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NAFTA WILL NOT BE TERMINATED

President Trump told the leaders of Canada and Mexico on Wednesday that the U.S. will renegotiate NAFTA rather than leave the trade agreement altogether, the White House says.

That's a surprising development given reports earlier in the day that the White House was drafting plans to begin the process of exiting the trade deal, which has been in place since 1994.

"President Trump agreed not to terminate NAFTA at this time and the leaders agreed to proceed swiftly, according to their required internal procedures, to enable the renegotiation of the NAFTA deal to the benefit of all three countries," reads a White House summary of Trump's calls with Mexican President Peña Nieto and Canadian Prime Minister Justin Trudeau.

"President Trump said, 'it is my privilege to bring NAFTA up to date through renegotiation. It is an honor to deal with both President Peña Nieto and Prime Minister Trudeau, and I believe that the end result will make all three countries stronger and better," the White House statement says.

Earlier Wednesday, Politico reported that the White House was developing plans for Trump to sign an executive order that would put the U.S. on a path to leaving NAFTA. White House strategist Steve Bannon and Peter Navarro, the head of the White House National Trade Council, drafted the executive order, according to Politico.

Trump has criticized NAFTA, saying that it harms American businesses and workers.

In a speech in Wisconsin last week, the Republican called the trade agreement a "disaster" for the U.S.

"NAFTA has been very, very bad for our country," Trump said. "It's been very, very bad for our companies and for our workers, and we're going to make some very big changes or we are going to get rid of NAFTA for once and for all. Cannot continue like this, believe me."

NEWSLETTER NOTES

Presidential Executive Order on Buy American and Hire American

EXECUTIVE ORDER

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BUY AMERICAN AND HIRE AMERICAN

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure the faithful execution of the laws, it is hereby ordered as follows:

Section 1. Definitions. As used in this order:

(a) "Buy American Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal procurement or Federal grants including those that refer to "Buy America" or "Buy American" that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.

(b) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(c) "Petition beneficiaries" means aliens petitioned for by employers to become nonimmigrant visa holders with temporary work authorization under the H-1B visa program.

(d) "Waivers" means exemptions from or waivers of Buy American Laws, or the procedures and conditions used by an executive department or agency (agency) in granting exemptions from or waivers of Buy American Laws.

(e) "Workers in the United States" and "United States workers" shall both be defined as provided at section 212(n)(4)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(4)(E)).

Sec. 2. Policy. It shall be the policy of the executive branch to buy American and hire American.

(a) Buy American Laws. In order to promote economic and national security and to help stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support the American manufacturing and defense industrial bases, it shall be the policy of the executive branch to maximize, consistent with law, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States.

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(b) Hire American. In order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad, including section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)).

Sec. 3. Immediate Enforcement and Assessment of Domestic Preferences According to Buy American Laws. (a) Every agency shall scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law.

(b) Within 150 days of the date of this order, the heads of all agencies shall:

(i) assess the monitoring of, enforcement of, implementation of, and compliance with Buy American Laws within their agencies;

(ii) assess the use of waivers within their agencies by type and impact on domestic jobs and manufacturing; and

(iii) develop and propose policies for their agencies to ensure that, to the extent permitted by law, Federal financial assistance awards and Federal procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement.

(c) Within 60 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Labor, the United States Trade Representative, and the Federal Acquisition Regulatory Council, shall issue guidance to agencies about how to make the assessments and to develop the policies required by subsection (b) of this section.

(d) Within 150 days of the date of this order, the heads of all agencies shall submit findings made pursuant to the assessments required by subsection (b) of this section to the Secretary of Commerce and the Director of the Office of Management and Budget.

(e) Within 150 days of the date of this order, the Secretary of Commerce and the United States Trade Representative shall assess the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement on the operation of Buy American Laws, including their impacts on the implementation of domestic procurement preferences.

