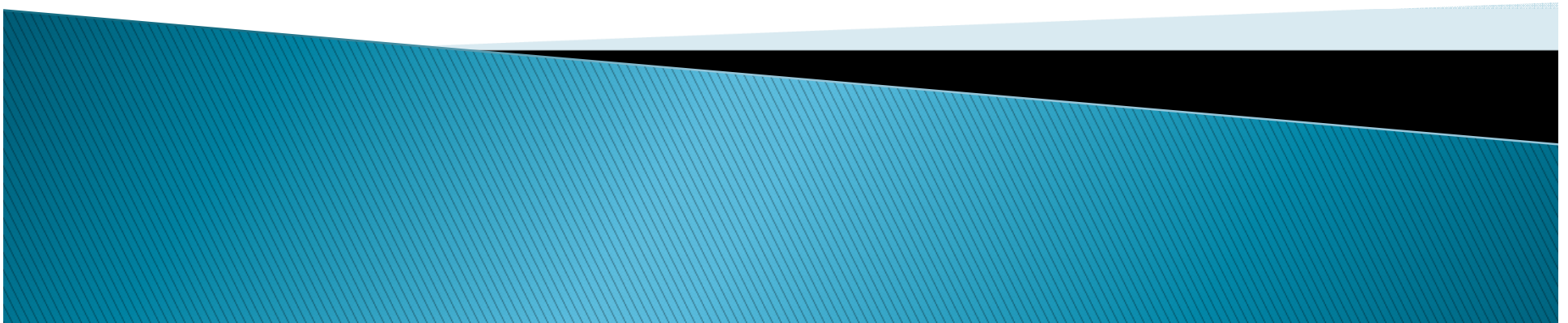


EXPORT CONTROL REFORM: CREATING LEADERSHIP OPPORTUNITIES FOR SECURING AMERICA'S TRADE

David W. Mills

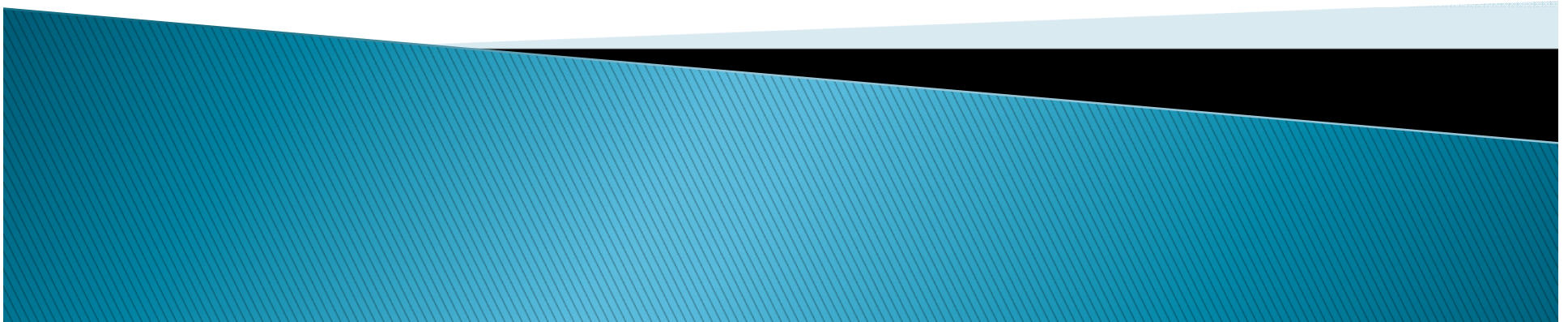
Assistant Secretary for Export Enforcement
Bureau of Industry and Security
U.S. Department of Commerce



EXPORT CONTROL REFORM :

