EXCELERATE

2024 Export Compliance Refresher Course for USA Organizations

Course Duration: 30 min 10 sec

Presentation Objective

USA export compliance refresher course for those that previously completed export compliance training

Version: RE-4.4

Export Compliance Rock Solid Rule

Export controlled articles, technical data and services can only be exported to a foreign party when approved.

Export Approval

License, Agreement, Exemption, or Exception

REGULATORY AGENCIES

U.S. Controlled Export Regulatory Paths

Defense & Aerospace Related

Commerce & Dual Use Related

U.S. Export Regulatory Paths

U.S. Department of State

U.S. Department of Commerce

Defense Trade Controls (DTC) ← Regulatory Agencies → **Bureau of Industry and Security (BIS)**

International Traffic in Arms Regulations (ITAR) ← Regulations → **Export Administration Regulations (EAR)**

U.S. Munitions List (USML) ← What is Export Controlled → **Commerce Control List (CCL)**

Export Reform

Defense Related Exports
ITAR & USML Overview

Hardware, Software, Data, and Services → Check if Controlled Under USML → Yes → Gain Export Approval → Export

International Traffic in Arms Regulations (ITAR)
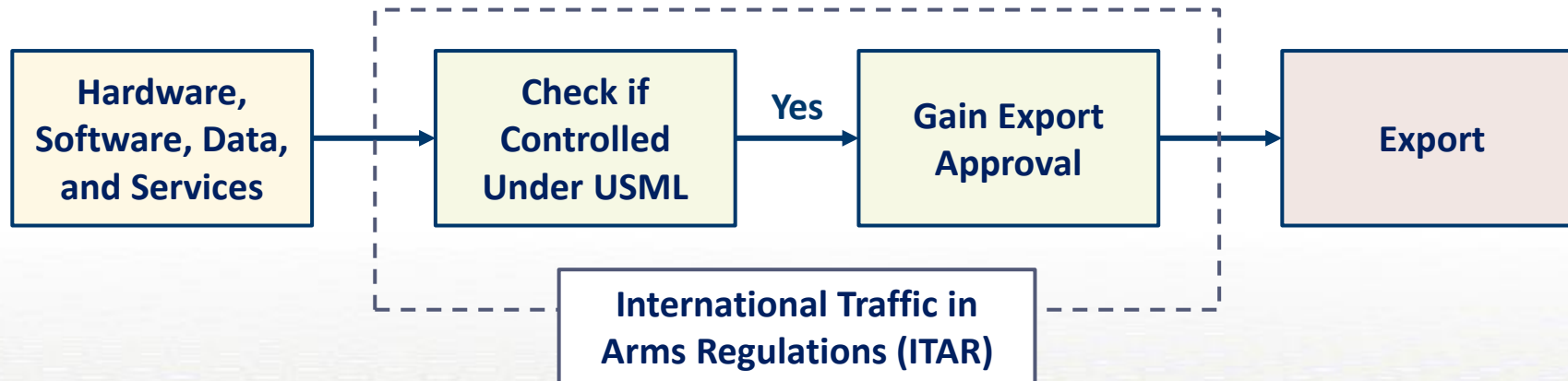
The United States Munitions List (USML) - ITAR

- I – Firearms, Close Assault Weapons,...
- II – Guns and Armament
- III – Ammunition/Ordnance
- IV - Launch Vehicles, Missiles,...
- V - Explosives, Propellants, Incendiary Agents and Their Constituents
- VI - Vessels of War and Special Naval Equipment
- VII – Ground Vehicles
- VIII - Aircraft and Related Articles
- IX - Military Training & Equipment
- X - Protective Equipment
- XI - Military Electronics
- XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment
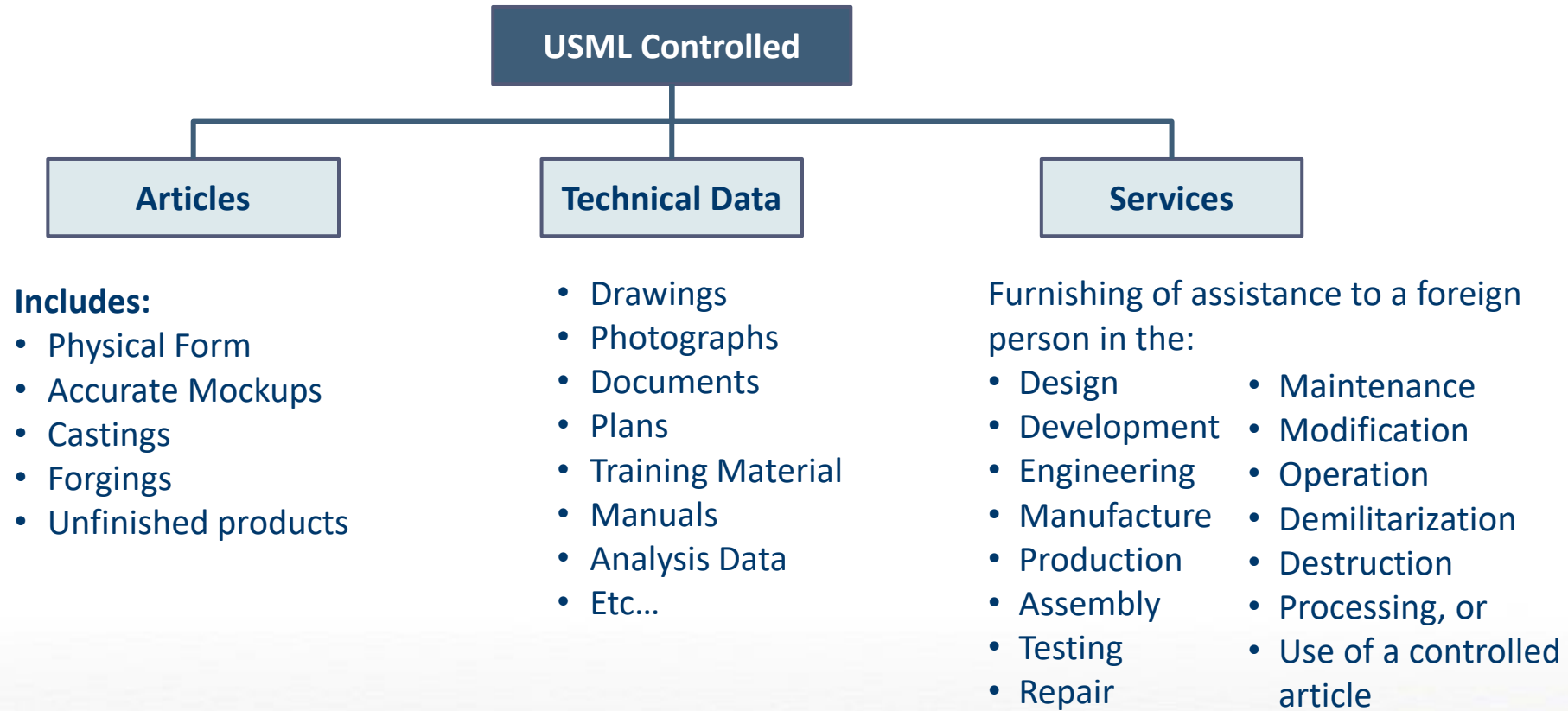
On Aircraft Arresting Gear

(h) Parts, components, accessories, attachments, and associated equipment and systems.

(5) On aircraft arresting gear....

