

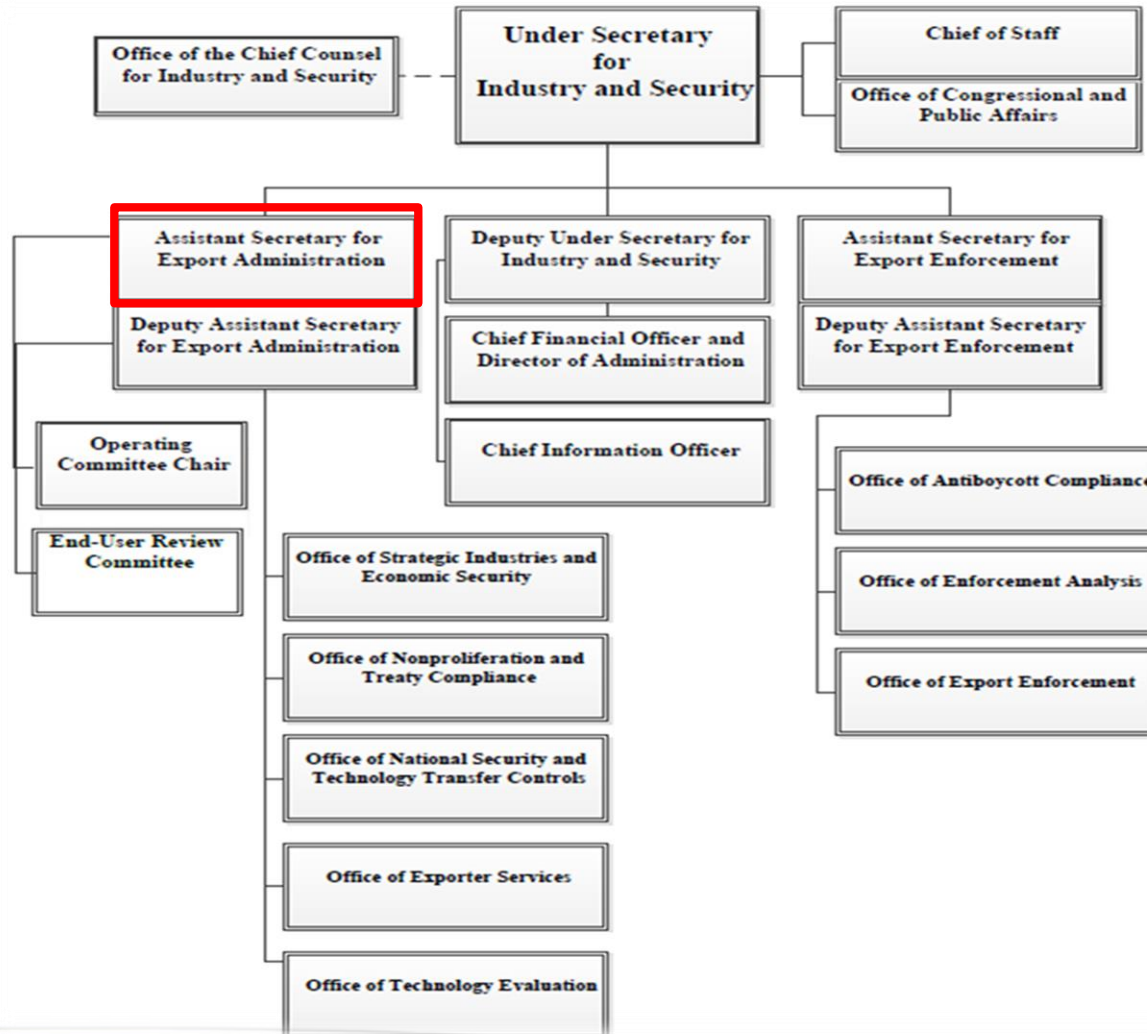


U.S. Department of Commerce Bureau of Industry and Security

**Asian Export Control Seminar
February 26, 2019**



BIS Organization





Export Control System Basics

Evolved from Cold War multilateral coordination to limit Soviet Union access to sensitive technology.

➤ Scope of Controls

- Dual-use and less sensitive military items
- Items: commodities, materials, software, technology, WMD support activities
- All items in U.S. economy, except as those covered by other departments (State, Energy, etc.), public information and fundamental research
- Certain foreign-produced items
- Exports; reexports; in-country transfers

➤ Sources of Controls

- 4 multilateral regimes (conventional arms, nuclear, missile, and CBW nonproliferation)
- Unilateral (regional stability; human rights; antiterrorism)
- End-use/end-user (Entity List; Is Informed letters)

➤ Interagency Coordination

- Regulations and license applications: Defense, State, Energy
- License application differences resolved through interagency escalation process

➤ Volume

- Over 35,000 license applications processed in 2018



ECRA Overview

The Export Control Reform Act of 2018 (ECRA) has three main components:

- Provides permanent statutory authorization for the current Commerce-lead export control system
- Establishes a formal interagency process to identify and control emerging and foundational technologies that are essential to the U.S. national security
- Continues export control enforcement authorities (e.g. subpoenas; arrests; firearms; criminal and civil penalties) and expands others (e.g. surveillance and undercover operations)

ECRA retains current provisions for weapons of mass destruction (WMD) sanctions and anti-boycott provisions.



Identification of Emerging & Foundational Technologies

Emerging Technologies Advance Notice of Proposed Rulemaking (ANPRM)

- Per ECRA Section 1758, BIS published an ANPRM on criteria for identifying emerging technologies
 - Solicited other agencies on emerging technologies for possible controls
 - Public comment period ended January 10, 2019, and 200+ comments currently being reviewed

Foundational Technologies

- Addresses mature technologies or technologies that have been reviewed for classification
- ANPRM forthcoming



Foreign Investment Risk Review Modernization Act (FIRRMA)

- The Foreign Investment Risk Review Modernization Act (FIRRMA) was recently enacted to update and modernize the Committee on Foreign Investment in the United States (CFIUS) process and one of its key provisions was to expand CFIUS's jurisdiction. Important changes to CFIUS enacted under FIRRMA include:
 - **Expanding the scope of CFIUS jurisdiction**
 - (1) Purchase, lease or concession by or to a foreign person of real estate located in proximity to sensitive U.S. Government facilities;
 - (2) "Other investments" in certain U.S. businesses that afford the foreign person access to material nonpublic technical information, membership on the board of directors, or other decision making rights;
 - (3) Any change in a foreign investor's rights resulting in foreign control of a U.S. business or an "other investment" in certain U.S. businesses; and
 - (4) Any transaction, transfer, agreement, or arrangement designed to circumvent CFIUS jurisdiction.
 - **Declarations** – Provides for an abbreviated filing or "light filing" process through a new declarations procedure that could result in shorter review timelines.
 - **Expanded timelines** – Expanded CFIUS's review period from 30 to 45 days and allows an investigation to be extended for an additional 15-day period under extraordinary circumstances.
- Through FIRRMA, CFIUS pilot program launched November 10, 2018
 - CFIUS determined new and evolving threats to U.S. national security arising from certain foreign investments in U.S. businesses in particular industries require immediate attention