



# JUNE 8 & 9

# ITAR EXPORT COMPLIANCE

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# Michael Rithmire

Michael Rithmire joined the Bureau of Industry and Security in 2002 and currently serves the Director of the Sensors and Aerospace Division of the Office of National Security and Technology Transfer Controls. He oversees licensing, commodity classification, commodity jurisdiction determination and control list development related to aerospace, maritime, and sensor commodities and technology.

His division leads the Bureaus support to the Wassenaar Arrangement multilateral export control regime as well as providing BIS technical expertise to numerous country-specific export control policy activities.





# **BIS Military End-use/End-user Rule**

Michael Rithmire

Dir., Sensors and Aviation Division



# 'Military end use'- 744.21(f)

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- 'Military end use' for this section means:
  - incorporation into a military item described on the U.S. Munitions List (USML); incorporation into items classified under ECCNs ending in "A018" or under "600 series" ECCNs; or
  - any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, "development," or "production," of military items described on the USML, or items classified under ECCNs ending in "A018" or under "600 series" ECCNs.






# ‘Military end user’- 744.21(g)

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- ‘Military end user’ for this section means:
  - the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or
  - any person or entity whose actions or functions are intended to support ‘military end uses’ as defined in paragraph (f) of this section.







# Other Recent Change: Military End-Users (MEU) List

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- 12/23/20 final rule published, *Addition of 'Military End User' (MEU) List to the Export Administration Regulations and Addition of Entities to the MEU List* (85 FR 83793).
- This final rule:
  - added an MEU List to supplement no. 7 to part 744, and
  - first tranche of 'military end-users' to the MEU List.

This rule did not change the scope of § 744.21.  
The addition of the MEU List is part of the 'is informed' process.





# Scope of the MEU List Final Rule

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- 12/23/20 MEU List rule added one hundred and two ‘military end users’ to the MEU List consisting of fifty-seven under China and forty-five under Russia.
- However, establishment of MEU List does not imply that other parties, not included on the list, are not subject to ‘military end-use’ and ‘military end user’ controls under the EAR.

1/15/21 Final rule made updates to MEU List and Entity List.  
BIS may combine rules making changes to MEU List and Entity List in the same rules.



# Key Provisions of MEU List

## Key provisions of the MEU List in Supplement No. 7 to part 744

License requirement for entities on MEU List applies to export, reexport, or transfer (in-country) of any item subject to the EAR listed in supp. no. 2 to part 744.

License requirements extend to when an entity that is listed on MEU List is a party to the transaction as described in § 748.5(c) through (f).

No license exceptions are available to listed entities on MEU List for items specified in supp. no. 2 to part 744, except License Exception GOV §740.11(b)(2)(i) and (ii).

License application procedure and license review policy for entities specified in supp. no. 2 to part 744 is specified in § 744.21(d) and (e).





# License Review Standards for § 744.21

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**(e)(1)** Applications to export, reexport, or transfer (in-country) items described in paragraph (a) of this section will be reviewed with a presumption of denial.

**(e)(2)** Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4), and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

**(e)(3)** Applications for items requiring a license for any reason that are destined to Burma, China, the Russian Federation, or Venezuela for a 'military end use' or 'military end user' also will be subject to the review policy stated in paragraph (e)(1) of this section.

*Note: If your license application involves an entity on MEU List, even if not for a supp. no. 2 to part 744 item, e.g., for a ECCN 3A001 item, the license would still be reviewed under (e)(1).*



# Things to Highlight for Trying to Overcome Presumption of Denial

## Technology licenses for MEUs:

For technology licenses, is the military end-user (MEU) producing parts and/or components based on U.S. customer designs (*i.e.*, are they producing build-to-print items)? For such cases, is the technology limited to information directly related to the part or component being produced, with no broader applicability?

Is this technology in the license in support of an on-going production effort? If yes, how long has the MEU been supplying these items?