VIII(h)(5)

USML Controlled Items

```
                    ┌──────────────────────┐
                    │   USML Controlled    │
                    └──────────────────────┘
           ┌────────────────┼────────────────┐
   ┌───────────────┐ ┌───────────────┐ ┌───────────────┐
   │   Articles    │ │ Technical Data│ │   Services    │
   └───────────────┘ └───────────────┘ └───────────────┘
```

Includes:
- Physical Form
- Accurate Mockups
- Castings
- Forgings
- Unfinished products

- Drawings
- Photographs
- Documents
- Plans
- Training Material
- Manuals
- Analysis Data
- Etc…

Furnishing of assistance to a foreign person in the:
- Design
- Development
- Engineering
- Manufacture
- Production
- Assembly
- Testing
- Repair
- Maintenance
- Modification
- Operation
- Demilitarization
- Destruction
- Processing, or
- Use of a controlled article

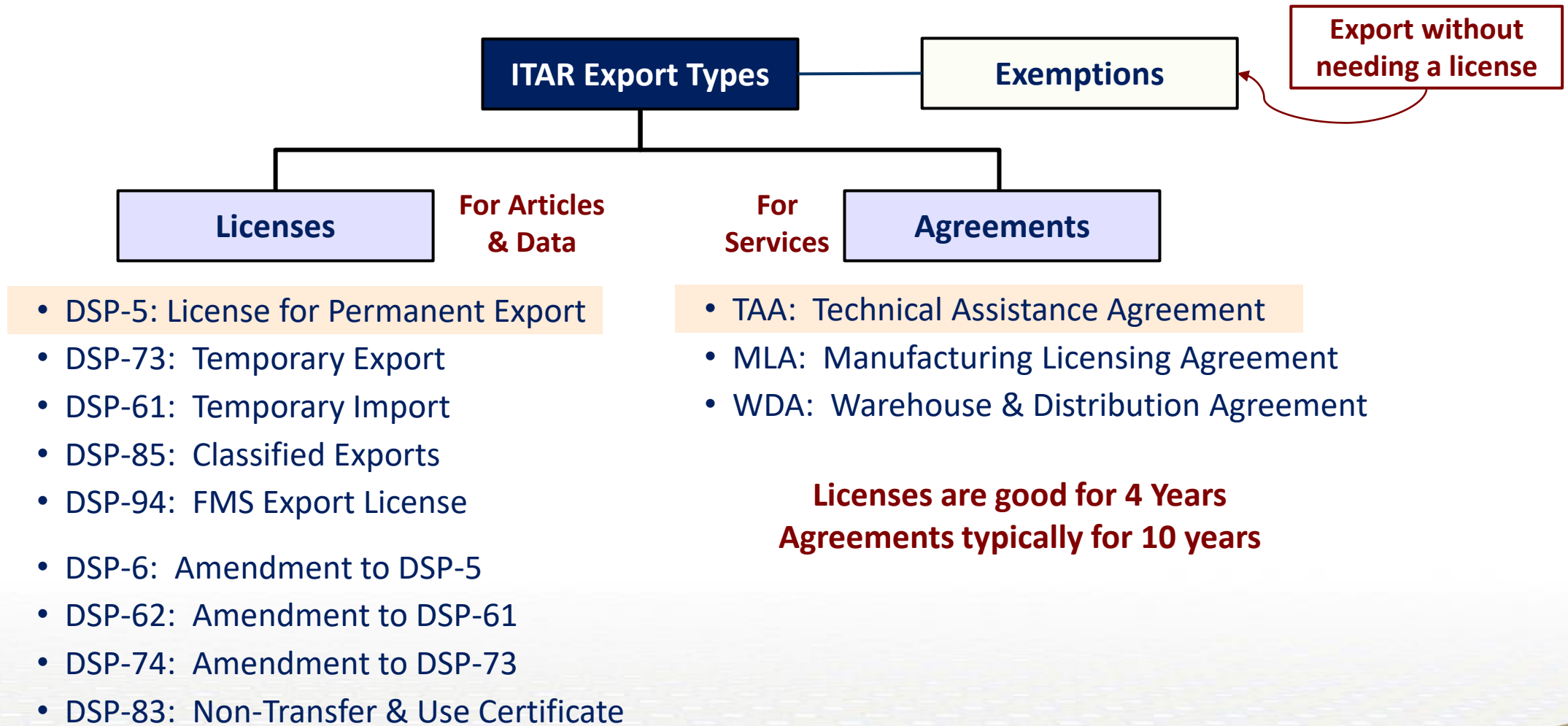# USML Controlled Special Notes

Technical Data is <u>NOT</u> controlled if it is:

- General scientific mathematical, or engineering principles

- Basic marketing information on function and purpose or general system descriptions.

Special Notes:

- Be aware that a commercial article that is modified for defense or aerospace purposes may now be controlled under the ITAR.

- An export occurs if a foreign person determines controlled technical data by viewing an export controlled article. ← **Important**

- Anything entering the U.S. automatically falls under U.S. export regulations. ← **Important**

EXCELERATE

Export Authorization Under ITAR

```
                    ┌─────────────────────┐        ┌─────────────────────┐         Export without
                    │  ITAR Export Types  │────────│     Exemptions      │ ◄────── needing a license
                    └─────────────────────┘        └─────────────────────┘
                              │
              ┌───────────────┴───────────────┐
     ┌────────────────┐  For Articles    For   ┌────────────────┐
     │    Licenses    │    & Data      Services │   Agreements   │
     └────────────────┘                         └────────────────┘
```

- DSP-5: License for Permanent Export

- DSP-73: Temporary Export

- DSP-61: Temporary Import

- DSP-85: Classified Exports

- DSP-94: FMS Export License

- DSP-6: Amendment to DSP-5

- DSP-62: Amendment to DSP-61

- DSP-74: Amendment to DSP-73

- DSP-83: Non-Transfer & Use Certificate

- TAA: Technical Assistance Agreement

- MLA: Manufacturing Licensing Agreement

- WDA: Warehouse & Distribution Agreement

**Licenses are good for 4 Years
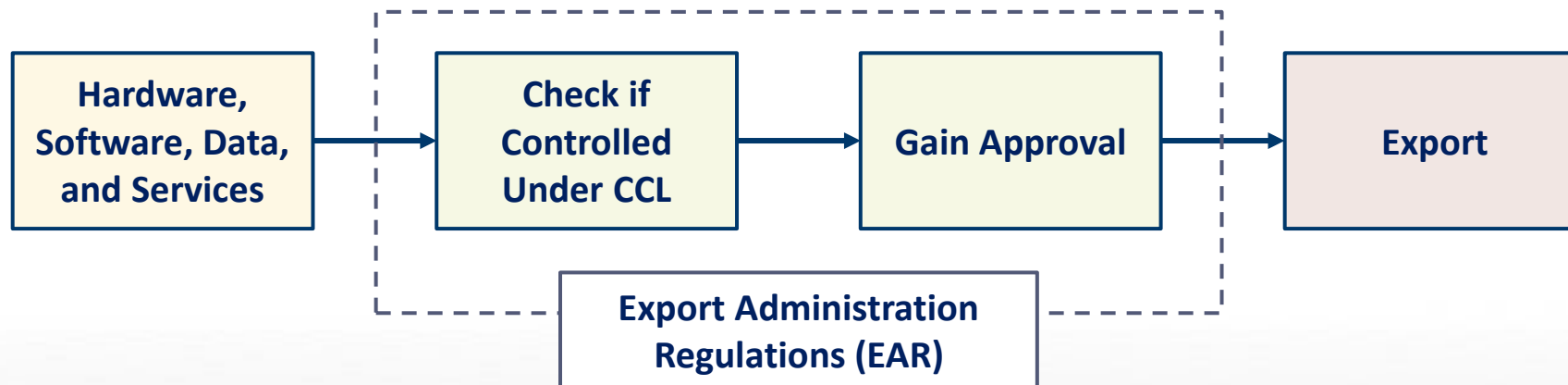Agreements typically for 10 years**

Section Summary

Some insights when working under the ITAR and USML:

- Guard against the onset of ITAR paranoia.

