

**UNITED STATES MISSION
ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE**

No. 2022/23

Note Verbale

The Mission of the United States of America to the Organization for Security and Cooperation in Europe presents its compliments to all of the other Delegations and Permanent Missions to the Organization for Security and Cooperation in Europe, the Forum for Security Cooperation, and the Conflict Prevention Center, and has the honor to submit the 2022 responses of the United States of America's reply to the OSCE Questionnaire on participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology.

The Mission of the United States of America to the Organization for Security and Cooperation in Europe avails itself of this opportunity to renew to all Delegations and Permanent Missions to the OSCE, the Forum for Security Cooperation, and the Conflict Prevention Center the assurances of its highest consideration.

**U.S. Mission to the OSCE
Vienna, August 12, 2022**

**To all Permanent Delegations and Missions to the OSCE
The Conflict Prevention Center**

Vienna



2022 Submission of the United States of America for the OSCE Questionnaire on participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology

1. Basic principles, policies and/or national practices on the export of conventional arms and related technology.

The policy of the United States on the export or transfer of conventional arms and related technology is laid out in the U.S. Conventional Arms Transfer Policy, which includes a description of the considerations for arms transfer decisions. This policy, fully reviewed and updated in April 2018, supports exports or transfers that meet the legitimate security requirements of our allies and partners in support of our national and economic security and foreign policy interests. At the same time, the policy requires exercising restraint in transfers that may be destabilizing or dangerous to international peace and security. The policy provides greater clarity and transparency with respect to U.S. goals for arms transfers and U.S. considerations in making arms transfer decisions. More specifically, it highlights the importance the United States places on, among other things, respect for human rights, reducing the risk of military operations causing civilian harm, promoting international stability, aligning exports with national and economic security, bolstering counter-terrorism capabilities, combatting transnational organized crime, and nonproliferation. Given the complexities and multiple U.S. interests involved in each conventional arms transfer decision, the U.S. Government continues to make decisions on authorizing transfers on a case-by-case basis according to the requirements of U.S. law, regulation and policy.

In May 2019, the United States also updated its policy governing the international sale, transfer and subsequent use of U.S.-origin military and commercial Unmanned Aerial Systems (UAS). The UAS transfer policy establishes stringent conditions and standards by which the United States assesses, on a case-by-case basis, potential exports of military UAS, including armed systems, and maintains the United States' long-standing commitments under the Missile Technology Control Regime (MTCR).

In February 2021, the United States reaffirmed the UAS export policy to permit greater flexibility in the transfer of certain Missile Technology Control Regime (MTCR) Category I UAS. Per this revision, the U.S. government may invoke its national discretion on the implementation of the MTCR's strong presumption of denial for transfers of Category I systems to treat a carefully selected subset of MTCR Category I UAS (those with a maximum airspeed less than 800 km/hr) as Category II. As with all arms transfers, UAS exports are carefully evaluated under the CAT policy. Additionally, UAS transfers are subject to stringent nonproliferation and security reviews.

2. National legislation governing the export of conventional arms and related technology.

The export of conventional arms is governed principally by the Arms Export Control Act (AECA), which authorizes the President to control the export of defense articles – including technical data – and defense services. The President has delegated the authority to promulgate regulations with respect to exports of defense articles and defense services to the Secretary of State. The Department of State implements that authority by promulgating the International Traffic in Arms Regulations (ITAR) pursuant to which a license or other approval is required for

UNCLASSIFIED

the export of defense articles, related technical data, and defense services. The Department of State also approves most government-to-government transfers, which are implemented by the Department of Defense. In addition, certain export authorization requests and government-to-government transfers – based on dollar value and type of equipment involved or the nature of the transaction and the destination – must be reported to Congress before a license or other approval is granted. These notifications to Congress are announced publicly.

The Department of Commerce, Bureau of Industry and Security (BIS) is responsible for regulating the less critical military systems and equipment, including some conventional arms (such as non- automatic and sporting firearms and related ammunition) or certain parts and components for items such as military aircraft, vehicles or ships. The Department of Commerce's authority is governed by the Export Control Reform Act (ECRA) of 2018. The Export Administration Regulations (EAR) 15 CFR Parts 730-774 are the Department of Commerce's implementing regulations for the exports of these items. Certain items which could be considered as arms or parts and components therefore, can be found in the Commerce Control List (CCL), Supplement No. 1 to Part 774 of the EAR. They are identified by Export Control Classification Numbers (ECCNs) that are either 0x5zz or xx600 in the "600 series." In the EAR "items" include equipment, materials, software and technology.

UNCLASSIFIED

3. International agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.

A critical element of U.S. policy is to promote the control and transparency of arms transfers. The United States plays an active role in many global and regional arms control initiatives and participates in several international forums that address these issues, to include the Wassenaar Arrangement, the MTCR, and the Hague Code of Conduct against Ballistic Missile Proliferation. In addition to U.S. national legislation, U.S. policy on arms transfers is consistent with various United Nations Security Council Resolutions, and the United States observes and enforces UN Security Council arms embargoes currently in force. U.S. law permits the prosecution of those subject to U.S. jurisdiction who violate UN embargoes. The United States seeks universal participation in the UN Register of Conventional Arms and supports expansion of the register to include military holdings and procurement through national production, thereby providing a more complete picture of changes in a nation's military arsenal each year.