## Hardware licenses for MEUs:

Is the item to be exported, reexported, or transferred (in-country) intended for a civil application?

Is the applicant aware of any military end-use for the item? If yes, please describe.





# Things to Highlight for Trying to Overcome Presumption of Denial

## For all licenses for MEUs:

Why is it necessary for the items to be exported to the parties in China? Explain, as necessary.

What role does this transaction play in the overall supply chain? Explain, as necessary.

How does this transaction impact the U.S. industrial base? Explain, as necessary.

Explain how this transaction cannot contribute to the advancement of China's military goals.



# MEU List and De minimis

- Part 744 of the EAR should not be used to identify controlled U.S. content for purposes of determining the applicability of the *de minimis* rules, see paragraph (a)(1) to Supp. No. 2 to Part 734.
- If the U.S.-origin items are being incorporated into a foreign-made item, *e.g.*, in Europe, the foreign manufacturer should review *de minimis* before submitting a license application to determine if the foreign-made item is subject to the EAR.

If the foreign-made item is subject to the EAR, then the MEU List and all other applicable EAR requirements would need to be followed for the subsequent reexport or transfer (in-country)



# Support Information for MEU Licenses

## Other support information for MEU licenses

Purchase orders are *not* required for BIS licenses.

History is important – how long has the MEU been your supplier.

What is the impact to your supply chain?

This should not just reflect the cost of the individual parts or components, but it is also helpful to specify information, such as:

- the time to find new suppliers,
- the additional lost business from being viewed as an unreliable customer, or
- other information that you believe should be taken into account in terms of the costs.







# 2020 MEU FAQs

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- Frequently Asked Questions:  
<https://www.bis.doc.gov/index.php/documents/pdfs/2566-2020-meu-faq/file>
- This set of FAQs includes different application questions to assist your understanding.





# **John Foster and Marissa Cloutier**

## **U.S. Department of State**

### **Directorate of Defense Trade Controls**

**John Foster** is a Senior Compliance Specialist in the Directorate of Defense Trade Controls (DDTC) at the U.S. Department of State. As part of the Compliance and Civil Enforcement Division within DDTC's Office of Defense Trade Controls Compliance, John adjudicates voluntary and directed disclosures, develops and manages consent agreements, and drafts advisory opinions in order to ensure the defense industry's proper compliance with the Arms Export Control Act and the International Traffic in Arms Regulations.

**Marissa Cloutier** is a Chief Compliance and Civil Enforcement Division at the Directorate of Defense Trade Controls, U.S. Dept. of State.



# **Compliance Programs and Best Practices for Higher Education and Scientific Institutions**

June 9, 2021

Marissa Cloutier and John Foster  
Compliance & Civil Enforcement  
Office of Defense Trade Controls Compliance



# **Export Control Considerations for Higher Education and Scientific Institutions**



# Defense Export Control Laws



- Defense export control laws regulate the export and temporary import of defense articles and defense services covered by the United States Munitions List (USML) in the interest of protecting national security and foreign policy

## **Governing Statutes and Regulations**

- Arms Export Control Act (AECA) (22 U.S.C. 2778-2780)
  - Law governing defense trade
  - Section 38 authorizes the President to control the export and import of defense articles and defense services and to designate those items
  - Generally requires a license as a condition of exporting or importing defense articles and defense services
- International Traffic in Arms Regulations (ITAR) (22 CFR 120-130)
  - Federal regulations that implement the Arms Export Control Act
  - Establish the policy, licensing, and compliance framework for the trade control function
  - U.S. Munitions List (USML): designate the articles and services deemed to be defense articles and defense services for purposes of import or export controls