- Make export compliance practices part of your everyday activities.

- Make sure you understand the scope and provisos associate with any export approval you are working under in relation to your interaction with foreign persons.

- Know who is the export compliance point of contact in your organization.

- Ask export compliance question when you have them since the ramifications to your organization could be significant.

Commerce & Dual Use Related Exports
EAR & CCL Overview

```
┌─────────────────┐      ┌─────────────────┐      ┌─────────────────┐      ┌─────────────────┐
│  Hardware,      │      │  Check if       │      │                 │      │                 │
│  Software, Data,│ ───► │  Controlled     │ ───► │  Gain Approval  │ ───► │  Export         │
│  and Services   │      │  Under CCL      │      │                 │      │                 │
└─────────────────┘      └─────────────────┘      └─────────────────┘      └─────────────────┘
```

Export Administration
Regulations (EAR)

Commerce Control List (CCL) – EAR

Category 0 – Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items)

Category 1 – Material, Chemicals, Microorganisms, and Toxins

Category 2 – Materials Processing

Category 3 – Electronics Design, Development and Production

Category 4 – Computers

Category 5, Part 1 – Telecommunications

Category 5, Part 2 – Information Security

Category 6 – Sensors and Lasers

Category 7 – Navigation and Avionics

Category 8 – Marine

Category 9 – Aerospace and Propulsion

Catch-All Category for stuff that don't fit somewhere else

Commerce Control List Product Groups

CCL Product Groups

Commerce Control List (CCL)

Group A
Systems, Equipment, & Components

Group B
Test, Inspection, & Production Equipment

Group C
Material

Group D
Software

Group E
Technology
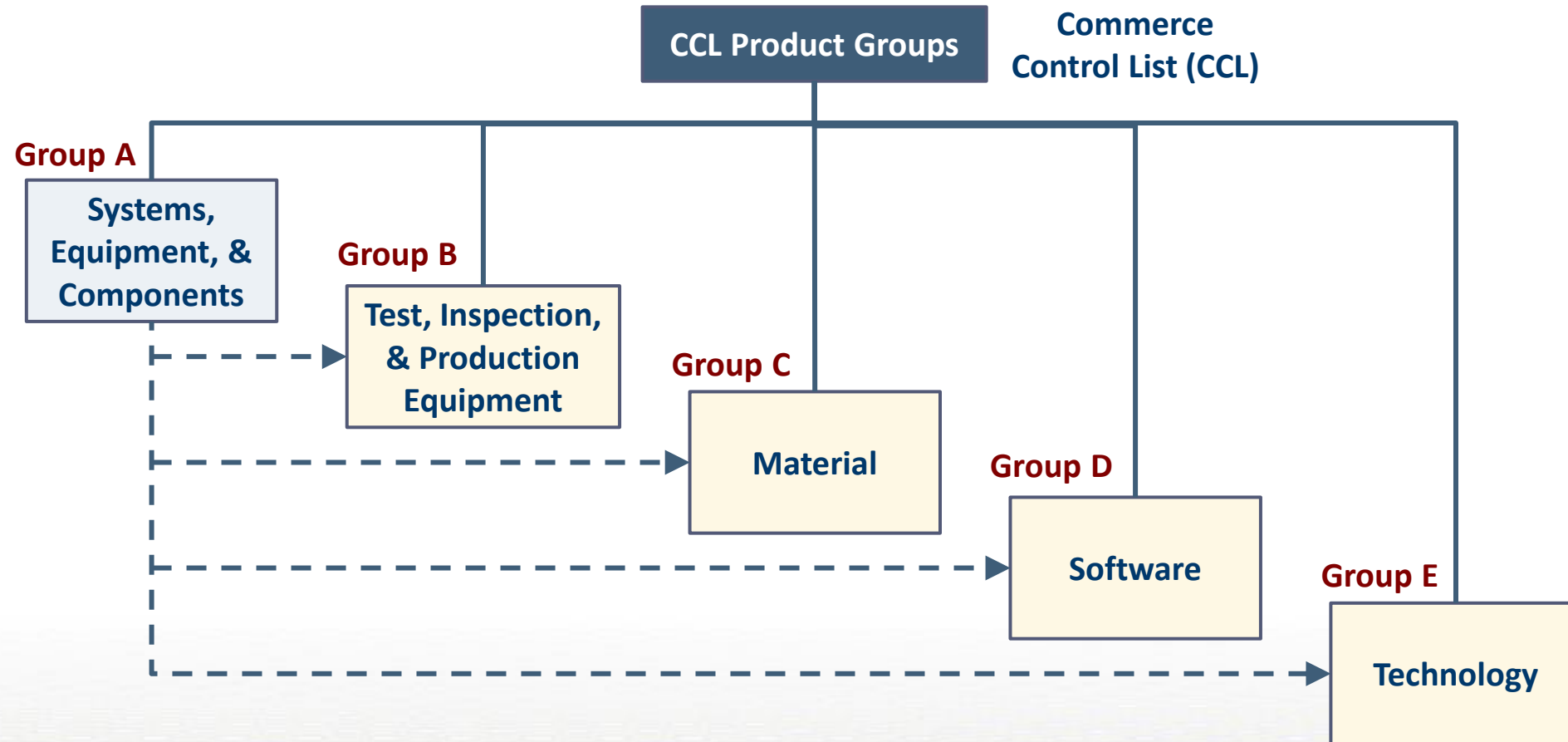
Export Control Classification Number (ECCN)

CCL Categories

- 0: Nuclear & Miscellaneous
- 1: Materials, Chemicals, Microorganisms & Toxins
- 2: Materials Processing
- 3: Electronics
- 4: Computers
- 5 (Part 1): Telecommunications
- 5 (Part 2): Information Security
- 6: Sensors & Lasers
- 7: Navigation & Avionics
- 8: Marine
- 9: Aerospace & Propulsion

Product Groups

- A: Systems, Equipment & Components
- B: Test, Inspection & Production Equipment
- C: Material
- D: Software
- E: Technology

Export Control Classification Number (ECCN)

9 = Aerospace & Propulsion

A = Systems, Equipment & Components

610 = Military Aircraft & Related Commodities

g = Aircraft life support equipment

Resultant ECCN is 9A610.g

ECCN Distribution in CCL

CCL Product Groups

Commerce Control List (CCL)

