reform became effective on 15 Oct., laying the foundation for the reformed system and carving out new controls on UAV systems, components and parts. The reform process for other items will continue to roll out in 2014 and beyond.

This article highlights some of the common questions about re-

form from those in the unmanned industry. It is not legal advice. If your company has not addressed the specifics of how reform affects your exports, now is the time — before the company violates the new rules. One of the effects of reform is that many exporters are going to have to deal with the Commerce Department's Office of Export Enforcement for the first time. Enforcement under the EAR is generally quite a bit tougher than under the ITAR for all but the highest profile cases.

Q: How much will my company benefit from export control reform?

A: It depends on your business. The benefits (and complexity) are the greatest for manufacturers and exporters of parts, components and less sensitive systems that are designed or modified for military end use. Many of these items moved from the ITAR to the EAR's new 600 series export control classification numbers (ECCNs). The transition generally makes exporting these items to U.S. allies less burdensome.

On the other hand, the EAR presents complex new requirements and potential enforcement exposure for companies used to operating only under the ITAR. Licensing requirements will also remain high for many military and commercial UAVs and their associated systems, components and parts.

Q: What does the new export control regime look like for complete UAVs?

A: ECR could only go so far in liberalizing controls on UAVs, because the U.S. has agreed to maintain stringent controls on longer-range UAVs through its participation in the international Missile Technology Control Regime (MTCR).

The MTCR is a voluntary association of countries that restrict the proliferation of missile technology by establishing common export control laws, among other measures. As a result of its participation in the MTCR, the U.S. requires exporters to obtain a license before shipping any UAVs with a range of 300 kilometers or more to nearly any destination abroad. Efforts to relax controls on UAVs through the MTCR have not succeeded in the past and look unlikely to do so in the immediate future.

Armed UAVs, unarmed military UAVs, target drones and all optionally piloted vehicles remain subject to the ITAR under Category VIII of the U.S. Munitions List, which lists articles subject to the ITAR. Exports of these systems require a license from the State Department. Nonmilitary UAVs with an autonomous flight control capability and UAVs capable of flight out of direct visual range are subject to the EAR's ECCN 9A610. Exports of these systems require a license from the Commerce Department, although nonmilitary UAVs with a range of less than 300 kilometers may be exported to most U.S. allies using license exception Strategic Trade Authorization.

Q: How about controls on UAV systems, parts and components?

A: Many systems, components, parts and materials used in UAVs are controlled under the ITAR or EAR.



The XP variant of General Atomics Aeronautical Systems' Predator, developed specifically for export. It's shown here in Abu Dhabi, the first customer for the aircraft. AUVSI photo.

Among other critical systems and components, UAV ship-based launch and recovery equipment, air launch systems, certain flight control and vehicle management systems, thermal batteries, and radomes are subject to the ITAR. UAV systems, parts and components that have been transferred from the ITAR to the EAR are classified under ECCN 9A610 and include, among other things, non-ship-based launching systems, radar altimeters, certain flight control systems, and parts and components specially designed for UAVs subject to the ITAR. These items are subject to varying licensing controls, but many items may qualify for license exception Strategic Trade Authorization when shipped to certain U.S. allies. Other less sensitive aircraft parts are enumerated in subsection .y of ECCN 9A610 and can generally be exported without a

license to most destinations around the globe.

Don't forget that many items used with UAVs are subject to licensing requirements under the other nonmilitary sections of the EAR. In particular, navigation systems, remote control equipment, autopilot systems, certain UAV engines, and equipment for converting a manned aircraft to a UAV are subject to ECCN 9A012 and require a license when shipped to most countries. Sensors, cameras, telecommunications equipment, advanced materials and composites, and other navigation systems are also controlled by various export control classification numbers throughout the EAR with differing license requirements. Manufacturers of commercial UAVs and components should carefully review the EAR to determine whether their

products require a license under any UAV-related export control classification numbers.

Q: How can I tell if an item is subject to the ITAR or EAR?