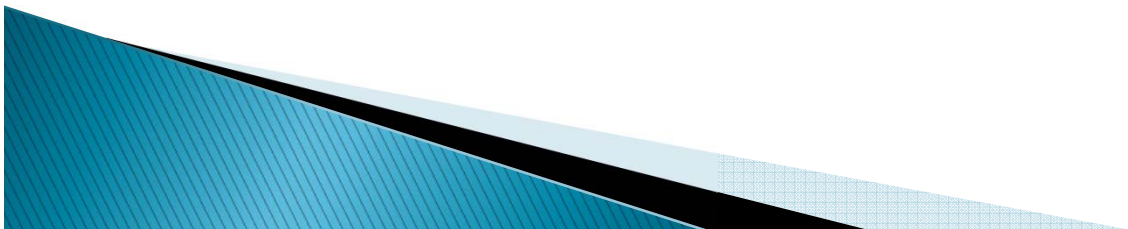
Overview and Current Status

Karen A. Swasey
Senior Export Policy Analyst
Office of National Security and Technology Transfer Controls
Bureau of Industry and Security
U.S. Department of Commerce



Agenda

- ▶ Overview of the President's Export Control Reform (ECR) Initiative; why change is needed.
- ▶ Current proposals and next steps.
- ▶ How to learn more and provide your input.



ECR Initiative

- ▶ In August 2009, the President directed a broad-based interagency review of the U.S. export control system.
- ▶ The Administration determined that fundamental reform of the current system is necessary to enhance our national security by
 - (i) focusing resources on the threats that matter most;
 - (ii) increasing interoperability with our Allies;
 - (iii) strengthening the U.S. defense industrial base by reducing incentives for foreign manufacturers to design out and avoid using U.S. parts and components.



ECR Plan

The Administration has deployed a three-phase implementation plan.

Phase I: Complete; the year long process of evaluation of the current export control system, culminating in the goals and visions for the reform.

Phase II: Currently underway, and consists of actions that can be taken without legislation or action by Congress

Phase III: Full implementation of all the four “singularities”, including a single control list and a single licensing agency.



ECR: License Exception STA

License Exception Strategic Trade Authorization (STA) published on June 16, 2011.

- ▶ Impacts export of almost all CCL items to most of Europe, Australia, Canada, New Zealand, Japan, South Korea, Argentina (36 Countries).
- ▶ Impacts export of Wassenaar Basic List items (NS controlled) to eight other countries: Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, Taiwan.



STA Benefits

- ▶ Eliminates licensing decision delays and uncertainty.
- ▶ Shortens time from order received, processed and delivered to ship or plane.
- ▶ Eliminates approximately 3,100 individual licenses worth \$1.4 billion, enabling BIS to focus on transactions warranting greater scrutiny.



STA Safeguards

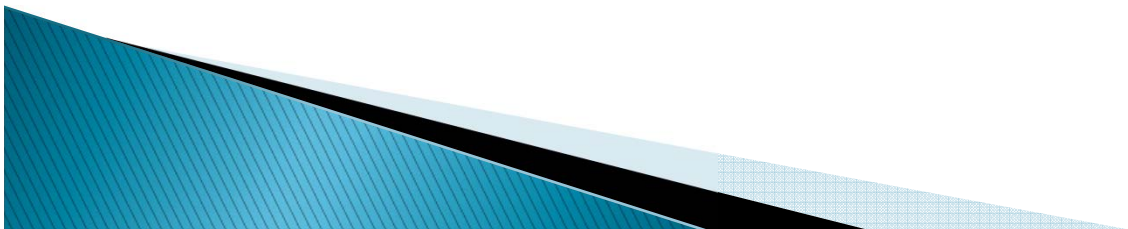
- ▶ Ensure eligible items are not re-exported outside eligible countries without USG authorization.
- ▶ Exporters must furnish the consignee with the Export Control Classification Number.
- ▶ Prior to shipping, consignee must furnish exporter with:
 - STA acknowledgement
 - ECCNs
 - Agreement to re-export or retransfer in accordance with EAR (e.g., no APR)
 - Agreement to maintain records