Group A — ECCN 9A610
Systems, Equipment, & Components

Group B — ECCN 9B610
Test, Inspection, & Production Equipment

Group C — ECCN 9C610
Material

Group D — ECCN 9D610
Software

Group E — ECCN 9E610
Technology
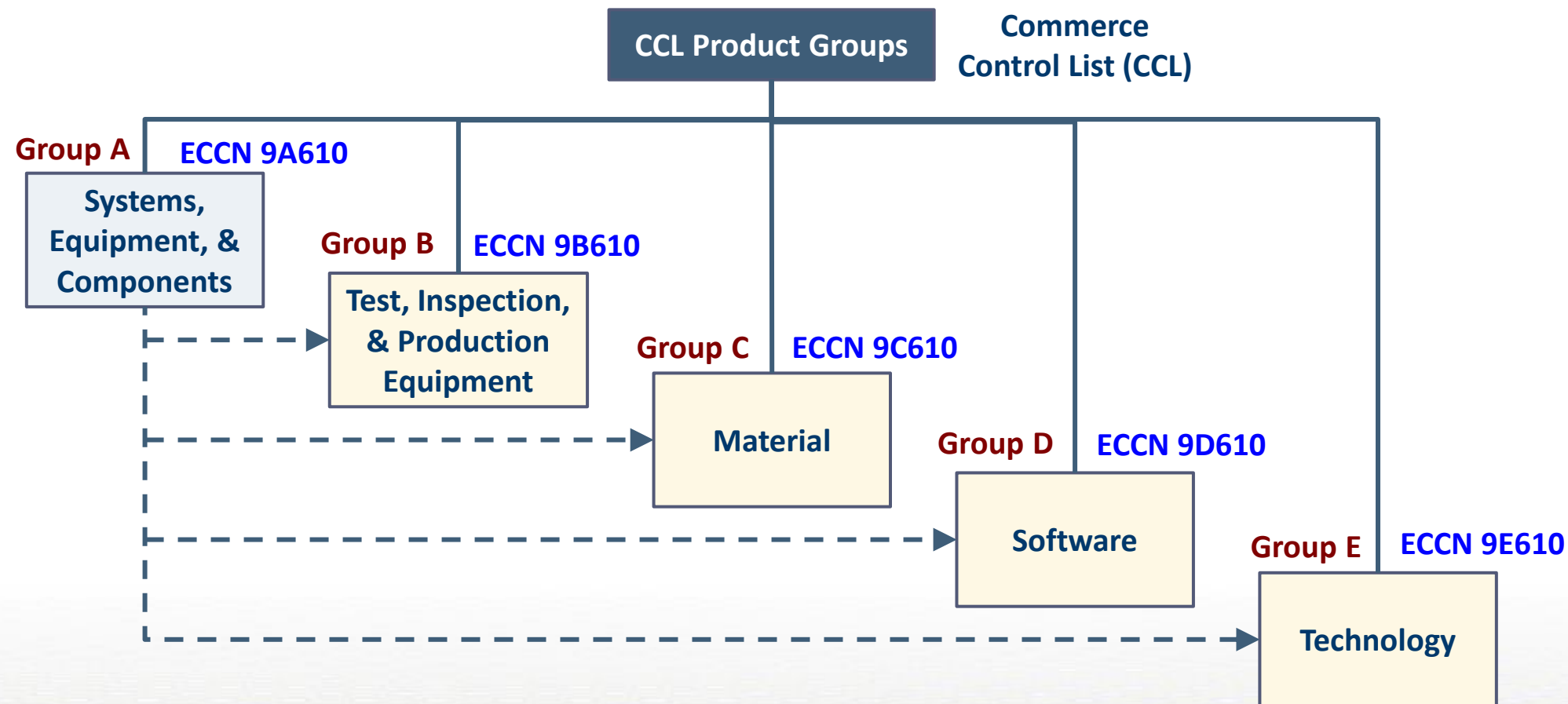
Choose Group A first then Groups B, C, D, and E follow under ECCN.

Export Authorization Under EAR

Exceptions are special provisions for exporting controlled items without requiring a license.

```
EAR Export Types  - - - - ->  Exceptions
      |
EAR or SNAP-R
  License
```

SNAP-R: Simplified Network Application Process Redesign
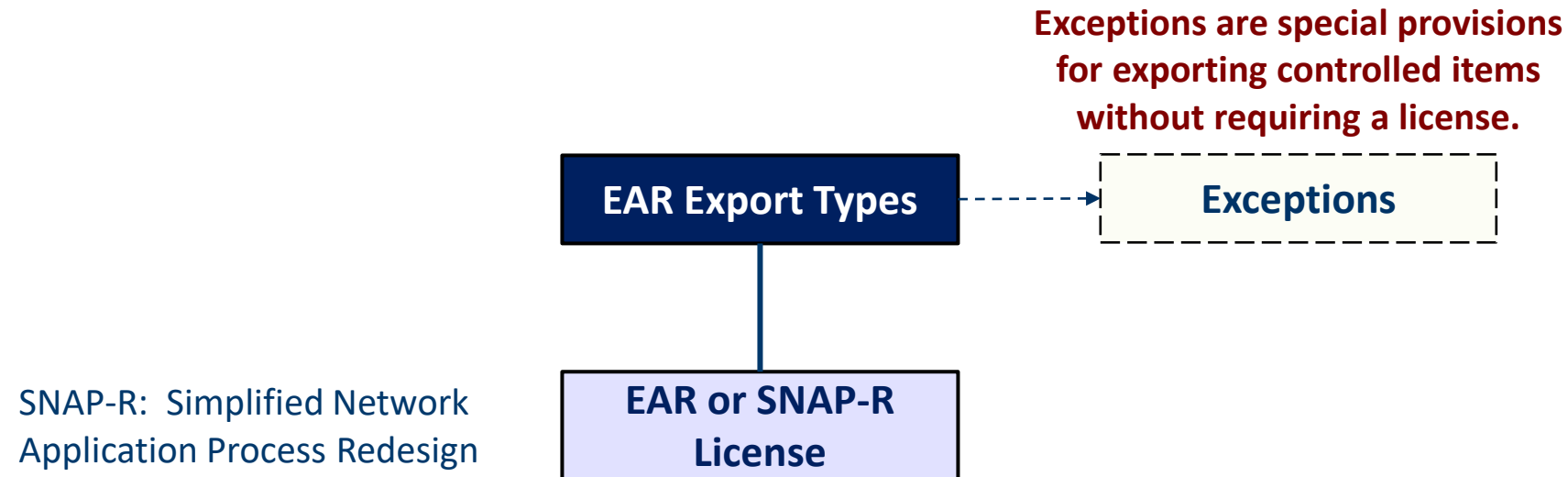
Licenses are typically good for 4 years

Version: RE-4.4

Challenge Questions

Challenge

- Challenge questions are next…

- They are designed to emphasize key points in the training.

- Just a few but you need to get them all correct before continuing.

- Click "Restart Challenge" to try again.

- Additional information is provided at the bottom of each question page.

- A "Click Here to Continue" button will appear upon successful

We call them "Challenge Questions"

ITAR & EAR Updates

www.fullcirclecompliance.eu

Free

THE DAILY BUGLE

Version: RE-4.4

ITAR Open General License Pilot Program

Intention: DDTC issued an Open General License (OGL) Pilot Program for Australia, Canada, and the United Kingdom. The intent is to allow retransfers and reexports for certain exports against specific criteria. Details of the OGL requirements can be found on the DDTC FAQ page.

Summary:

- The OGL pilot program will be under evaluation unit July 31, 2026.

- OGL's can not be used to export defense articles. Only applies to retransfers and reexports.

- Must comply with ITAR 123.9(b).

- Must be used by or on behalf of the government of Australia, Canada, or the United Kingdom.