4. Procedures for processing an application to export conventional arms and related technology.

The Directorate of Defense Trade Controls (DDTC) in the Department of State is responsible for licensing commercial exports and temporary imports of defense articles and defense services. The U.S. Government requires exporters to have a license or other authorization to export defense articles and defense services. All export license applications for defense articles and defense services are screened against a "Watch List," which alerts compliance and policy personnel to companies and individuals legally prohibited from receiving a license, as well as entities and individuals requiring additional scrutiny.

Internal procedures ensure that the views of other relevant State Department offices, the Department of Defense, and other appropriate U.S. Government agencies are sought in commercial cases. Approval of government-to-government exports are subject to similar considerations.

The BIS is responsible for licensing and enforcement of export laws regarding those items subject to the EAR. All applications are given an initial technical and policy review prior to further processing. The items are evaluated to determine if they are appropriate in type and quantity for the stated end use and if any parties or countries involved in the transaction are subject to special licensing requirements or embargoes. All parties involved in the transaction are further reviewed using law enforcement and intelligence sources to determine if any adverse information could impact the processing or approval of the application. Applications are referred to the Departments of State and Defense for their input or concurrence. After an evaluation of all these inputs, a final determination is made as to whether the export would be contrary to U.S. national security, foreign policy or regional stability concerns as described in the EAR. Approvals may impose additional conditions such as reporting, post shipment verifications and visits and other limitations as appropriate.

5. List of conventional weaponry under national export controls and the basis for their control.

Under rules effective March 9, 2020, firearms and related articles that are inherently military or provide a critical military or intelligence advantage remain under State Department jurisdiction for export. These include fully-automatic and precision guided firearms, linked or belted ammunition, and advanced projectiles (e.g., incendiary, guided, or armor-piercing). The specific conventional weapons regulated by DDTC are generally set forth under Categories I, II, and III of the U.S. Munitions List (USML) in the ITAR.

UNCLASSIFIED

Certain other firearms and related items, including those that are non-automatic, or semi-automatic, that were previously subject to the export control jurisdiction of the State Department authorities as set forth under Categories I, II and III of the USML have been transferred to the jurisdiction of the Export Administration Regulations (EAR, 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce U.S. Department of Commerce export licensing jurisdiction under the EAR.

They are identified by Export Control Classification Numbers (ECCNs) that are either 0x5zz or xx600 in the "600 series." In the EAR "items" include equipment, materials, software and technology.

These items may be controlled for multiple reasons including National Security, Missile Technology, Regional Stability, AntiTerrorism, Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Material (CIFTA), the details regarding the objectives and implementation of these individual controls can be found in Part 742 of the EAR.

UNCLASSIFIED

6. Principles and national regulations on the destination or end-user of the equipment.

The U.S. Conventional Arms Transfer Policy promotes restraint in transfers that may be destabilizing or dangerous to international peace or security. U.S. policy and our record of transfer approvals reflect these considerations. The United States abides by UN Security Council-mandated arms embargoes. In addition and in accordance with our national security and foreign policy interests, the United States scrutinizes potential exports or transfers of conventional arms, considering such factors as whether the conventional arms could: be a direct threat to U.S. security; contribute to regional instability; be used in the systematic denial of human rights; or be used in acts of international terrorism, among other factors. It is the policy of the United States to deny licenses or other approvals for exports or transfers of defense articles and defense services in accordance with the criteria cited above and otherwise set forth in the ITAR Section 126.1. Exports of defense articles and defense services to countries that the Secretary of State has determined have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States, and are thus subject to a policy of denial consistent with Section 40 of the AECA. Section 40A of the AECA also prohibits the sale or licensing of defense articles or defense services for export to countries that are not fully cooperating with U.S. antiterrorism efforts. In addition, U.S. policies may preclude exports of defense articles, including technical data, and defense services to certain destinations. A comprehensive list of countries subject to policies of denial for exports of defense articles and defense services can be found under the "Country Policies" tab at <https://www.pmddtc.state.gov>.

The EAR license requirements and license review policies take into account the sensitivity of the destination, item, end use and end users for the transaction. Countries that are members of the multilateral export control regimes, which are identified under Country Group A groupings in Supplement No. 1 to part 740 of the EAR have more permissive treatment under the EAR compared to other countries as it relates to the availability of U.S. Government authorizations and license review policies. For purposes of conventional arms the license requirements under the EAR are restrictive. "600 series" items require a U.S. Government authorization for all destinations except for Canada. The firearms moved from the ITAR to the CCL and controlled under 0x5zz items (firearms and related items) require a U.S. Government authorization for all destinations, including Canada because of the additional license requirements from the CIFTA. For conventional arms the EAR imposes restrictions on the use of EAR license exceptions and restrictive license review policies for countries subject to U.S. arms embargoes, which are identified in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. For conventional arms the EAR also imposes restrictions on the use of EAR license exceptions and restrictive license review policies for countries subject to U.N. arms embargoes, which are identified in section § 746.1(b) of the EAR. The EAR also imposes controls under Part 746 for countries subject to embargoes or other sanctions, including terrorist supporting countries identified in Country Group E:1 or unilaterally embargoed identified in Country Group E:2 in Supplement No. 1 to part 740 of the EAR. The EAR controls also include various end-use and end-user controls in part 744 that impose very restrictive controls on certain prohibited end-uses and end-users, which in most cases apply to all items "subject to the EAR," including conventional arms.