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(f) The Secretary of Commerce, in consultation with the Secretary of State, the Director of the Office of Management and Budget, and the United States Trade Representative, shall submit to the President a report on Buy American that includes findings from subsections (b), (d), and (e) of this section. This report shall be submitted within 220 days of the date of this order and shall include specific recommendations to strengthen implementation of Buy American Laws, including domestic procurement preference policies and programs. Subsequent reports on implementation of Buy American Laws shall be submitted by each agency head annually to the Secretary of Commerce and the Director of the Office of Management and Budget, on November 15, 2018, 2019, and 2020, and in subsequent years as directed by the Secretary of Commerce and the Director of the Office of Management and Budget. The Secretary of Commerce shall submit to the President an annual report based on these submissions beginning January 15, 2019.

Sec. 4. Judicious Use of Waivers. (a) To the extent permitted by law, public interest waivers from Buy American Laws should be construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

(b) To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award or Federal procurement under consideration.

(c) To the extent permitted by law, before granting a public interest waiver, the relevant agency shall take appropriate account of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods, and it shall integrate any findings into its waiver determination as appropriate.

Sec. 5. Ensuring the Integrity of the Immigration System in Order to "Hire American." (a) In order to advance the policy outlined in section 2(b) of this order, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, and consistent with applicable law, propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud or abuse.

(b) In order to promote the proper functioning of the H-1B visa program, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.

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Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof;

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or

(iii) existing rights or obligations under international agreements.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
April 18, 2017.

Presidential Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch

EXECUTIVE ORDER

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COMPREHENSIVE PLAN FOR REORGANIZING THE EXECUTIVE BRANCH

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. This order is intended to improve the efficiency, effectiveness, and accountability of the executive branch by directing the Director of the Office of Management and Budget (Director) to propose a plan to reorganize governmental functions and eliminate unnecessary agencies (as defined in section 551(1) of title 5, United States Code), components of agencies, and agency programs.

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Sec. 2. Proposed Plan to Improve the Efficiency, Effectiveness, and Accountability of Federal Agencies, Including, as Appropriate, to Eliminate or Reorganize Unnecessary or Redundant Federal Agencies. (a) Within 180 days of the date of this order, the head of each agency shall submit to the Director a proposed plan to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency.

(b) The Director shall publish a notice in the Federal Register inviting the public to suggest improvements in the organization and functioning of the executive branch and shall consider the suggestions when formulating the proposed plan described in subsection (c) of this section.

(c) Within 180 days after the closing date for the submission of suggestions pursuant to subsection (b) of this section, the Director shall submit to the President a proposed plan to reorganize the executive branch in order to improve the efficiency, effectiveness, and accountability of agencies. The proposed plan shall include, as appropriate, recommendations to eliminate unnecessary agencies, components of agencies, and agency programs, and to merge functions. The proposed plan shall include recommendations for any legislation or administrative measures necessary to achieve the proposed reorganization.

(d) In developing the proposed plan described in subsection (c) of this section, the Director shall consider, in addition to any other relevant factors:

(i) whether some or all of the functions of an agency, a component, or a program are appropriate for the Federal Government or would be better left to State or local governments or to the private sector through free enterprise;

(ii) whether some or all of the functions of an agency, a component, or a program are redundant, including with those of another agency, component, or program;

(iii) whether certain administrative capabilities necessary for operating an agency, a component, or a program are redundant with those of another agency, component, or program;

(iv) whether the costs of continuing to operate an agency, a component, or a program are justified by the public benefits it provides; and

(v) the costs of shutting down or merging agencies, components, or programs, including the costs of addressing the equities of affected agency staff.

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(e) In developing the proposed plan described in subsection (c) of this section, the Director shall consult with the head of each agency and, consistent with applicable law, with persons or entities outside the Federal Government with relevant expertise in organizational structure and management.

Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
March 13, 2017.

Enacting Sensible Drone Regulation on a Federal and Local Level

The FAA has and continues to define what it means to legally operate a drone in the United States, but the authors of a recent article laid out why the agency's position in doing so might need to be reconsidered. Jason Snead and John-Michael Seibler from the Heritage Foundation showcased how and why states and localities are fully equipped to regulate local drone operations through the enforcement of existing laws. Their article, Seattle Case Shows Why Drone Regulation Should Be Local, Not Federal, is a great look at the differences and distinctions between federal and state law when it comes to drone regulation, and illustrates where shortcomings can and will arise.