Note: The OGLs are designed to support the mission readiness of U.S. allies by facilitating defense trade activity related to the maintenance, repair, and storage of unclassified defense articles deployed or in-inventory rather than supporting new acquisitions or capabilities.

Increase in Civil Monetary Penalties

The allowable civil monetary penalties were increased effective January 11, 2023. A summary of the new amounts are indicated in the following table:

Citation in 22 CFR	FY22 Max penalties	New (FY 23) max penalties
§ 35.3	$12,537 up to $376,138	$13,508 up to $405,270.
§ 103.6(a)(1) *Prohibited Acts*	$42,163	$45,429.
§ 103.6(a)(2) *Recordkeeping Violations*	$8,433	$9,086.
§ 127.10(a)(1)(i)	$1,272,251	the greater of $1,200,000 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed.
§ 127.10(a)(1)(ii)	$925,041 or five times the amount of the prohibited payment, whichever is greater	$996,685, or five times the amount of the prohibited payment, whichever is greater.
§ 127.10(a)(1)(iii)	$1,101,061	$1,186,338.
§ 138.400 *First Offenders*	$21,665	$23,343.
§ 138.400	$22,021 up to $220,213	$23,727 up to $237,268.

Version: RE-4.4

Temporary Modification of Category VIII of USML

Summary: On December 4, 2023 Note (h)(1) to ITAR Category VIII – Aircraft and Related Articles was modified as follows:

Note to paragraph (h)(1): This paragraph does not control parts, components, accessories, and attachments that are common to aircraft, other than the KF–21 and variants thereof, described in paragraph (a) of this category but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, when applying § 120.41(b)(3), a part common to only the F-16 and F–35 is not specially designed for purposes of this paragraph. A part common to only the F–22 and F–35—two aircraft models identified in paragraph (h)(1)—is specially designed for purposes of this paragraph, unless one of the other paragraphs is applicable under § 120.41(b) of this subchapter. Commodities otherwise described in this paragraph that are utilized in the KF–21 are not released from this paragraph due to use in the KF–21.

ITAR Compliance Risk Matrix

Background: DDTC created a document, in September 2023, called the ITAR Compliance Risk Matrix that is available for download at the following location:

https://www.pmddtc.state.gov/ddtc_public/ddtc_public?id=ddtc_public_portal_itar_landing

Select: "How to Comply"

Scroll Down and Select: "DDTC ITAR Risk Matrix"

Comment: We haven't found it all that helpful, but they like it, so it's worth a look to see if you can find interesting content.

EAR Note Worthy Items – 1 of 2

- Many new additions to the BIS Entity list associated with China, Iran, Russia, and Belarus.

- Increased control over certain instruments for the automated synthesis of peptides (automated peptide synthesizers) have been identified by BIS as a Section 1758 emerging and foundational technology. In this rule, BIS proposes controls for these automated peptide synthesizers.

- Updates made to the CCL related to nuclear non-proliferation.

- BIS clarified the release of the software final rule to what they intended and adds a clarifying note that a release of software includes either source or object code.

- BIS revised controls on semiconductor manufacturing equipment to more effectively align the protection of the technology to the U.S. national security interests.
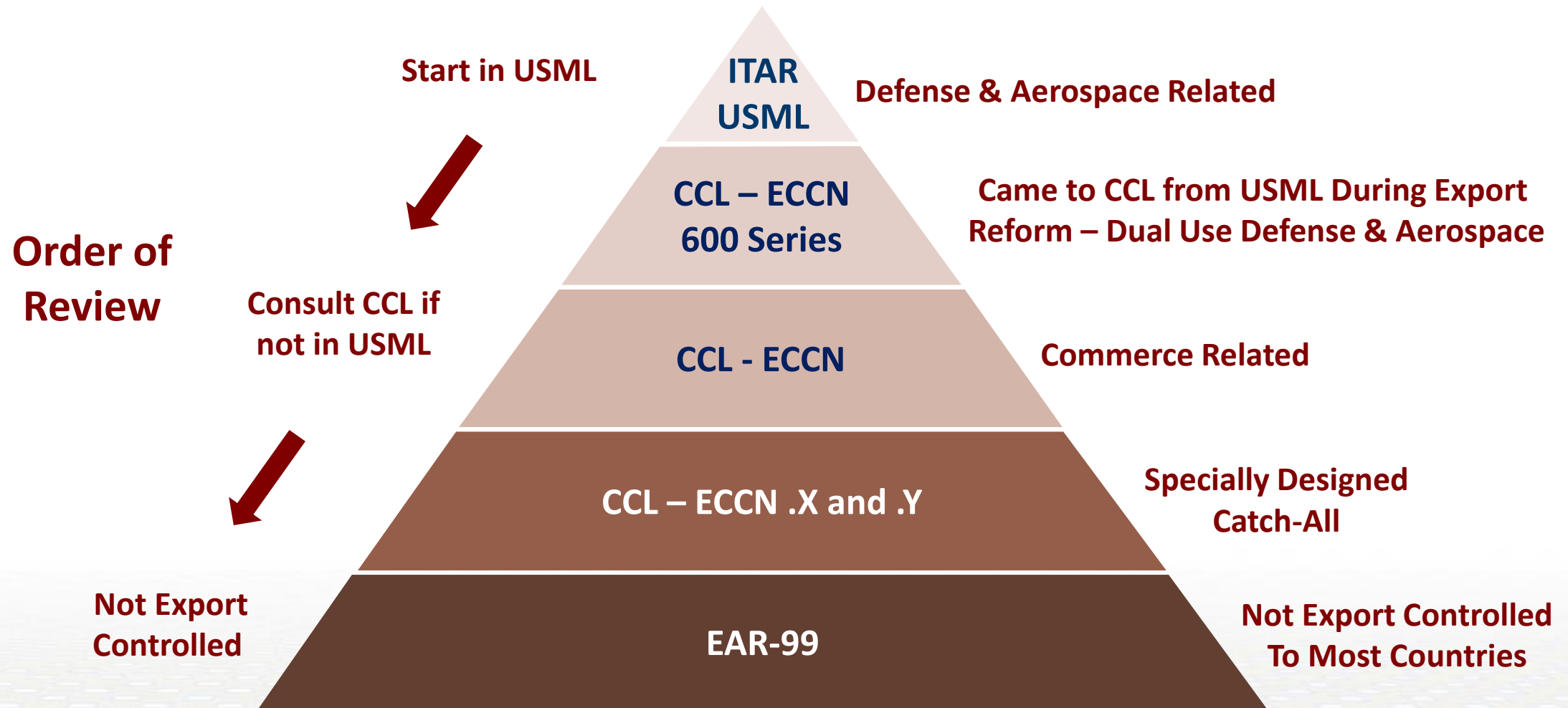
Version: RE-4.4

EAR Note Worthy Items – 2 of 2

- BIS amended the EAR to reflect changes to the MTCR Annex. This rule also expands the eligibility for the use of license exceptions under the EAR for MT-controlled items. These changes to license exception eligibility are also being made as part of a broader effort announced today that will liberalize several categories of export licensing requirements and the availability of export license exceptions for key allied and partner countries, as well as for members of certain multilateral export control regimes.