USML Positive List

- ▶ Identify what items require USML control
 - Inherent military function; critical military/intelligence advantage
- ▶ Convert USML into a “positive list”
 - Establish objective technical parameters rather than design intent to control items on USML.
- ▶ Items not meeting criteria to be on “positive” USML list would be transferred to CCL* and could include:
 - end-items,
 - parts,
 - components,
 - accessories, and
 - attachments

* Requires congressional notification

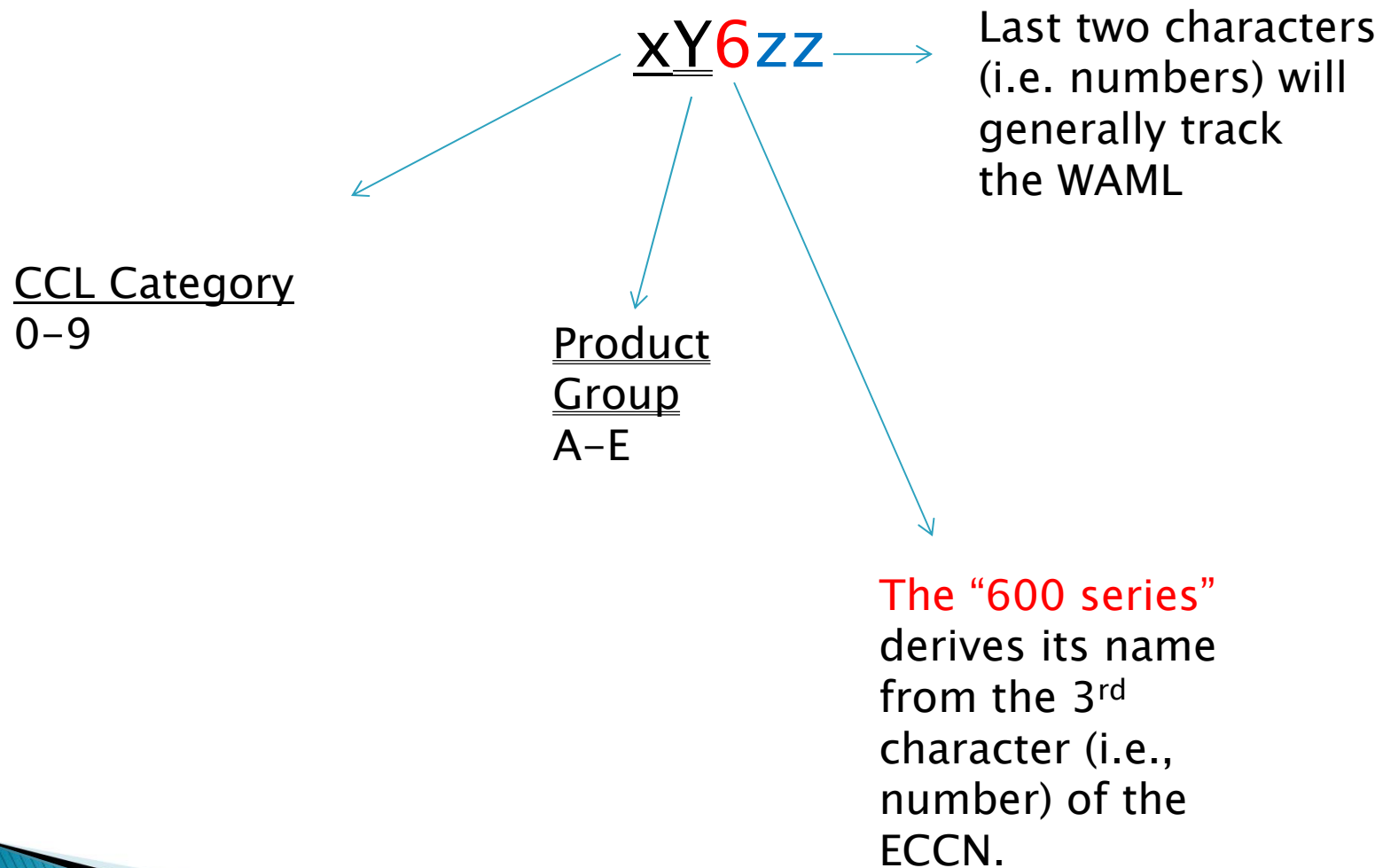


Commerce “600 series”