After making such a great case for a more practical approach to drone regulation, there were a number of topics that came to mind around how such an approach could and would work. I got in touch with the authors of the article to discuss these issues, and the two answered every question I threw out to them.

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Jeremiah Karpowicz: What can you tell us about the work you do at the Heritage Foundation? How much of the Foundation's work is focused on drone technology?

Jason Snead and John-Michael Seibler: We both work in the Meese Center for Legal and Judicial Studies, which focuses primarily on issues surrounding the law, the Constitution, and the federal courts. We both work on overregulation and overcriminalization, and in 2015 when we began looking at the FAA's decision to push forward with a recreational drone-owners' registry, it became clear that the agency's treatment of drones was an example of both. We started with a narrow critique of the recreational registry as running afoul of section 336 of the 2012 Modernization Act and a misuse of the "good cause" exemption under the Administrative Procedure Act, and have since broadened our work. Now we are looking at airspace property rights issues and federal preemption in the drone space.

Tell us a little bit about your personal interest in UAVs.

We both think the technology will be revolutionary in multiple arenas – package delivery and aerial photography being just the tip of the iceberg. I (Jason) own a small drone and occasionally get the chance to fly it, but the flight restrictions in the DC metropolitan area really make the hobby a non-starter here, unless you are content to fly indoors.

I got in touch with you because of your excellent article, but before we get into that I wanted to get a sense of where you're coming from around these issues. If we could wave a magic wand and take us back to 2012 when Congress made the safe integration of drones in the national airspace a top priority, what do you believe would have made the most sense in terms of making that happen from a policy perspective?

Using Section 333 to grant broad waivers by category of drone, or by type of operation, would have helped to expedite commercial drone activity. If you read the 2012 statute, it's clear that Congress wanted the FAA to facilitate commercial operations as quickly as possible. The rulemaking deadlines in that law are aggressive, but Congress seems not to have wanted industry to have to wait even that long – hence the Section 333 waiver authority. The FAA interpreted Section 333 narrowly, granting waivers only on a case-by-case basis. If it had taken a broader approach, operators could have avoided the months-long delays that plagued the 333 application process. And of course, the agency could still have put in place reasonable restrictions on operations, such as constraining drones to Class G airspace, or barring them from flying at night.

What kind of complications have you seen as a result of the differences in FAA regulation between commercial and recreational operation?

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One of the most significant complications is just where the agency draws the line between recreational and commercial conduct. It may seem straightforward, but in practice, the distinction between the two has been blurred. In several cases, the FAA has pursued enforcement actions against hobby fliers who posted videos to YouTube, alleging that the minimal advertising revenue YouTube generates can retroactively transform a flight from recreational to commercial activity. More recently, the agency has hinted that some hobbyists may actually be required to comply with Part 107 depending on whether they join a community based organization like the Academy of Model Aeronautics – but fliers have no definition of what constitutes a CBO, leaving many in the lurch.

What did Part 107 tell you about how things have progressed or changed in terms of how the FAA views commercial operations, and even about the approach of the FAA itself?

Part 107 tells us a few things. First, the FAA is having a great deal of difficulty meeting either internal or Congressionally-mandated deadlines for rulemaking. Part 107 came nearly a year late, and a regulation allowing for flights over people was promised by the end of 2016, but that has yet to materialize. Second, the FAA seems absolutely committed to restricting commercial activity to the pace of regulation, even while candidly acknowledging that the regulatory process is far slower than the rate of innovation.

Have you seen Part 107 open up commercial opportunities? Or do you find many are still waiting for such legal logistics to get further sorted out?

Part 107 has certainly opened up commercial opportunities for drone operators, but it is hardly the "grand opening of the skies" the FAA has made it out to be. In reality, it is an incremental step forward from the Section 333 process. There are still a great many restrictions on operations – no night flying and no flying beyond line of sight, for example. So, Part 107 has finally normalized access to the market, but it has only done so for a narrow set of operations, and only if operators comply with fairly rigorous FAA requirements and submit to a TSA background check. More complex operations, of the sort that could revolutionize package delivery or allow drones to engage in life saving operations, are still banned. As a result, we still see companies doing significant testing and investment abroad rather than here at home.