- BIS proposed revising License Exception Strategic Trade Authorization (STA) for the purpose of encouraging additional use of License Exception STA for ally and partner countries. This proposed rule is part of a broader effort that will revise several categories of export licensing requirements and the availability of export license exceptions for key allied and partner countries, as well as for members of certain multilateral export control regimes.
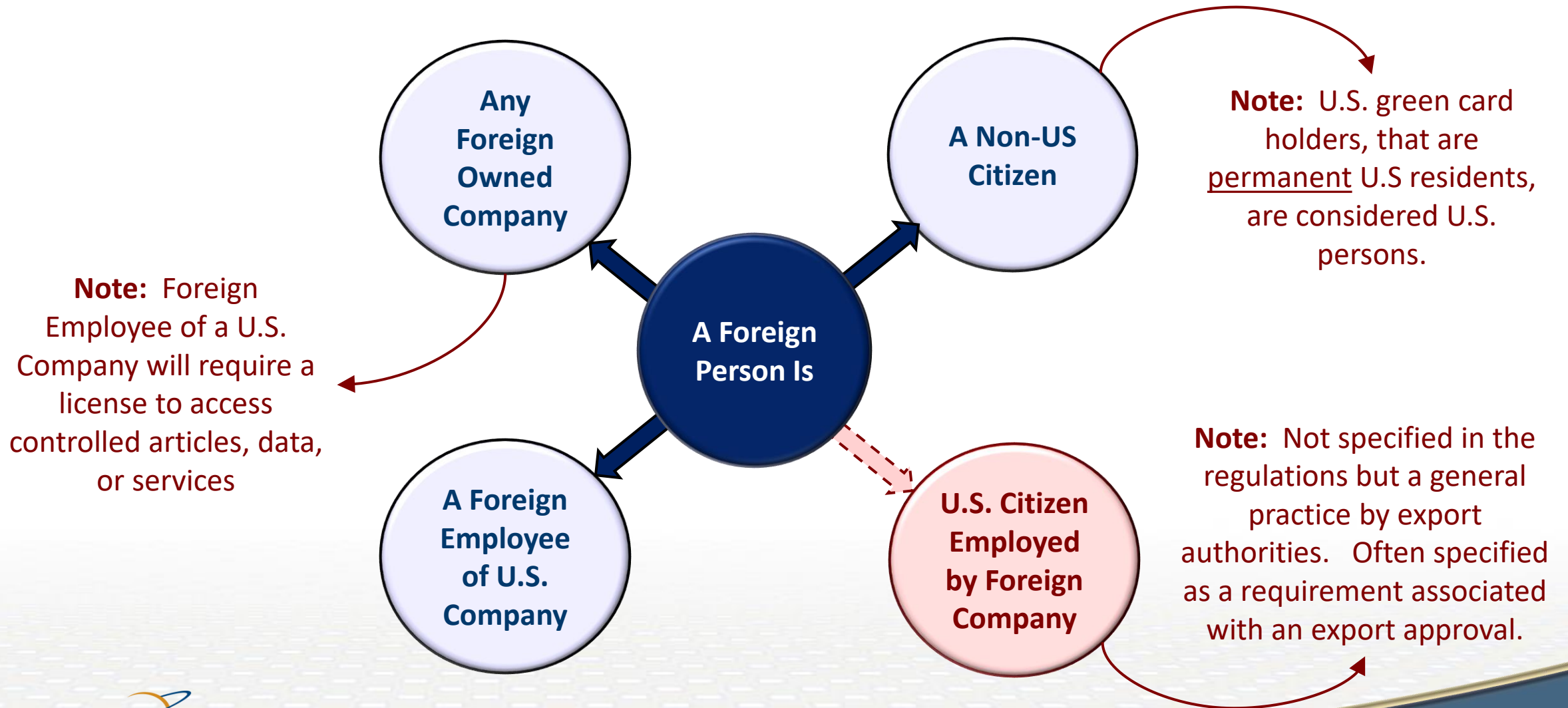
STA Exception Tool Location:
https://www.bis.doc.gov/index.php/statool.

Export Compliance

Export Classification Pyramid

Order of Review

Start in USML

Consult CCL if not in USML

Not Export Controlled

ITAR USML — Defense & Aerospace Related

CCL – ECCN 600 Series — Came to CCL from USML During Export Reform – Dual Use Defense & Aerospace

CCL - ECCN — Commerce Related

CCL – ECCN .X and .Y — Specially Designed Catch-All

EAR-99 — Not Export Controlled To Most Countries

EXCELERATE

Foreign Person Defined

A Foreign Person Is

- Any Foreign Owned Company
- A Non-US Citizen
- A Foreign Employee of U.S. Company
- U.S. Citizen Employed by Foreign Company

Note: U.S. green card holders, that are <u>permanent</u> U.S residents, are considered U.S. persons.

Note: Foreign Employee of a U.S. Company will require a license to access controlled articles, data, or services

Note: Not specified in the regulations but a general practice by export authorities. Often specified as a requirement associated with an export approval.

EXCELERATE

Be Aware – Many Paths to Export

Social Media

 ...