7. Requirements of the provision of an end-user certificate in an export license application, or of non-re-exportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts.

The written approval of the Department of State must be obtained before reselling, transferring, reexporting, retransferring, transshipping, or disposing of a U.S.-origin defense article (even if it is a component incorporated into a foreign origin article) or technical data to any end-user, end-use, or destination other than originally authorized on the export authorization. For items that were exported pursuant to the ITAR (instead of under the government-to-government system), a

UNCLASSIFIED

Non-transfer and Use Certificate (Form DSP-83) is required as a condition to the approval of licenses or agreements that relate to Significant Military Equipment (SME) and/or classified articles, including classified technical data. This certificate must be signed by the applicant, foreign consignee(s), and foreign end-user. DDTC may also require, at its discretion, a Form DSP-83 for the export of any other defense articles or services. DDTC may also require as a condition of approval that an appropriate authority of the government of the country of ultimate end-use also execute the certificate or provide assurances comparable to those contained in Form DSP-83 (e.g., in a diplomatic note), when the foreign government is not the end-user. Agreements involving classified articles or classified technical data must be accompanied by a Form DSP-83 signed by an authorized representative of the foreign government concerned, unless DDTC has granted an exception to this requirement. A similar approval process and conditions are required for the retransfer of items originally transferred under the government-to-government program, which can be found at <http://www.state.gov/t/pm/rsat/c14030.htm>.

All export licenses issued by the Department of Commerce include the following provision regardless of the destination:

Items subject to the EAR and within the scope of this license may not be reexported or transferred (in-country) unless such re export or in-country transfer is (i) authorized by this license, or another license or other approval issued by the U.S. Government; (ii) authorized by a license exception or other authorization under the Export Administration Regulations (EAR); or (iii) to a destination, end user, and end use that would be "NLR" (No License Required) under the EAR.

In addition for exports of firearms and ammunition an additional provision applies regardless of the destination:

A current complete, accurate and valid CIFTA Import Certificate (or equivalent official document) shall be obtained, if required by the Government of the importing country, from the Ultimate Consignee and maintained in the exporter's files prior to any export of the item(s) listed on this license. A copy shall be provided to the US Government upon request. (Refer to Part 742.17 (b) of the EAR for Guidance.

Since the Department of Commerce's licenses are valid for four years, in many instances an exporter may have to obtain multiple Import Certificates to fully exhaust the quantities on the license. As noted above, every shipment must be supported by a valid import certificate where required. These certificates become part of the records that must be maintained by the exporter for 5 years beyond the expiration date of the license and must be presented to Government Officials upon request.

8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.

UNCLASSIFIED

UNCLASSIFIED

The written approval of DDTC is required before bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is in transit to another foreign destination. Transit and transshipment include withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination.

An authorization is not required for the temporary or permanent import of items subject to the EAR, including conventional arms. This also applies to the temporary import of items subject to the EAR, including conventional arms, to a U.S. Customs-bonded warehouse and/or foreign trade zone while transiting the United States.

Under the EAR, as specified in § 734.3(a)(1) all items in the United States, including in a U.S. Foreign Trade Zone or moving in transit through the United States from one foreign country to another are "subject to the EAR." Any subsequent export from the United States of items "subject to the EAR," including conventional arms that temporarily enter the United States or were in transit through the United States, are subject to the same EAR license requirements and license review policies as any other export from the United States.

The EAR under § 740.9 Temporary Imports, Exports, Reexports, and Transfers (In-Country) (TMP) has a license exception which is available in certain cases to authorize these exports after temporary import or transiting the United States. Specifically, paragraph (b) (*Exports of items temporarily in the United States*) of License Exception TMP includes an authorization for items that are "subject to the EAR" that are being transhipped through the United States, including "600 series" items and 0x5zz items. Exports of the conventional arms of firearms and certain shotguns (controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502) temporarily in the United States may be authorized under paragraph (b) provided the requirements of paragraph (b)(5) of License Exception TMP are met.