Focusing in on your article, I thought it provided readers with an amazing example of how effective local and existing regulation can be, as opposed to federal and drone-specific laws. Do you think some members of the public and even the drone industry itself have been trained to look to the FAA for guidelines, even as this is proof of how unnecessary that is?

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When people think of aviation regulations, they naturally think of the FAA. This is a consequence of the fact that, for nearly a century, "aviation" and "manned aviation" have been essentially synonymous. But drones represent a paradigm shift – we aren't talking about manned operations that are virtually exclusively at high altitudes, we are talking about unmanned operations of much smaller craft that are expected to fly almost exclusively at low altitudes, in airspace right above our backyards. At those low altitudes, it is not the FAA, but local zoning boards, town councils, and local police departments that have the most experience and awareness of the local terrain. This is not to say the FAA has no role to play in drone regulation, but rather to say that its role is going to be significantly more limited compared to the role the agency plays in manned aviation.

Without getting specific, do local authorities have enough laws at their disposal to effectively deal with issues created by or caused by drones, which exclude any drone-specific laws or even what the FAA has mandated?

Local authorities have access to a wide variety of technology-agnostic statutes that will enable them to deal with reckless operators or bad actors. Even the FAA has recognized that reckless endangerment, assault and battery, and peeping tom laws are generally applicable to someone using a drone to commit the crime in question. Some states and localities have moved to criminalize certain conduct when done via drone, but we caution against this approach, as it results in needless duplication of the criminal law, which can result in charge-stacking. States and localities should be looking to the harm caused by technology, not the technology itself. Where and when drones cause unique harms, drone-specific laws may be called for. The same is true at the federal level.

One of my favorite lines in that article stated that drones "only offer a new way to commit old crimes." This is something that can be pushed forward as well since drone technology will continue to change and evolve well past any drone-specific laws that are created in the short term, don't you think?

Absolutely. The pace of technological change is rapid and accelerating. If lawmakers write laws that are specific to drones as we understand and envision them today, those laws risk rapid obsolescence. We see this happen in other contexts, where criminal law becomes outmoded but remains on the books.

Regardless of the specific issue or complaint, the FAA will always frame their approach and action in terms of safety. FAA officials will often reply to complaints about their speed or caution by saying that if a drone is the cause of a major incident, everyone will look to and blame the FAA. Is that a fair justification for the approach they've taken?

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We certainly understand the safety concerns of the FAA. The agency is right to point proudly to the safety culture and record they help to maintain in manned aviation. Unfortunately, when it comes to drones, officials have been too reliant on worst-case scenarios when justifying their policy positions. The fact is, there has never been a collision between a manned jet and a drone, and pilot sightings of UAS are unreliable, to say the least. It is also worth pointing out that a bad actor intent on using a drone to commit a crime will not be stopped or deterred by any existing FAA regulation any more than gun laws deter gangs from using firearms. Safety is certainly an important consideration, but so too is the cost to society that comes from restricting technological advancement and losing out on the benefits that come with it.

When someone causes an accident with a car, you very rarely hear anyone claim that the Department of Transportation created a safety issue by issuing that person a driver's license. Will we someday get to that same place with drones?

This is an example of one of the many fundamental policy questions that remain to be resolved: who should be the primary authority over operations in low-altitude airspace, the states, or the federal government? At the moment the FAA has staked out a fairly aggressive posture, claiming to preempt virtually the entire field of drone law and regulation. Whether that position is tenable is an open question. The agency has limited resources and a big country to cover, so it would make sense to keep more responsibility and accountability for low-altitude rule-making and enforcement at the local level.

How do you think the development of standards around how drones should be operated in certain industries should factor into regulation?

The short answer is, industry standards and best practices have a significant role to play, particularly as we live in a world where the pace of technological change is accelerating. Regulators cannot keep pace, and will only fall further behind in the future. Consequently, government officials need to be prepared to move away from prescriptive regulations towards flexible performance-based standards that allow for new developments while guaranteeing a minimum level of safety. However, government regulation is not the only means of ensuring safety. The tort system affords people the ability to sue for damages if drones crash into their property or cause them harm. And no drone company wants to suffer the damage to its reputation that would come from rolling out an immature and error-prone system, especially since prominent early failures risk turning off the public to unfamiliar new technologies.