# Application of the ITAR to Higher Education and Scientific Institutions



- ITAR applies to all
  - Primarily regulates U.S. companies selling defense articles to non-U.S. militaries or governments
  - Applies to higher education and universities when their activities involve defense articles or services covered by the USML
- ITAR controls activities, such as:
  - Publishing research
  - Exchanging scientific information with researchers outside of the U.S.
  - Participation of a visiting scholar in a research project covered by the USML
  - Using equipment covered by the USML in laboratory
  - Research activities supporting foreign military or government (e.g., UAV payload)
  - Shipping equipment or material covered by the USML to a non-U.S. country



# Balancing Open Research Culture and National Security Considerations



- Traditional university concepts:
  - Discover and expand knowledge for the benefit of humanity
  - Unrestricted academic freedom
  - Unrestricted academic publications
  - Unrestricted dissemination of research findings and results
- University must balance concerns about national security and foreign policy with its traditions of open access and dissemination of research

*"The goal of university research is the creation, dissemination, and preservation of knowledge. At Harvard, where so much of our research is of global significance, we have an essential responsibility to distribute the fruits of our scholarship as widely as possible."*

Steven E. Hyman, Provost of Harvard University



# Reality on Campus: Types of Universities



## **University limits research conducted on campus**

- Policy to conduct “fundamental research only”
- Declines research proposal or grant if it involves USML products or services
- Declines proposals that require publication restrictions
- Will not undertake classified research

## **University conducts ITAR-controlled research on campus**

- Implements compliance program
- Appoints responsible senior administrators
- Trains professors and researchers
- Implements technology control plans
- Implements physical and IT access controls (e.g., lock door to laboratory)



# Common Compliance Challenges for Higher Ed. & Scientific Institutions



- Unaware of ITAR-controlled inventory or programs subject to the ITAR occurring on campus
- Human capital resources are experienced with limited bandwidth and many competing priorities
  - If one area of compliance requires attention, other compliance areas may be vulnerable
- Challenges investigating potential violations
  - Difficulty investigating activities on IT systems
  - Records are unorganized or difficult to access
- No or minimal audit capabilities
- Dedicated resources



# Relationship between the State Dept. & Higher Ed. & Scientific Institutions



- How does the U.S. Department of State support higher education and scientific institutions and their mission?
  - Investigate issues affecting universities
  - Direct outreach
  - Resources for universities
  - Mechanisms for universities to advise State
- How do these institutions contribute to State's enforcement objectives?
  - Mutually beneficial relationship
  - Universities voluntarily disclose suspected/actual violations of the ITAR
  - Universities voluntarily offer tips
  - Cooperation during investigations
  - Increased awareness and understanding of the regulations
  - Universities self identify weaknesses in their compliance programs so they can prevent and detect violations





# State Department Resources Available to Higher Ed. & Scientific Institutions



- U.S. Department of State's website
- U.S. Department of State's DDTC Response Team
- U.S. Department of State officials participate in outreach events involving universities and
- U.S. Department of State Company Visit Program campus visits



# Mechanisms for Higher Education & Scientific Institutions to Advise the State Dept.



- Formal advisory group - Defense Trade Advisory Group (DTAG)
- Opportunity to comment on proposed regulations and new forms
- Opportunity to test new IT systems for export licenses and disclosures
- Ad hoc offer suggestions/ideas (e.g., redesign website)
- Advisory Opinion requests



# **Developing and Implementing an Effective Compliance Program in the Higher Education and Scientific Institution Context**



# Consequences of Non-Compliance



- Potential harm to U.S. national security & foreign policy
- Potential adverse impact on institutional reputation and the ability to obtain future federal research funds
- Potential civil enforcement actions resulting in fines and penalties



# Compliance Program Elements



Internal compliance program should address:

1. Organizational structure
2. Compliance resources
3. Product classification
4. Contracts/marketing screening
5. License preparation & implementation
6. Exemption Implementation
7. Non-U.S. person employment
8. Physical security of the ITAR facility
9. Computer network security
10. Foreign travel
11. Foreign visitors
12. Record keeping
13. Reporting
14. License / Agreement maintenance
15. Shipping & receiving processes
16. ITAR training
17. Internal monitoring and audits
18. Voluntary Disclosure
19. Violations and penalties
20. Brokering