The EAR includes § 758.10 Entry Clearance Requirements for Temporary Imports. This section specifies the temporary import entry clearance requirements for firearms "subject to the EAR" that are on the United States Munitions Import List (USMIL, 27 CFR 447.21), except for firearms "subject to the EAR" that are temporarily brought into the United States by nonimmigrant aliens under the provisions of Department of Justice regulations at 27 CFR part 478 (*See* § 740.14(e) of the EAR for information on the export of these firearms "subject to the EAR"). These firearms are controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502. As referenced above in this answer, an authorization under the EAR is *not* required for the temporary import of "items" that are "subject to the EAR," including for "items" "subject to the EAR" that are on the USMIL. Temporary imports of firearms described in § 758.10 must meet the entry clearance requirements specified in paragraph (b) (*EAR procedures for temporary imports and subsequent exports*) of § 758.10. Permanent imports of items on the USMIL are regulated by the Attorney General under the direction of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (see 27 CFR parts 447, 478, 479, and 555).

By the temporary importer/subsequent exporter following the entry clearance requirements in § 758.10 under paragraph (b), the U.S. Government will be able to confirm whether an ECCN 0A501.a or .b item or shotgun with a barrel length less than 18 inches controlled in ECCN 0A502 is for temporary import. At the time of entry into the United States of the temporary import, the temporary importer must provide one of the following statements specified in

UNCLASSIFIED

UNCLASSIFIED

paragraphs (b)(1)(i)(A), (B), or (C) of § 758.10, as well as the information in paragraphs (b)(1)(ii)-(iv) as applicable, to U.S. Customs and Border Protection:

(A) "This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of License Exception TMP (15 CFR 740.9(b)(5));"

(B) "This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of License Exception RPL (15 CFR 740.10(b));" or

(C) "This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of BIS license number (provide the license number) (15 CFR 750.7(a) and 758.4);"

UNCLASSIFIED

9. The procedures governing companies wishing to export arms.

Any person who engages in the United States in the business of manufacturing, exporting, or temporarily importing defense articles or furnishing defense services is required to register with DDTC. Manufacturers of defense articles who do not engage in exporting must nevertheless register. Registration is a primary means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. Registration is generally a precondition to the issuance of any license or other approval. Companies must obtain a license or other approval before disclosing any technical data controlled by the USML to foreign end-users. Companies are required to obtain a license or other approval in order to transfer defense articles or defense services to foreign persons. U.S. persons or foreign persons subject to U.S. jurisdiction who engage in arms brokering activities, as defined in Part 129 of the ITAR, must register with DDTC. Their brokering activities may be subject to prior approval (license requirements) by DDTC, required by Section 129.4 of the ITAR.

Under the EAR there is not a requirement for persons exporting or otherwise engaged with items that are "subject to the EAR" to register with BIS. In order to apply for a license from BIS or submit a classification request, an applicant is required to create a free account in an online submission system called the Simplified Network Application System (SNAP-R) on the BIS website at www.bis.doc.gov. For the export of conventional arms under the "600 series" and firearms controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c, there are additional export clearance requirements that are applicable to those commodities. For these items the EAR requires submitting information to the U.S. Government prior to export with the submission of Electronic Export Information (EEI) filing in the Automated Export System (AES), including for exports to Canada and applies regardless of the dollar value. These AES filing requirements for the "600 series" are specified in § 758.1(b)(9) and for the 0x5zz ECCNs in section § 758.1(b)(9). There are any additional export clearance requirements that need to be complied with for exports of firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502 when using License Exception TMP. Specifically, in accordance with the requirements in § 758.1(b)(9) and (g)(4)(i) of the EAR, the exporter or its agent must provide documentation that includes the serial number, make, model, and caliber of each firearm being exported by filing these data elements in an EEI filing in AES for exports authorized under License Exception TMP under paragraphs (a)(5) or (6).

The Department of State retains jurisdiction for brokering activities for items which are now listed on the CCL that are also listed on the USMIL. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under section 38 of the AECA, 22 U.S.C. 2778, for purposes of permanent import or brokering controls.

10. Policy on the revocation of export licenses once they have been approved.

UNCLASSIFIED

DDTC has broad authority to deny or revoke licenses in furtherance of the foreign policy and national security of the United States. Section 42(e)(2)(A) of the AECA provides that any export license issued shall provide that such license may be revoked, suspended, or amended without prior notice, whenever the Secretary deems such action to be advisable. Further, Section 126.7 of the ITAR authorizes suspension or revocation of an export license, *inter alia*, if: the Department of State deems such action to be in furtherance of world peace, the national security or foreign policy of the United States, or is otherwise advisable; the applicant or any party to the transaction has been convicted of a violation of certain criminal statutes or of violating the ITAR; the applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from any agency of the U.S. Government; or the Department of State believes that the terms of any license or other approvals have been violated by any party to the export. Similarly, pursuant to the underlying agreement for the government-to-government sale of defense articles or defense services, under certain circumstances, the United States can suspend or cancel the sale prior to delivery.

BIS notes that the U.S. Government continuously monitors the export control system to determine where the most likely points of diversion are and takes actions to prevent potential diversion points by using existing license review policies, rescinding or revoking prior authorizations, or imposing new license requirements or other prohibitions.

Under § 750.8 Revocation or Suspension of Licenses of the EAR, all licenses for exports or reexports are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BIS to stop a shipment or an export or reexport transaction at any stage in the process (e.g., in order to prevent an unauthorized export or reexport). If a shipment is already en route, it may be further necessary for BIS to order the return or unloading of such shipment at any port of call in accordance with the provisions of ECRA.