A: First, review the articles specifically enumerated on the U.S. Munitions List. Second, examine the Munitions List's catchall categories, with particular attention to the new definition of "specially designed." The Commerce Department published a helpful tool online to guide a specially designed analysis that is available at <http://beta-www.bis.doc.gov/index.php/specially-designed-tool>.

Next, take a look at the 600 series of military items that were transferred from the ITAR to the EAR. The 600 series contains a list of items and catchall categories, like the Munitions List. Be sure to review the varying licens-

ing requirements carefully.

Finally, examine the nonmilitary export control classification numbers and the applicable licensing requirements. The index to the Commerce Control List is a great way to start.

Remember, you can always seek a formal classification determination from the Commerce or State Departments. Just make sure you go to the right agency, because that can make a difference in getting a reliable response.

Q: Do I still have to register?

A: If you manufacture or export any items that remain subject to the ITAR, you need to maintain your ITAR registration. If you only produce or export items subject to the EAR, no ITAR registration is generally required.

Q: Can I rely on my old commodity jurisdictions?

A: No, old CJs should be reviewed. The State Department will not notify you if previously classified products have transitioned to the EAR. CJs indicating that an item was subject to the EAR remain valid.

Q: Are my State Department licenses and agreements still valid?

A: Generally, yes. The State Department has a transition plan to grandfather in the use of State Department licenses and agreements for two years or until expiration, depending on the type of license and items involved. The Directorate of Defense Trade Controls has a helpful overview, available online at <http://www.pmdtcc.state.gov/faqs/ecr.html#3>.

Q: How does the EAR's Strategic Trade Authorization license exception work?

A: STA can be an important way to simplify and speed the export-

ing process by eliminating the need to obtain an export license before shipping qualifying UAV systems, components and parts to a range of U.S. allies. Various requirements apply, including obtaining a consignee statement, providing notice to consignees, export declaration requirements and recordkeeping requirements. Additional restrictions and requirements apply for military items, including limitations on eligible end users and consignees. Check the Bureau of Industry and Security's online STA eligibility tool to help determine whether your items qualify at <http://www.bis.doc.gov/index.php/statool>.

It is important to note that items controlled for missile technology purposes pursuant to the Missile Technology Control Regime are not eligible for the Strategic Trade Authorization.

Q: What about reexports of UAV items outside the U.S.?

A: A foreign product that contains any ITAR-controlled parts or components is itself fully subject to the ITAR. As a result, any reexport or transfer of the foreign product requires a license from the State Department.

In contrast, EAR items are generally subject to a 25 percent de minimis rule. In other words, if the U.S. EAR-controlled content is less than 25 percent of the value of the foreign product, the foreign product is not subject to the EAR.

However, there is a big limitation for "600 series" items that were transitioned to the EAR from the ITAR. When foreign products containing 600 series content are shipped to a country subject to a U.S. arms embargo, the foreign-produced good is subject to a zero percent de minimis rule and requires a license from the Commerce Department.

Q: My company is new to the EAR. What else do we need to look out for?

A: First, classify your products. Unlike the ITAR, the EAR's licensing requirements depend on the export control classification number of each product that is exported.

Second, ensure that you have a process in place to comply with the EAR's other requirements, particularly those related to blacklisted denied parties and prohibited end uses. Critically, U.S. persons are prohibited from exporting virtually any item if it will be used in the design, development, production or use of UAVs with ranges of 300 kilometers or more by or in Israel, China or many countries in the Middle East, among others. Similar restrictions apply to weapons of mass destruction end uses.

UAV producers should also be aware that there are a bevy of restrictions on exports of commercial items for end use by the military in China. Any indication of such use should trigger a compliance review.

Q: I'm interested in what other AUVSI members are doing to comply with U.S. export control regulations.

A: Kelley Drye and AUVSI are exploring the creation of an export controls working group to allow AUVSI members to share best practices, talk candidly with senior government officials and advocate for policy change. Let us know if you'd be interested in participating by contacting Eric McClafferty at +1 202 342-8841 or emcclafferty@kelleydrye.com or Robert Slack at +1 202 342-8622 or rslack@kelleydrye.com. ■