# Key Factors of Effective Compliance Programs



- Senior management commitment to compliance
- Established policies and procedures
- Experienced personnel and training to maintain knowledge base
- Adequate resources dedicated to compliance





# Key Factor – Senior Management Commitment



## Senior management is responsible for creating culture of compliance

- Have general knowledge of export controls
- Directly engage in ITAR registration and disclosure responsibilities, as appropriate
- Dedicate adequate resources to compliance program & activities
- Create an organizational structure that incorporates compliance as a significant function
- Consistently message importance of compliance
- Encourage employee reporting without retaliation
- Reward compliance successes with incentives



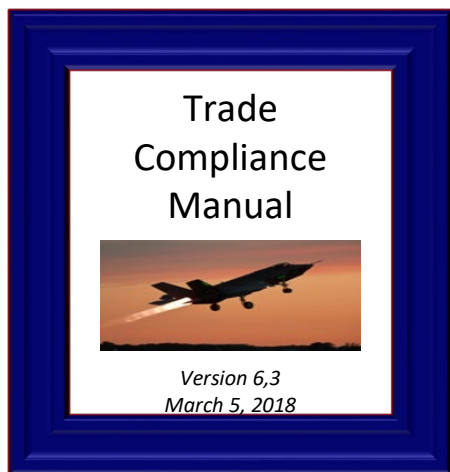
# Senior Management Commitment (Continued)



- Human Resources
  - Responsible & knowledgeable personnel
  - Job Descriptions
  - Annual Evaluations
- Material Resources
  - Budget
  - Training
  - Dedicated Positions
- Messaging
  - Senior Management Statement of Commitment
  - Senior Management/Board Reporting and Involvement
  - Training