The terms and conditions of BIS licenses also restrict what is being authorized. Licenses for "600 series" items and 0x5zz ECCNs are limited to the authorized end use and end users. Consistent with other BIS licenses, licenses for conventional arms are limited to the authorized end use and end users specified on the license and supporting documentation submitted as part of the license application. This means any change in the authorized end use or end user for a licensed transaction will require a BIS authorization. This existing requirement of BIS licenses is specified in § 750.7(a) and on the boiler plate text included on all BIS licenses. A change in end use or end user, including a change of authorized end use or end user within a single foreign country for conventional arms authorized under a BIS license, requires a BIS authorization.

The exporter, reexporter, or transferor using a BIS license, including for conventional arms, is also required, pursuant to § 750.7(a), to inform the other parties identified on the license, such as the ultimate consignees and end users of the license's scope and of the specific conditions applicable to them. As an additional safeguard for firearms and ammunition licenses and other conventional arms, BIS will include, when warranted, a license condition requiring the exporter, reexporter, or transferor to obtain from the other parties identified on the license a written confirmation that those other parties have received and agree to the terms and conditions of the license. For example, the condition may state "Prior to using this license, the exporter (reexporter or transferor) and other parties to the license must agree to the conditions in writing and the exporter (reexporter or transferor) must keep this on file with their other records." The documents described in this paragraph are required to be kept for EAR recordkeeping purposes under part 762 of the EAR.

UNCLASSIFIED

11. Penal and administrative implications for any exporter failing to comply with national controls.

Persons who violate the AECA and the ITAR may be subject to criminal prosecution by federal law enforcement and/or may be the subject of a civil enforcement action by the Department of State. Persons who plead guilty or who are proven guilty in a court of law of knowingly or willfully violating or conspiring to violate the AECA may face penalties of up to one million U.S. dollars or imprisonment for up to 20 years, or both, for each violation. Criminal conviction under the AECA also triggers statutory debarment, which entails a legal prohibition from participating directly or indirectly in activities regulated by the ITAR until the Department of State approves an application request for reinstatement. Alleged civil violations of the ITAR may be resolved through a consent agreement between the alleged violator and the Department of State. Consent agreements often include a monitoring component, remedial steps, and a monetary penalty, and can run for several years. Any violation of the ITAR, regardless of intent, may also trigger discretionary administrative debarment. Additionally, ITAR violations may have other consequences, including the denial or revocation of licenses and other export authorizations, compliance oversight, and the loss of business opportunities.

For purposes of the EAR, a person who willfully violates the EAR or ECRA may be subject to criminal prosecution and subject to penalties of one million dollars per violation and up to 20 years imprisonment. BIS may also pursue administrative charges, including strict liability charges. Civil penalties include a fine of not more than \$300,000 per violation (subject to adjustment for inflation) or twice the value of the transaction, whichever is greater. In addition, civil penalties may include the imposition of Denial Order, involving a prohibition on the person's ability to export, reexport, or in-country transfer items subject to the EAR.

12. Any circumstances in which the export of arms does not require an export license.

Exemptions exist to relieve the administrative burden for certain exports involving specified defense articles. These exemptions generally do not apply to proscribed destinations, or exports for which Congressional notification is required, and may not be used by persons who are generally ineligible per section 120.1 of the ITAR. When shipping tangible items pursuant to a license exemption, the shipper must file a shipper's export declaration with U.S. Customs at the port of exit, certifying that the export is exempt from licensing requirements and identifying the section of the ITAR under which the exemption is found. Exports under government-to-government arrangements do not require licenses, but must be approved by the Department of State.

Under the EAR conventional arms controlled under the "600 series" and firearms and ammunition under 0x5zz ECCNs will require a U.S. Government authorization for export in most cases. The exception is for exports of "600 series" items to Canada and exports of the least sensitive "600 series" .y items (e.g., aircraft tires under 9A610.y.1) and ECCN 0A501.y items (e.g., scope mounts or accessory rails under 0A501.y.2) that will not require a license under the EAR.

All other conventional arms under the EAR require a U.S. Government authorization for export. Under the EAR, an exporter does not have a right to export. When BIS imposes a license requirement under the EAR, this means the exporter will need to meet all of the applicable requirements of a license exception, or obtain a license from BIS to proceed with the export.

UNCLASSIFIED

The license exceptions or portions of license exceptions that are available for these conventional arms moved to the CCL, have sufficient requirements and limitations added to protect U.S. export control interests. In order to use a license exception under the EAR, the export must not be restricted under any of the general restrictions in § 740.2 of the EAR. For the "600 series" items there is a general restriction on the use of license exceptions for countries subject to U.S. arms embargoes under § 740.2(a)(12), except for a very small number of license exception provisions that are eligible, such for exports to the United States Government. Countries subject to U.N. arms embargoes, which are identified in section § 746.1(b) of the EAR are also restricted from receiving conventional arms that are subject to UN controls on the CCL. There is also another general restriction for the "600 series" under § 740.2(a)(13) for other countries that identifies a larger list of license exceptions that may be available for countries of less concern.