- ▶ On July 15, 2011, Commerce proposed rule on controlling formerly USML items
- ▶ CCL will add new 600 series of entries:
 - Specify end-items
 - Specify and catch-all control (“specially designed”) for parts and components
 - Specify less significant parts and components subject to less restrictive treatment



Anatomy of a “600 series” ECCN



License Requirements for “600 series”

“600 series” items will generally be controlled for the following reasons for control:

- ▶ National Security column 1 ([NS1](#)); Regional Stability column 1 ([RS1](#)); Anti-terrorism column 1 ([AT1](#)).
- ▶ License required for export or reexport to all countries except Canada (excluding certain items controlled for MT, CB1 & FC reasons)
- ▶ Regime controlled items retain regime control.

Specific parts, components, accessories and attachments identified in .y paragraphs.

- ▶ Anti-terrorism column 1 (AT1)
- ▶ Restrictions on certain military end-uses in the PRC in §744.21, and other end-use and end-user controls as applicable.



License Exceptions for the “600 series”

- ▶ Certain license exceptions would be available to facilitate exports, reexports and transfers (in-country) of “600 series” items.
- ▶ These license exceptions would play an important role in the “600 series” control structure to facilitate certain exports, reexports and transfers (in-country).
- ▶ In particular to the License Exception STA-36 countries.



Benefits of “600 series”

- ▶ Focus controls and compliance (incl. resources)
- ▶ Security of supply with allies and partners
 - STA applies to reexports
- ▶ Avoid design-out (via de minimis)
- ▶ Eliminate ITAR registration requirements



ECR: Progress to Date

- ▶ Developed and published the methodology for rebuilding the control lists, and will be implementing these regulatory changes on a rolling schedule.
 - 19 USML categories, as of June 1 2012, published 7 (14 proposed rules, 1 each for State and Commerce per category)
 - Several others are in the OMB clearance/Interagency review process.
 - 3 additional rules are in the drafting stages
 - Following notification to Congress, per Arms Export Control Act section 38(f), publish all 19 again in final by the end of 2012



USML List Review – Progress to Date

- ▶ BIS and State published proposed rules on:
 - Protective Personal Equipment (Category X), 6/7/12
 - Misc. and Auxiliary Military Equipment (Category XIII), 5/18/12
 - Energetic Materials (Category V), 5/2/12
 - Surface Vessels (Category VI), 12/23/11
 - Submersibles (Category XX), 12/23/11
 - Gas Turbine Engines (Categories VI, VII, VIII), 12/6/11
 - Vehicles (Category VII), 12/6/11
 - Aircraft (Category VIII), 11/7/11
- ▶ BIS posted public comments on these proposals on: <http://efoia.bis.doc.gov>.



ECR Proposed Rules

– USML to CCL In Process

- ▶ Military training equipment (USML Category IX -- CCL 0X614)
- ▶ Dissemination, detection and protection equipment related to toxicological agents (USML Category XIV CCL 0X607)
- ▶ Firearms, i.e. small guns (USML Category I – CCL 0X601)
- ▶ Guns and armament, i.e. big guns (USML Category II – CCL 0X602)
- ▶ Ammunition and ordnance (USML Category III – CCL 0X603)



Emerging Technologies Rule

- ▶ USML Category XXI (Miscellaneous Articles) – CCL 0Y521
- ▶ Final rule published April 13, 2012
- ▶ USML “Miscellaneous” items and “Emerging Technologies” not covered elsewhere on the CCL temporarily placed here