# Key Factor - Policies & Procedures

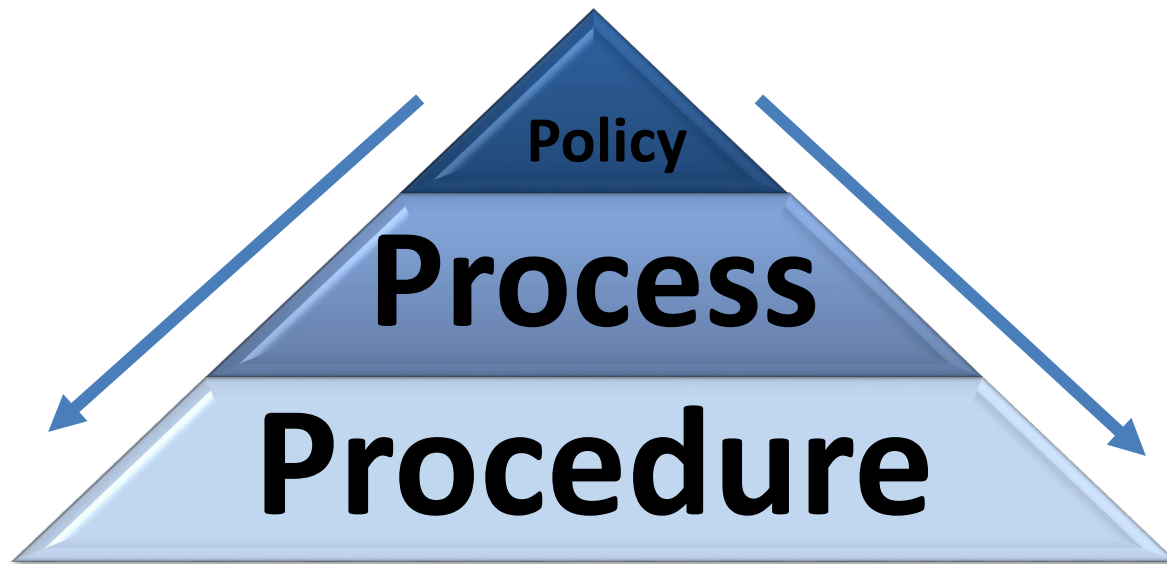


*The best compliance programs  
are tailored to the organization.*

*They don't need to be complicated  
– they need to work.*



# Key Factor - Policies & Procedures





# Key Factor - Policies & Procedures



## P&P Should Be...

- Tailored to the business
- Designed for each functional area at every business site
- Accessible, easy to understand, effective, and not overly burdensome
- Written, tested, and regularly improved
- Dynamic, not static



# Written Procedures



- Written procedures, available to all personnel involved in activities, addressing such areas as:
  - Senior Management Statement
  - Jurisdiction/Classification
  - License Determination
  - Technical Data/Technology Control
  - Training, Monitoring & Reporting





# Key Factor – Experienced Personnel & Training



- One size does not fit all
- Tiered, documented training program
  - Awareness training for all/most
  - In-depth training for subject matter experts
  - Focal points for additional information
- Frequency: regularly scheduled and as needed
- Ensure trainers are subject matter experts



# Key Factor - Experienced Personnel & Training



## Training Implements the P&P

### Comprehensive Training Plan:

- Function specific
- Awareness for all
- Advanced training
- Outside training
- Online modules

### Goal of Training:

- Maintain & improve knowledge base
- Compliant employees
- Prevention of Violations



# Key Factor - Training



## Training Issues to Consider:

- Train technical experts for the classification process
- Train the trainers
- Recordkeeping – presentation and attendance
- If do not attend training, what happens?
- Test attendees' subject matter comprehension
- Adequate resources to effectively train
- Do NOT overlook training for C-Suite



# Train to Protect Your Electronic Technical Data



- **Risk areas:**

- Employee onboarding
- Employee departure or role change
- Foreign employees or visitors or third-parties with network access
- IT consultants
- Travel with electronic devices

- **Prevention:**

- Technology Control Plans (TCP)
- IT Automation tools
- Maintain records of screening and users with access to tech data
- Log tech data access
- Obtain authorization for anticipated access
- Remove tech data from devices when unnecessary



# Key Factor – Adequate Resources



- Staffing – the right number of people, in the right roles, with the right experience and training
- Infrastructure and security:
  - Information Technology – systems are secure and allow technical data to be handled and stored correctly
  - Physical security – the site is secure and defense articles and technical data are handled and stored correctly
- Budget covers regular costs of compliance



# Discovering Violations

## Violations are often discovered when:

- Updating Registration
- Initiating export/import activity
- During training
- Preparing or amending a license submission
- Auditing
- Merging with or acquiring another company
- Working with other businesses/parties





# Additional Comments by Michael Rithmire



# Noel Sampson



Noel Sampson is a registration analyst III, working at the Department of State in the Directorate of Defense Trade Controls (DDTC) with DDTC on the Registration Team.

His main role is to perform thorough and complete analysis on ITAR registration applications submitted in DECCS.

His focus is on improving the registration process.



# Registration & Eligibility



# Discussion Topics



- Registration Requirements
- Submission Review
- Validity and Fees
- Material Changes



# Who Must Register And Why

- **Who**
  - Manufacturer / Exporter (M)
  - Broker (K)
- **Why**
  - Required by AECA Section 38 & ITAR Part 122 & Part 129
- **Exemptions**
  - USG agencies exempt from M&K registration and fee
  - Foreign governments in the U.S. acting in official capacity are exempt from M registration fee
  - Foreign governments in U.S. acting in official capacity are exempt from K registration & fee