For the 0x5zz items the EAR includes two general restrictions on the use of license exceptions under § 740.2, one under paragraph (a)(21) and a second under paragraph (a)(22). The general restriction on the use of license exceptions in § 740.2(a)(21) restricts the use of license exceptions, except for License Exception GOV under § 740.11(b)(2)(ii), for reexport or transfer (in-country) of certain firearms classified under 0A501 or 0A502. Restriction applies if a part or component that is not "subject to the ITAR," but would otherwise meet criteria in USML Category I(h)(2) (*Parts and components specially designed for conversion of a semiautomatic firearm to a fully automatic firearm*) is incorporated into the firearm or is to be reexported or transferred (in-country) with the firearm with "knowledge" the part or component will be subsequently incorporated into the firearm. The general restriction on the use of license exceptions in § 740.2(a)(22) restricts use of license exceptions for any 0x5zz item when a party to the transaction is designated on the Department of the Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals and Blocked Persons (SDN) list under the designations [SDNT], or [SDNTK]. This restriction is intended to exclude known narcotics traffickers and organizations from receiving 0x5zz items under an EAR license exception.

In addition to the general restrictions, the EAR license exceptions that are available for "600 series" and 0x5zz ECCNs include various additional restrictions to ensure that the export of these conventional arms will be done in accordance with U.S. national security and foreign policy interests and also reflect U.S. multilateral commitments. There are exclusions for countries of concern in the license exceptions, such as those subject to U.S. arms embargoes under Country Group D:5 or additional requirements that need to be met in order to use a license exception for a "600 series" or 0x5zz item because of the sensitivity of those items. For example, in order for an end user or other party outside the United States to receive "600 series" items under License Exception § 740.20 License Exception Strategic Trade Authorization (STA), only if the purchaser, intermediate consignee, ultimate consignee, and end user have previously been approved on a license or other approval, *i.e.*, DDTC Manufacturing License Agreement (MLA), Technical Assistance Agreement (TAA), Warehouse Distribution Agreement (WDA), or General Correspondence approval (GC) issued by BIS or DDTC at the U.S. Department of State. This requirement of License Exception STA is intended to exclude any potential front companies that may be trying to acquire conventional arms.

13. Licenses for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the license, including verification of return procedures.

Licenses for the temporary export of defense articles are issued by DDTC if: 1) the article will be exported for a period of less than four years, 2) the article will be returned to the United States, and 3) transfer of title will not occur during the period of temporary export. Articles may not be

UNCLASSIFIED

UNCLASSIFIED

sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license unless DDTC gives prior approval for the retransfer/re-export.

Under the EAR in § 740.9 Temporary Imports, Exports, Reexports, and Transfers (In-Country) (TMP) is a license exception that is available for the "600 series" and 0x5zz items, provided the export is not restricted under any of the general restrictions in § 740.2 and meets all of the applicable requirements of the license exception.

License Exception TMP under paragraph (a) is available for firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, but only paragraphs (a)(5) (Exhibition and demonstration) and (a)(6) (Inspection, test, calibration, and repair) are available. Paragraph (a) of License Exception TMP does not authorize any export or reexport of firearms controlled under ECCN 0A501.a or .b, or shotguns with a barrel length less than 18" controlled under ECCN 0A502 to, or any export of such an item that was imported into the U.S. from, a country in D:5, or from Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan. Paragraph (a)(5) and (a)(6) of License Exception TMP may not be used to export more than 75 firearms per shipment. Paragraph (a)(5) and (a)(6) of License Exception TMP may not be used to export more than 75 firearms per shipment. The exporter is required to maintain effective control of the conventional arms exported under License Exception TMP, is required to return those items within one year to the United States or otherwise authorize the disposition of those items under another EAR authorization, e.g., obtaining a BIS license to authorize a permanent export or keeping the item outside the United States for longer than one year from the date of export.

BIS also issues licenses for temporary exports. As soon as the temporary purpose has ended, but in no case later than one year of the date of export (or reexport), unless other disposition has been authorized in writing by the Bureau of Industry and Security, the items would need to be returned to the United States. Similar to License Exception TMP, the exporter would be required to maintain effective control of the items and return them to the United States or be otherwise authorized under the EAR. Because the terms and conditions of a license can be specific to the transaction being authorized in certain cases a license may provide a broader authorization than License Exception TMP. A license may also include additional conditions that go beyond what is required in License Exception TMP, such as requiring reporting to BIS.

Temporary exports made under License Exception TMP or a BIS temporary export license for conventional arms require filing EEI in AES for export clearance purposes. In addition, as specified in § 758.1(g)(4)(i), for any export authorized under License Exception TMP or a BIS license authorizing a temporary export of items controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, in addition to any other required data for the associated EEI filing, the exporter must report the manufacturer, model, caliber, and serial number of the exported items in the EEI filing in AES.