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Your piece mentions that the FAA has defined a drone as an "aircraft" in the same way they define a 747 as an aircraft. Few would argue they're actually the same, but I imagine advocates for that position would argue the similarities are in terms of airspace. At certain times, that drone and 747 are in the same airspace, and during that time they're both "aircraft" in the sense that a collision could cause a major problem. Do you think that interpretation justifies that "aircraft" definition?

The fact is, these technologies are different, and we need regulatory and legal schemes that recognize that difference if the drone industry is to achieve its full potential. The FAA argues that if something flies, it is a plane. But if we accept that, we must also accept the argument that paper airplanes, and perhaps even baseballs, are aircraft for the purposes of federal law, and subject to the FARs. This is clearly absurd. Defining drones as "aircraft" subjects them to an array of laws and regulations written for manned aircraft, and the result, as we have seen, is a morass of inconsistent and sometimes contradictory requirements, enforced through arbitrary rulemaking, and backed up by severe criminal penalties. For example, the FAA maintains that it is a crime to shoot down a drone, citing section 32 of Title 18, which carries a 20 year prison sentence. Does that make sense in the drone context?

Is it possible to change the direction of regulation? Ultimately, do you think we'll need that many more examples like the one in Seattle to help compel the FAA to focus more on integration? Or will something much more dramatic need to happen?

If we wait for something more serious to happen, we risk overreacting in the heat of the moment. It would be better to take the time now to develop a well thought out approach to drones, one that allows for industry innovation, respects the sovereignty of states and the interests of local governments and private landowners, and grants the federal government sufficient regulatory power to ensure safety in the national airspace. Congress has just such an opportunity, in the form of the upcoming FAA reauthorization.

What would you say to someone who told you they want to fight for and help enact drone policy that makes sense in 2017 and beyond? What's the best thing they can do to be part of that effort?

The best thing they could do is let their lawmakers know that they care about the issue, and that they care about getting the policy and regulatory framework right. The FAA can only do what Congress lets it do, and if legislators know that their citizens care about who owns the airspace directly above their own backyards, we are more likely to get the kind of forward-thinking policy America deserves.

FDA Releases List Of Class I Medical Devices Exempt From 510(k) Notifications

The FDA has compiled a list of over 70 class I medical devices that will no longer be subject to premarket notification requirements, effective immediately. This list's release comes on the heels of a list of class II device exemptions released last month, and is in accordance with amendments to the Federal Food, Drug and Cosmetic Act (FDCA) effected by the 21st Century Cures Act, which passed in 2016.

A 510(k) submission currently covers all medical devices that are "substantially equivalent" to devices currently on the U.S. market, or previous models of the same device. These applications are evaluated by the FDA's Center for Devices and Radiological Health (CDRH) to ensure that any differences do not alter the new device's safety or effectiveness profile.

The 21st Century Cures Act was a bipartisan bill signed into law by then-President Obama in December 2016, and aimed at increasing research funding for complex and challenging diseases, particularly mental health issues. The law also included substantial changes to the FDA's regulatory process, aspects of which lawmakers determined were unnecessary and needlessly burdensome to industry stakeholders in ways that slowed innovation and patient access.

The agency stated in the Federal Register, alongside the list of now-exempt devices, that "FDA's action will decrease regulatory burdens on medical device industry and will eliminate private costs and expenditures required to comply with certain Federal regulation."

One of the amendments to the FDCA required the FDA to publish a list of medical devices that no longer required 510(k) premarket notifications. The list of class II devices published last month was required within 90 days, and a list of class I devices was expected within 120.

Medical devices are classified in one of three groups, depending on the amount of risk associated with their use. Class I medical devices are those products deemed to be low-risk, and as such are subject to the least amount of regulatory control. Devices on the class I exemption list include enzyme controls, tonometers, parallelometers, irrigating dental syringes, finger cots, and protective restraints for patients.

According to the agency, decisions to include or exclude devices of either class from the exemption list were based "on the assurance of safety and effectiveness that other regulatory controls, such as current good manufacturing practice requirements, provide."