Brochures

Vendors

Exhibitions

Technical Papers

Facility Tours

Pictures

Responses

Selfies

Text Messages

Neighbors

Memory Sticks

Meetings

Briefings

Email

Viewing Hardware

Social Networks

Trade Shows

Cleaning Staff

EXCELERATE
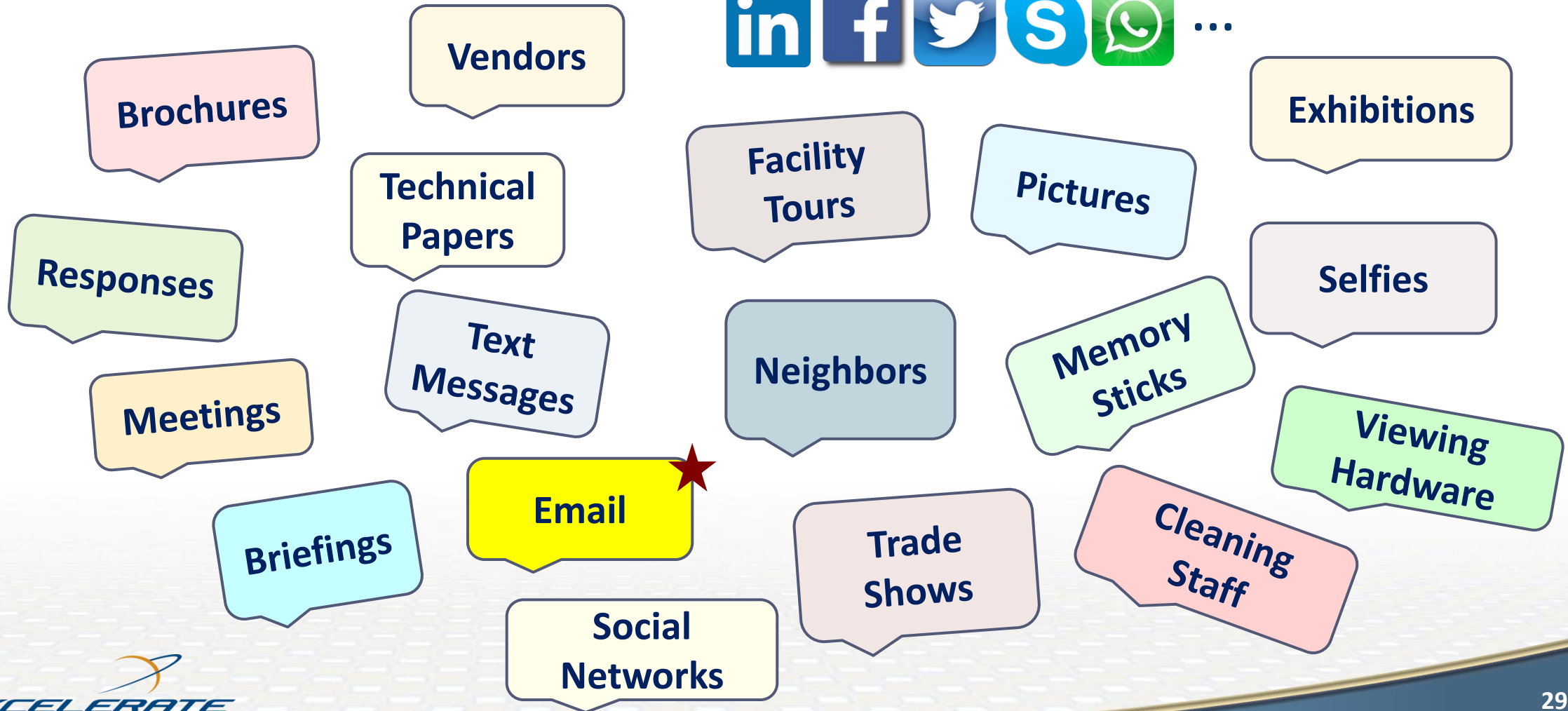
Protecting Technical Data

- No more important responsibility than controlling technical data.

- Remember that data comes in many forms – documents, pictures, etc.

- Secure all digitally stored technical data by encryption.

- Ensure all hardcopy data is not left unattended.

- Properly dispose of controlled data when no longer needed.

- U.S. companies receiving controlled data must be export compliant.

- Understand and follow your organization's export policies and procedures.

- Report potential export violations to your export compliance staff.

What is Public Domain?

- Sales at newsstands and bookstores

- Subscriptions which are available without restriction to any individual

- Through second class mailing privileges granted by the U.S. Government

- At libraries open to the public

- Patents available at any patent office except as defined in 125.2(b).

- Unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States

- Public release (*i.e.,* unlimited distribution) in any form after approval by the cognizant U.S. Government department or agency

Information on the Internet is <u>NOT</u> Automatically Considered Public Domain

Approval Provisos and Conditions

- **Some are Administrative:**
  - ○ "This license expires on ..."
  - ○ "Final USG configuration authorization must be the subject of separate export license application..."
- **Some are technical...**
  - ○ "Software source code may not be offered or discussed"
  - ○ "No US Government threat data can be provided, offered, or discussed"
  - ○ "Simulation data MUST be from the public domain or provided by the end user."
- **Look out for "death by proviso"**
  - ○ DTC or BIS approval but provisos and conditions limit the export to the point that the export cannot be performed.
  - ○ Typically, this is due to a mistake by DTC or BIS which can be rectified by a proviso or condition reconsideration

Version: RE-4.4

Meetings with Foreign Persons

- Meetings with foreign persons have the same export requirements as any other controlled export of technical data from the U.S.

- Do not disclose export controlled articles, technical data, or services, during the meeting with a foreign person, unless approved to do so.

- Know the limitations of approved agreements or licensing if export controlled topics will be discussed.

- Keep a record of the meeting dates, participants, and topic for your compliance records.

- During the meeting, be careful with leading questions: Use "How are you meeting the requirement?" instead of "Have you considered….?"

Important Stuff

Export Controlled Paper Confinement Tool Marketing

Non-Permanent Paper Binding Apparatus

- Olive Drab (OD) Green

- Made from high quality non-obtainium to reduce IR signature

- Holds 10 sheets of MIL-SPEC-123 paper for 254.3 days

- Dissolves if placed in salt water for 2.3 days

- 17 stacked in a crisscross pattern can stop a BB

Customers
- US SEAL Team 6
- Secret Service
- Army Rangers
- Navy Cooks
- Israeli Forces

Other Uses
- Fish Hook
- Fidget Toy
- Crude Digger
- Tiny Poker
- Projectile
- M16 Tool

Specifications
- 63.5 x 11.4 x 1.3 mm
- Weight: 45 grams
- Fastener Tension: 10.1 N
- MTBF: 6 months
- Max Wind Gust: 4.7 m/s

Export Controlled Paper Confinement Tool - Modify

Remove or Modify
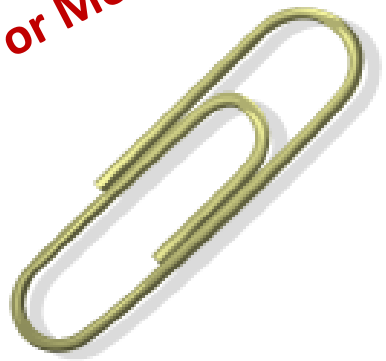
Non-Permanent Paper Binding Apparatus

- Olive Drab (OD) Green
- Made from high quality ~~non- obtainium to reduce IR signature~~
- Holds 10 sheets of MIL-SPEC-123 paper for ~~254.3 days~~
- ~~Dissolves if placed in salt water for 2.3 days~~
- ~~17 stacked in a crisscross pattern can stop a BB~~

Customers
- ~~US SEAL Team 6~~
- ~~Secret Service~~
- ~~Army Rangers~~
- ~~Navy Cooks~~
- ~~Israeli Forces~~

Other Uses
- Fish Hook
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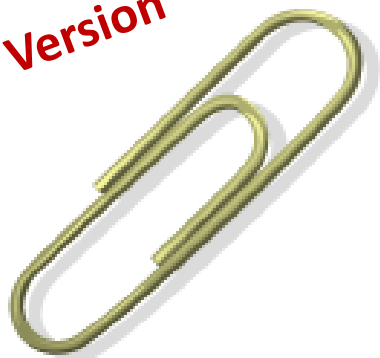- Crude Digger
- Tiny Poker
- Projectile
- ~~M16 Doohickey~~

Specifications
- 63.5 x 11.4 x 1.3 mm
- Weight: 45 grams
- ~~Fastener Tension: 10.1 N~~
- ~~MTBF: 6 months~~
- ~~Max Wind Gust: 4.7 m/s~~

EXCELERATE

Export Controlled Paper Confinement Tool - Marketing Lingo

Revised Version

Non-Permanent Paper Binding Apparatus

- Olive Drab (OD) Green
- High quality construction and material
- Holds 10 sheets of MIL-SPEC-123 paper
- Rugged – the harshest environments
- Reconfigurable for many uses

Customers
- US Army
- US Navy
- Foreign Forces
- Israel MOD
- Many Customers Worldwide

Other Uses
- Fish Hook
- Fidget Toy
- Crude Digger
- Tiny Poker
- Many Military Applications

Specifications
- 63.5 x 11.4 x 1.3 mm
- Weight: 45 grams
- Holds tight for long periods
- 400% longer product life
- Positive retention in worst conditions

EXCELERATE

Technology Control Plan (TCP)

- Compliance processes and procedures

- TCP governs interaction with foreign party's

- Provides guidance to company personnel

- ITAR and EAR regulations take precedent over TCP

- Management must be familiar with implementation of TCP.

Your <u>responsibility</u> is to understand and abide by the contents of your organizations TCP.