14. License documents and any standard conditions attached to it.

Applications for permanent or temporary exports and temporary imports must be made as follows: applications for licenses for the permanent export of unclassified defense articles including unclassified technical data that do not involve the furnishing of a defense service must be made on Form DSP-5; applications for licenses for the temporary export of unclassified defense articles must be made on Form DSP-73; applications for licenses for the temporary import of unclassified defense articles must be made on Form DSP-61; applications for the export of classified defense articles, including and classified technical data must be made on

UNCLASSIFIED

UNCLASSIFIED

Form DSP-85; applications for administrative amendments to license applications must be made on Form DSP-6 (permanent export), DSP-62 (temporary import), DSP-74 (temporary export), or DSP-119 (classified exports or temporary imports); end-use and non-transfer assurances for classified and SME (as defined in the ITAR) export transactions must be made on Form DSP-83. Most license applications, including technical assistance agreements, manufacturing license agreements, and warehouse and distribution agreements are submitted and processed electronically. DDTC also processes General Correspondence requests for the reexport or retransfer of articles previously exported from the United States, advisory opinions, and brokering requests.

For the Department of Commerce, all export and reexport license applications, and classification requests and their accompanying documents must be filed via BIS's Simplified Network Application Processing system (SNAP-R), unless BIS authorizes submission via the paper forms BIS 748-P (Multipurpose Application Form), BIS-748P-A (Item Appendix) and BIS-748P-B, (End-User Appendix). Only original paper forms may be used. Facsimiles or reproductions are not acceptable.

SNAP-R allows for attachment of commonly required support documents such as technical specifications, letters of explanation, end user statements, import certificates when required as well as the ability to respond to the licensing officer questions and requests for additional information from other reviewing agencies.

UNCLASSIFIED

Sample forms and further information are available under "Conduct Business" at <https://www.pmddtc.state.gov>

15. Different types (e.g., individual, general, restricted, full permanent, etc.) of licenses and what they are used for.

DDTC issues export licenses to permit the export or temporary import of specific defense articles, including technical data, and defense services covered by the USML.

Technical Assistance Agreements: A technical assistance agreement is an agreement for the performance of a defense service or the disclosure of technical data. Assembly of defense articles is included under this type of agreement, provided production rights or manufacturing know-how are not conveyed.

Manufacturing License Agreements: A manufacturing license agreement is an agreement granting a foreign person an authorization to manufacture defense articles abroad that involves or contemplates: A) the export of technical data or defense articles or the performance of a defense service; or B) the use by the foreign person of technical data or defense articles previously exported by the U.S. person.

Distribution Agreements: A distribution agreement is an agreement to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory.

Open General License: In July 2022, DDTC issued two open general licenses (OGLs) as part of a new pilot program to assess the viability and appropriateness of the OGL concept. The OGLs prescribe a set of terms and conditions under which qualifying transactions may be conducted. Under the pilot program, two OGLs are valid for one year, effective August 1, 2022, through July 31, 2023. DDTC will evaluate the merits of this new licensing mechanism during that period and may extend or amend the licenses prior to their expiration date.

BIS uses a single license form to authorize the various types of exports that are made under the EAR. BIS licenses are flexible enough to authorize the same scope of activities as authorized under a State TAA, MLA, or Distribution Agreement. As noted above, BIS issues temporary export licenses, but those are also done using the same BIS license form.

16. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

ITAR Section 126.1 provides guidance to potential exporters regarding restrictions on exports destined for certain countries.

Exporters can also obtain advisory opinions from DDTC as to whether DDTC would likely grant a license or other approval to export a particular defense article or defense service to a particular country and may contact the DDTC Response Team to ask general questions on export control matters. Response Team answers are not authoritative and are not a substitute for formal advisory opinions. Additional information about the Response Team, including contact information, is available under the "About Us" tab at <https://www.pmddtc.state.gov>.

Under the EAR the license review process is transparent. The license review policies are specified in part 742, 744 and 746 of the EAR. Once an exporter determines what license requirements are applicable to their export transaction, they may review the applicable license review standards for those license requirements in parts 742, 744, and 746 as applicable and that will tell the applicant how that license will be reviewed by the U.S. Government. For example, the license review policy may be case-by-case, or a presumption of denial depending on the specifics of the application.

UNCLASSIFIED

BIS licenses are subject to an interagency review process that includes review by the Departments of State, Defense, and Energy, which allows BIS to supplement its technical expertise with that of its interagency partners on matters of national security, foreign policy, regional stability, and national defense. The interagency review process for Commerce licenses is specified in Executive Order 12981 and in part 750 of the EAR. The well-established and transparent interagency review process (including specifying the timelines for each step of the review process) ensures that a variety of perspectives and expertise from these U.S. Government agencies are able to inform the Commerce license review process to ensure only those exports that are consistent with U.S. export control interests will be approved. BIS also emphasizes that it has flexibility in how it approves licenses and can include additional safeguards as may be warranted. The interagency review process also helps to inform how licenses are approved.

17. The average number of export licenses issued annually and the staff engaged in the export licensing procedure.

In Fiscal Year 2021 DDTTC adjudicated 23,527 export authorization requests. There are approximately 215 people in DDTTC (including full-time civil servants, contractor personnel, and uniformed military personnel) involved in the regulation of commercial arms sales and transfers. This does not include the cases and staff who support the Department of Defense-implemented government-to-government mechanisms, nor does it include the staff of government organizations that advise DDTTC in their licensing decisions.