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These exemptions do not come without limitations, and FDA stipulates that exemption from premarket notification does not provide exemption from other regulatory requirements. Additionally, the agency provided some exceptions to items included on the list.

The list of class II medical device exemptions is subject to 60 days of comment from regulators and industry stakeholders, but the class I list will go into effect immediately. In accordance with the amended FDCA, the agency is required to update the list every five years.

Businesses Take a Strategic Turn Toward Encryption

Today, more organizations are taking a strategic stance to encryption, and they are deploying a range of technologies and techniques to combat external threats.

Businesses have responded to the increased use of the cloud with a commensurate adoption of encryption, the Ponemon Institute and Thales outlined in the "2017 Global Encryption Trends Study." As many as 41 percent of respondents believed their organization had a strategy that was applied consistently across the enterprise.

The research highlighted how the growing use of on-demand systems and services means line-of-businesses executives are taking a comprehensive approach to data security. Additionally, they are, in many cases, helping to dictate how information is used and protected.

Creating a Strategy for Encrypted Data

Businesses are aware of both the potential risk of cyberattacks and of the requirement to protect sensitive data, said Larry Ponemon, chairman and founder of the Ponemon Institute, in the report's press release. He added that smart executives understand they must replace reactive approaches with a sophisticated data protection strategy. Business leaders have a higher influence over this aspect of a security strategy than IT operations for the first time in the study's 12-year history.

Infosecurity Magazine noted compliance is the top driver for encryption, according to 55 percent of respondents. It was followed closely by protecting enterprise intellectual property (51 percent), customer information protection (49 percent) and protection from external threats (49 percent).

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Understanding the Rise of the Cloud and Encryption

About two-thirds (67 percent) of respondents take one of two routes to securing data at rest in the cloud: They either encrypt data on-premises prior to transmitting it to the cloud, or they encrypt it on-demand using keys they generate and manage on their own site.

But 31 percent of firms are using or plan to use hardware security modules (HSMs) with bring-your-own-key deployments. As many as 38 percent of firms now use HSMs, which represents a new industry high. Almost half of those businesses own and operate HSMs on-site to support cloud-based apps.

More than two-thirds (37 percent) said their organizations turn over complete control of keys and encryption processes to cloud providers. Another 20 percent are using or plan to deploy cloud access security brokers (CASBs). Overall use of HSMs with CASBs is expected to double during the next year from 12 percent to 24 percent, Infosecurity Magazine reported.

Implementing a Stronger Security Strategy

Organizations are adopting encryption at a rapid and increasingly urgent pace. The move is largely because the technology helps enterprises support dynamic industry regulations while also protecting sensitive data in the cloud.

Yet the shift towards stronger data security should not be taken for granted. Thales and 451 Research stated 93 percent of firms will use sensitive data in an advanced technology environment, such as the cloud, this year. However, 63 percent also believed they were deploying these technologies without appropriate data security systems in place.

Business and security leaders should ensure their on-demand IT approach is matched with a strong security strategy. The deployment of service-based security tool sets, the classification of sensitive data within the cloud, and the use of information security across all advanced technology platforms are potential solutions for securing enterprise data.

Hong Kong

On January 19, 2017, BIS published a regulatory requirement for exporters and reexporters of items controlled under the multilateral regimes to have a Hong Kong license, if one is required, prior to exporting or reexporting under a BIS export license or license exception. For additional information, please review the rule or the Frequently Asked Questions.

Licensing Policy

The Hong Kong Special Administrative Region (HKSAR) and the People's Republic of China (the PRC or Mainland China) are treated as two separate destinations under U.S. law for export control purposes (see Hong Kong's separate entry on the Commerce Country Chart in Supplement No. 1 to Part 738 of the Export Administration Regulations. The United States-Hong Kong Policy Act of 1992 (Public Law 102-383, 106 Stat. 1448, Oct. 5, 1992) allows the United States to continue to treat Hong Kong separately from Mainland China for matters concerning trade and export control. Hong Kong administers its own import and export systems and, owing to its status as a cooperating country with multilateral export control regimes, receives favorable treatment with regard to U.S. export licensing and regulations.