- **Management Commitment**
- **Compliance Personnel**
- **Awareness Training**
- **Export Control Labeling**
- **Distribution Control**
- **Secure Storage**
- **Technical Data Access**
- **Foreign Person Meetings**
- **Foreign Travel**
- **Service Providers & Subcontractors**
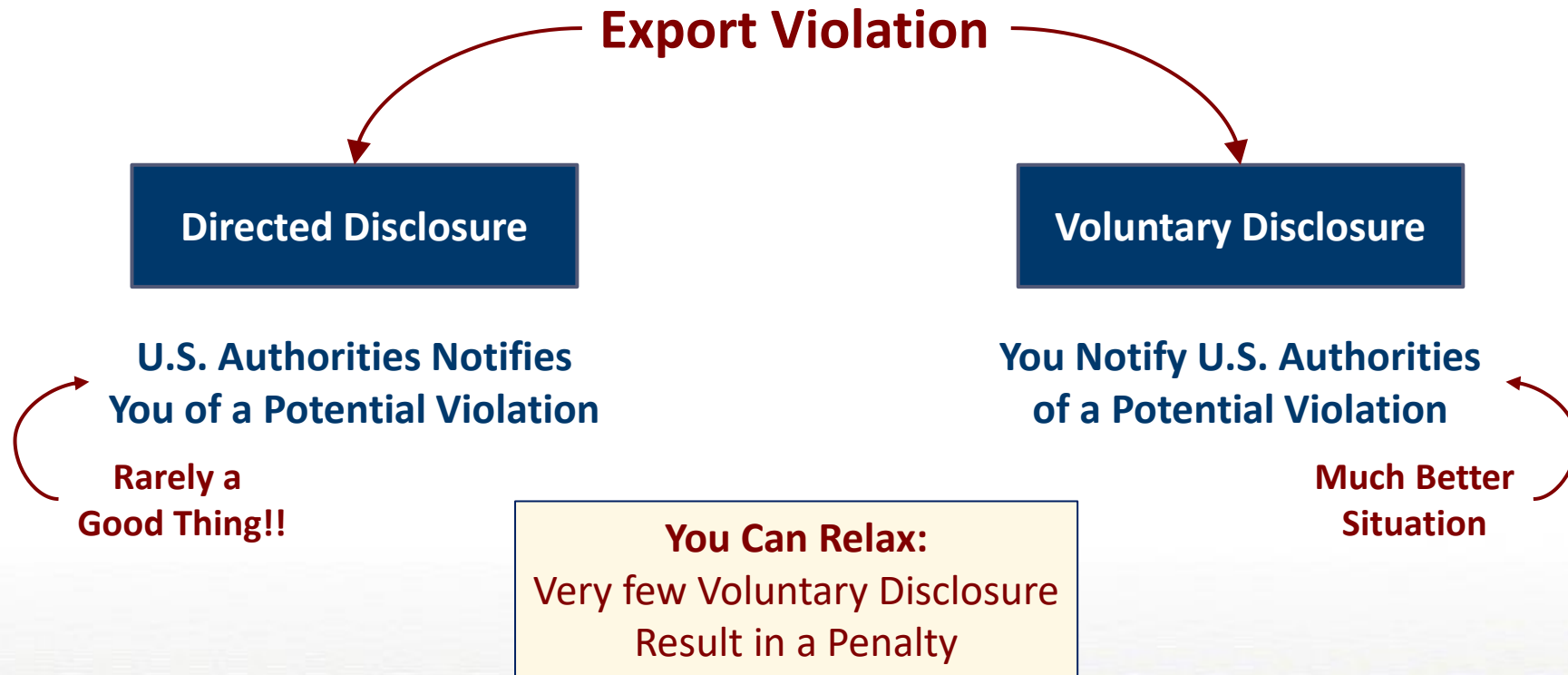- **Voluntary Disclosures**
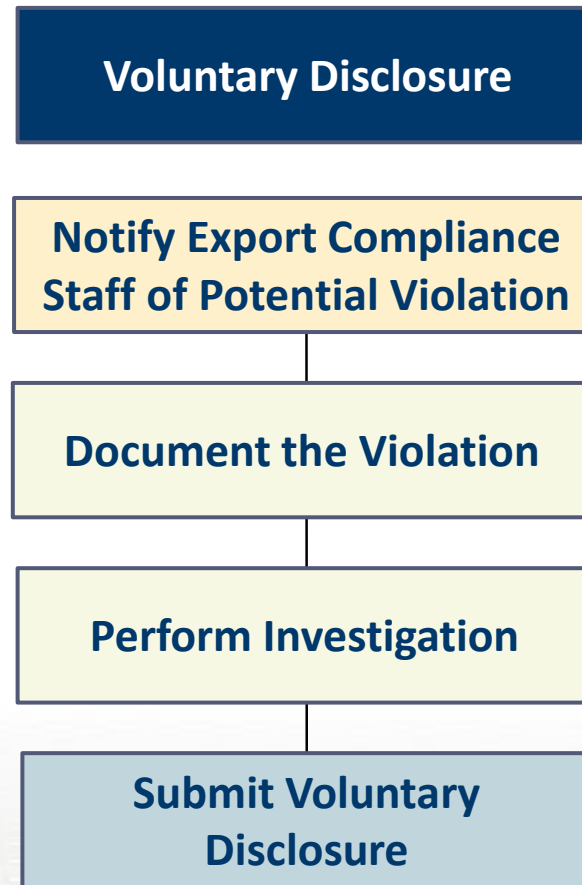
Compliance Section Summary

- Export compliance is everyone's responsibility.

- Understand and follow your organizations Technology Control Plan (TCP)

- Pay close attention to any provisos and conditions with an approval since they qualify the approved export authorization.

- Protect controlled technical data and not all information on the internet is considered public domain in relation to export compliance.

- Exports occur in many ways so be mindful of what you are conveying and to whom.

- Ask questions when you have them – the penalties for making an export mistake can be significant for your organization.

VIOLATIONS &
VOLUNTARY DISCLOSURE

Types of Export Violations

Export Violation

Directed Disclosure

Voluntary Disclosure

U.S. Authorities Notifies
You of a Potential Violation

You Notify U.S. Authorities
of a Potential Violation

**Rarely a
Good Thing!!**

**Much Better
Situation**

You Can Relax:
Very few Voluntary Disclosure
Result in a Penalty

Voluntary Disclosure

Voluntary Disclosure

Notify Export Compliance Staff of Potential Violation

Document the Violation

Perform Investigation

Submit Voluntary Disclosure

Potential Violation Penalties

Jail Time

Financial Penalties

EXPORT

Vast Majority – No Penalties

REMAINING EXPORT COMPLIANT

KNOW WHAT YOU ARE EXPORTING

WHO YOU ARE EXPORTING TO

ABIDE BY U.S. EXPORT REGULATIONS

Individual Export Compliance Liability

- An individual is immune from liability for activities associated with their responsibilities as an employee.

- There is <u>no immunity</u> for actions taken by an employee which are outside the scope of employee's responsibilities or those taken with negative intent, in bad faith, or in a reckless manner.

WRAP-UP

Version: RE-4.4

Export Compliance Takeaways

- Export compliance is everyone's responsibility.

- Understand and follow your organizations Technology Control Plan (TCP)

- Protect export controlled technical data and not all information on the internet is considered public domain in relation to export compliance.

- Exports occur in many ways so be mindful of what you are conveying and to whom.

- Ask questions when you have them – the penalties for making an export mistake can be significant for your organization.

Thank You!

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training@excelerate-inc.com