As noted earlier, BIS administers and enforces controls on the export of: (1) dual-use items, which have chiefly commercial uses but could be used in conventional arms and/or in weapons of mass destruction by terrorists, or to abuse human rights; and (2) certain military items that are not otherwise controlled by the Department of State under the ITAR. The Department of Commerce controls are implemented under ECRA of 2018 through the EAR, in coordination with several other agencies. The EAR set forth license requirements and licensing policy for exports of these items, and incorporate controls on items identified on the control lists of the four major multilateral export control regimes: the Australia Group (AG) (chemical and biological nonproliferation); the Missile Technology Control Regime (MTCR); the Nuclear Suppliers Group (NSG); and the Wassenaar Arrangement (conventional arms and related goods, software, and technologies), in addition to unilateral controls.

Given this broad mission BIS has a staff of 380 people. This includes employees involved in exporter outreach and compliance, regulations writing and guidance, policy analysis and regime representation, export licensing and export enforcement. It should be noted that BIS has its own enforcement arm, which includes federal law enforcement agents and analysts located at field offices throughout the United States and Export Control Officers stationed at strategic locations abroad to conduct end use checks for items "subject to the EAR" exported or reexported from the United States.

With respect to the licensing of the items covered under this questionnaire document there are 28 engineers and policy analysts directly engaged in licensing of these items. As noted above, all the other Bureau personnel are involved in related functions such as outreach, regulations or export enforcement support as needed for the licensing of these items, which includes the performance of pre license and post shipment checks.

In FY 2021, BIS processed 12,883 export license applications for exports of "600 series" items that transferred from the USML to the CCL. BIS officially began issuing export licenses for

UNCLASSIFIED

UNCLASSIFIED

certain firearms and ammunition in March 2020. For FY 2021, BIS processed 6,233 license applications for firearms and ammunition related items.

UNCLASSIFIED

18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.

In making its arms export and transfer decisions, the United States complies with its commitments under all relevant international arrangements, to include the Wassenaar Arrangement, and the MTCR.

Information on proposed export licenses subject to Congressional notification thresholds pursuant to sections 36(c) and 36(d) of the AECA are published in Federal Register on a semi-annual basis. See the Federal Register category under the "News and Events" tab at <https://www.pmdtc.state.gov/> for the most recent filing.

Congressional notifications of sales under government-to-government arrangements are published on the internet at <http://dsca.mil/major-arms-sales>.

Data and statistics on exports under these arrangements are published at <http://dsca.mil/resources/dsca-historical-facts-book-fiscal-year-series>.

Under the EAR, in making its conventional arms export and transfer decisions, the United States complies with its commitments under all relevant international arrangements, to include the Wassenaar Arrangement, and the MTCR, as well as the Nuclear Suppliers Group, the Australia, the Organization for American States (OAS) under CIFTA and to the United Nations for conventional arms reporting. The EAR requirements also reflect these commitments. For example, § 743.4 (Conventional arms reporting), as specified in paragraphs (c)(1)(i) and (c)(2)(i), ECCN 0A501.a and b are commodities that require Wassenaar Arrangement reporting and United Nations reporting under this conventional arms reporting section of the EAR.

The EAR includes § 743.5 Prior Notifications To Congress Of Exports Of "600 Series Major Defense Equipment" that specifies that applications to export items on the CCL that are "600 Series Major Defense Equipment" will be notified to Congress as provided in this section before licenses for such items are issued. As part of these requirements in § 743.5, the EAR includes restrictions on the use of license exceptions under § 740.2(a)(15) and (a)(16) for "600 series Major Defense Equipment." Specifically, under paragraph (a)(15) if they are sold under a contract that includes \$14,000,000 or more of "600 Series Major Defense Equipment" (as defined in § 772.1), exports of "600 series" items to a country not listed in Country Group A:5 (see Supplement No. 1 to Part 740 of the EAR), are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR). Under paragraph (a)(16), if they are sold under a contract that includes \$25,000,000 or more of "600 Series Major Defense Equipment" (as defined in § 772.1), exports of "600 series" items to a country listed in Country Group A:5 (see Supplement No. 1 to part 740 of the EAR) are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR).

19. Are all guidelines governing conventional arms transfers nationally published?

All changes to the ITAR are published in the U.S. Government's Federal Register. Regulatory and policy information, including lists of criminal and civil debarments, is also regularly posted at the DDTC website on the internet at <https://www.pmdtc.state.gov>.

All changes to the EAR are published in the U.S. Government's Federal Register. Regulatory and policy information, including a consolidated list of proscribed persons (e.g., those subject to

UNCLASSIFIED

Denial Orders under the EAR or subject to additional license requirements under the Entity List in Supplement No. 4 to part 744 of the EAR), is also regularly posted at the BIS website on the internet at <https://www.bis.doc.gov>.

UNCLASSIFIED