# Defense Export Control Compliance System (DECCS) Registration Submission

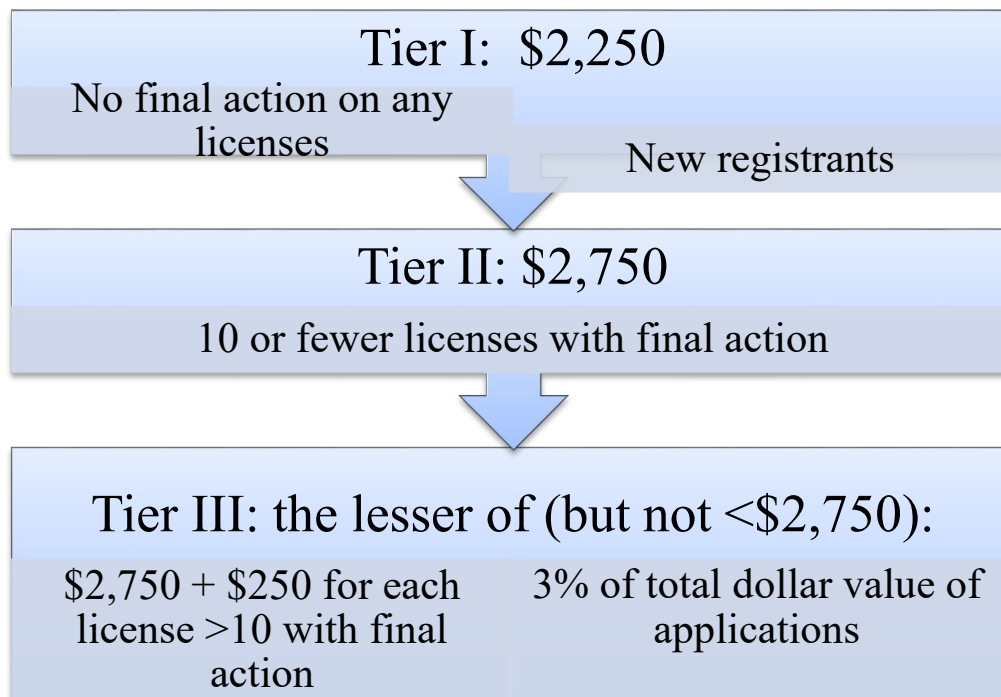


- Must establish DECCS account
- Must submit electronically in DECCS Registration
- Draft New Registration and attach support documentation
- Submit New registration to Senior Officer for review, signature, and submission
- Draft Renewal registration up to 90 days prior to expiration and send to Senior Officer for review and submission up to 60 days in advance of expiration
- Status in DECCS Registration updated in each step



# Validity Term & Fee

- Registration valid for 12 months
- Fee amount due in DECCS Registration account and paid at the end of the registration review then registration letter available
- Three-Tier Fee Structure:





# Material Changes

- Material Changes
  - Criminal Charge
  - Eligibility
  - Name
  - Address
  - Legal Organization Structure
  - Directors, Senior Officers, Partners, Owners
  - Establishment/Addition of Subsidiary/Controlled Affiliate
- See Material Change guide on DDTC website
- Within 5 Days after event submit directly in DECCS Registration as an Amendment or with Renewal
- Need to cover all changes in submission in summary letter and attach to submission
- Acknowledgement letter if Authorizations transferred





# Merger, Acquisition, Divestiture (MAD)



- Within 5 Days after event submit directly in DECCS Registration as an Amendment or with Renewal
- Attach Summary Letter of Changes
  - Letter must cover all changes made
- Acknowledgement letter if Authorizations transferred
- Pre 60-Day Notification
  - Intended sale or transfer of control to a foreign person of ownership or control of the registrant or any entity thereof
  - ITAR Compliance manual that will be used after completion of transaction in Word format
  - See MAD Change Guide on DDTC website



# General Information



- Response Team phone:
  - 202-663-1282
- Response Team email:
  - [DDTCCustomerService@state.gov](mailto:DDTCCustomerService@state.gov)
- DDTC Website:
  - [www.pmddtc.state.gov](http://www.pmddtc.state.gov)



# Roundtable Discussion