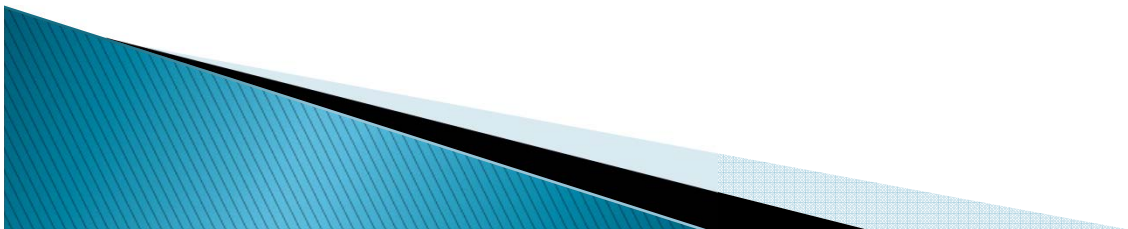
Other ECR Proposed Rules

- ▶ Specially designed – Based on public input from 7/15/11 rule and additional USG review, a revised definition was published for public review on June x, 2012
- ▶ USML to CCL transition – To address transition related issues identified in the public comments to the 7/15/11 rule and from the USG review.
- ▶ Improving the clarity of the CCL – Implements changes from the ECR CCL ANPR from 12/9/10 and BIS review of the CCL.



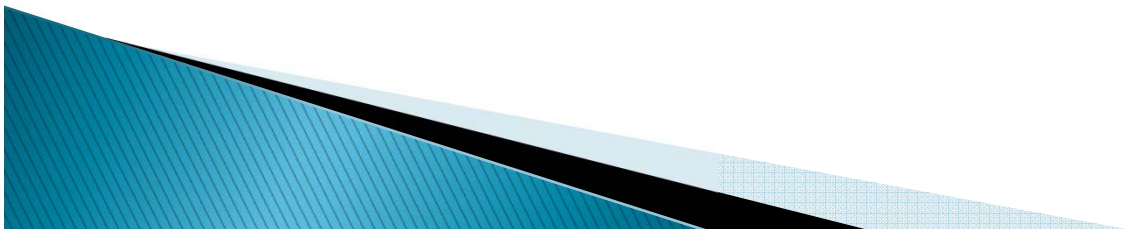
BIS Weekly Teleconferences to Answer ECR questions

- ▶ BIS's Assistant Secretary for Export Administration, Kevin J. Wolf holds teleconferences each Wednesday at 2:00 EST to answer pre-submitted written questions from the public on any Commerce ECR proposed rules open for public comment.
- ▶ Please dial 1-888-455-8218 with participant code 6514196 to join the call.
- ▶ Please send questions in advance to oesdseminar@bis.doc.gov with the subject line of "Teleconference questions".



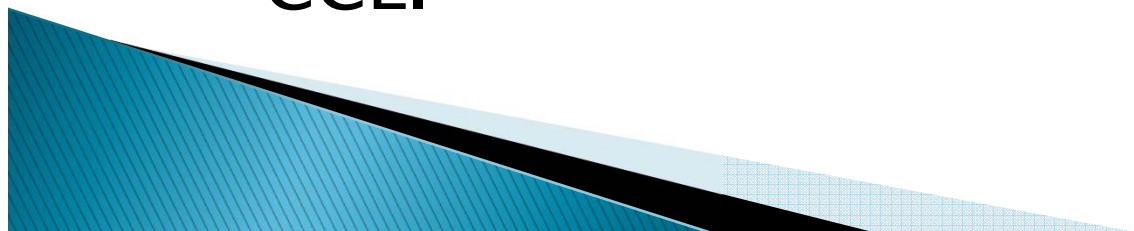
Other ECR Actions

- ▶ Single form; harmonized definitions
- ▶ Consolidated screening list
- ▶ USXports (Single IT System)
- ▶ Follow along on www.export.gov/ecr



Summary–Reform Initiatives

1. Created license exception for close allies and regime partners. License Exception STA.
2. Revise Commerce Control List to be more clear.
3. Revise control lists so that they are parallel and “positive.”
4. Move items that no longer warrant control on the US Munitions List to the CCL.



Export Enforcement Update

Office of Export Enforcement Perspective

U.S. Department of Commerce
Bureau of Industry and Security

Office of Export Enforcement

Ronald B. Orzel

Special Agent in Charge
Chicago Field Office

630-705-7010



The Office of Export Enforcement's Mission

- ▶ OEE protects U.S. national security, homeland security, foreign policy, and economic interests through enforcement of the Export Administration Regulations and associated laws.
- ▶ OEE accomplishes its mission through:
 - ▶ Preventative and investigative enforcement activities
 - ▶ Pursuing appropriate criminal and administrative sanctions against export violators



Dual Use Commodities

- OEE enforces US export laws that regulate dual-use technology.
- Dual-use: Items that have both commercial and military or proliferation applications.
- One of the most specialized US federal law enforcement organizations.



Dual Use Commodities

- ▶ **NUCLEAR WEAPONS**

- ▶ Centrifuge
- ▶ High Speed Thermal Cameras
- ▶ Mass Spectrometer
- ▶ Vacuum Pumps

- ▶ **BIOLOGICAL WEAPONS**

- ▶ Bacterial Strains
- ▶ Coated Valves and Pumps
- ▶ Fermenters
- ▶ Presses

- ▶ **CHEMICAL WEAPONS**

- ▶ Precursor chemicals
- ▶ Coolers/Heat Exchangers
- ▶ Mixing Vessels

- ▶ **WEAPONS OF TERRORISM**

- ▶ IED components

- ▶ **MISSILES**

- ▶ Composites
- ▶ Machine Tools
- ▶ Filament Winding Equip
- ▶ Accelerometers
- ▶ Vibration Test Equipment



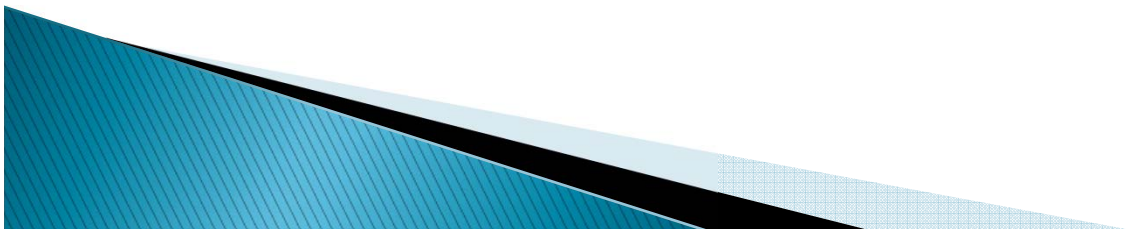
Export Enforcement Partners

- ▶ OEE enforces the Export Administration Regulations (EAR) and shares overlapping jurisdiction with the Federal Bureau of Investigation (FBI) and Homeland Security Investigations (formerly ICE).
- ▶ OEE routinely works with various U.S. intelligence and defense agencies for threat assessment and the enforcement of U.S. Export Laws



Investigations and Sanctions

- **Criminal Fines and Imprisonment “Willful Violations”**
 - 20 years imprisonment
 - \$250,000 fine (\$1,000,000 for corporations)
- **Civil Fines and Penalties**
 - \$250,000 or twice the value of the transaction,
Which ever is greater. Applies retroactively.
 - Denial of Export Privileges
 - Revocation of Export Licenses
 - Exclusion from practice



HOW VIOLATIONS HAPPEN IN GOOD COMPANIES

New personnel using outdated go-by documentation

Overwhelmed by end of quarter orders and processing

Export manager on vacation (cross train back up personnel)

Lack of communication with sales staff and foreign distributors

Management commitment for Export Compliance Program need

Voluntary Self Disclosure

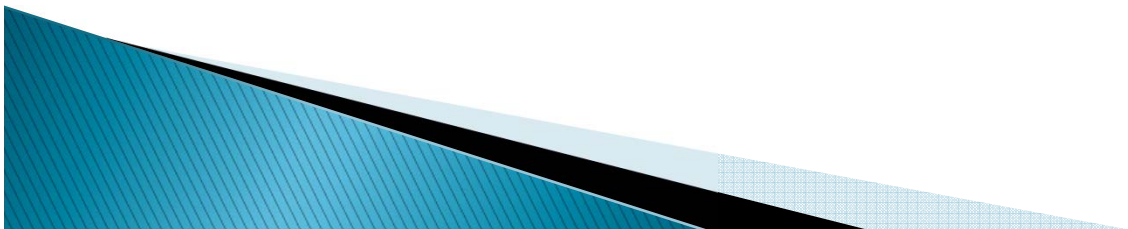
- ▶ Permitted under EAR Section 764.5
- ▶ Initiated by a company when a company identifies export violations
- ▶ Violations still investigated by OEE
- ▶ Great Weight Mitigation of 50% or more
- ▶ On average over 90% of VSD cases resulted in Warning Letter or no action



Voluntary Self Disclosure

► Costs of Not Disclosing Violations

- Risk of criminal investigation and associated costs of litigation
- Damage to Brand/Corporate Reputation
- Substantial Penalties
- Be Aware of Successor Liability



The OEE Education Mission

The key to OEE's mission is educating the exporting community.

- Responsibilities under the Export Administration Regulations
 - Preventing Violations
 - Dealing with Diversion Attempts
-

OEE Conducts:

- ▶ – Company Outreach Visits
- ▶ – Seminars
- ▶ – Workshops



New Developments In Export Controls

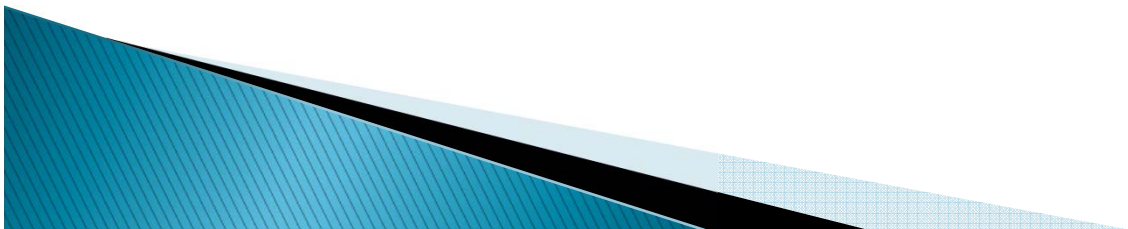
- ▶ Executive Order Establishing **Export Enforcement Coordination Center (E2C2)**
- ▶ Importance of Voluntary Self-Disclosures
- ▶ Going forward, when there are willful violations, OEE will seek penalties against individuals as well as companies.
- ▶ Increasing Number of Investigations
 - EAR99 & Prohibited Countries and End Users
 - 600 Series



Enhanced Compliance

Expanded...

- ▶ intelligence reviews
- ▶ STA document reviews
- ▶ domestic outreach
- ▶ AES monitoring, focused on interdiction
- ▶ end-use checks in STA countries
- ▶ enforcement resources via Export Enforcement Coordination Center (E2C2)



Contact BIS & OEE

WE ARE HERE TO HELP!

- ▶ The website is www.bis.doc.gov
- ▶ Check the BIS Website for current information about regulations, denied parties and listed entities.
- ▶ If you have questions about product classification, call BIS Exporter Services Export Counseling Division
202-482-4811 Wash. D.C. / 949-660-0144 California
- ▶ If you have questions about **Red Flags** or other potential enforcement problems, call Office of Export Enforcement
- ▶ Hotline 1-800-424-2980
- ▶ Chicago Field Office 630-705-7010