In most cases, a license issued for an export to Hong Kong is valid only for export to Hong Kong. Certain items subject to the EAR that do not require an individual validated license for export from the United States to Hong Kong require a license for reexport from Hong Kong to China. However, , if an item is going to Hong Kong on its way to China, you must determine license requirements based on China as the destination.

Tiananmen Square Sanctions

Following the 1989 military assault on demonstrators by the PRC in Tiananmen Square, the U.S. Government imposed constraints on the export to the PRC of certain items on the Commerce Control List (CCL). Pursuant to Section 902(a)(4) of the Foreign Relations Authorization Act for fiscal year 1990-1991, Public Law 101-246 (February 16, 1990), better known as the U.S. Tiananmen Square Sanctions, BIS reviews applications for the export or reexport to China of items controlled for Crime Control (CC) reasons under a general policy of denial. However, under the "one country, two systems" principle, BIS reviews applications for the export or reexport to Hong Kong Government end-users, or in certain cases to private end-users, on a case-by-case basis.

License Exceptions

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A license exception is an authorization to export or reexport certain items under stated conditions without a license, even though such exports or reexports would otherwise require a license. There are certain limited circumstances in which a license exception may be available for export to Hong Kong, or for reexport from Hong Kong to China, based on a number of factors, including the Export Control Classification Number (ECCN), the end-user and the end-use. You should consult Part 740 of the EAR for details on whether or not a license exception is available for export to Hong Kong or reexport from Hong Kong to China.

Hong Kong Best Practices

Hong Kong has promulgated a set of "Best Practices" and BIS encourages you to ensure that your company, as well as all of the parties in the transaction chain, adheres to best practices. Your Hong Kong consignees may commit a violation of Hong Kong export controls if they fail to follow Hong Kong's best practices. You can view TID's best practices here, and are encouraged to share them with your overseas counterparts.

If you would like to know more about an entity in Hong Kong, all companies doing business in Hong Kong are required to register with the Hong Kong Inland Revenue Department. Information about registered companies is available to the public. Basic company information is available for free at their Cyber Search Center, and more detailed information is available for a nominal fee.

Ahead Of NAFTA Talks, U.S. Sets 20 Percent Duties On Canadian Softwood Lumber

WASHINGTON (Reuters) – The United States will impose preliminary anti-subsidy duties averaging 20 percent on imports of Canadian softwood lumber, Commerce Secretary Wilbur Ross said on Monday, escalating a long-running trade dispute between the two neighbors.

The move, which affects some $ 5.66 billion worth of imports of the construction material, sets a tense tone as the two countries and Mexico prepare to renegotiate the 23-year-old North American Free Trade Agreement.

Canada denounced the U.S. action and vowed to protect its lumber interests through litigation.

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News of the tariffs sent the U.S. dollar sharply up against the Canadian dollar in Asian trading to hit an almost four-month high. The Canadian currency sank to C$ 1.3559 to the greenback, or 73.75 U.S. cents, down from its North American close of C$ 1.3516, or 73.99 U.S. cents.

Ross told Reuters in a telephone interview that Canada was “already retaliating” against the United States well ahead of the lumber duties by restricting imports of U.S. highly filtered milk protein products used by cheesemakers.

President Donald Trump last week called Canada's dairy protections “unfair.”

Ross said some Wisconsin dairy producers were now “losing their farms” because of the restrictions. “Apparently Canadians now are coming down and saying: 'Since you can't do it anymore, I'll buy your equipment for 5 cents on the dollar,'” he said.

U.S. lumber producers asked the Commerce Department last November under President Barack Obama to investigate what they viewed as unfair subsidies to Canadian competitors who procure their timber from government lands at cheaper rates. U.S. lumber producers generally cut timber grown on private land.

Canadian Natural Resources Minister Jim Carr and Foreign Minister Chrystia Freeland said in a joint statement that Commerce's accusations “are baseless and unfounded” and would raise U.S. home construction and renovation costs.

Ross said the duties collected would total about $ 1 billion a year. In a statement, he said the need for the lumber duties and Canada's dairy restriction were “not our idea of a properly functioning free trade agreement.”

NAFTA never addressed the softwood lumber issue or Canada's largely closed dairy market. The Trump administration has vowed to renegotiate NAFTA on terms that would reduce U.S. goods trade deficits of $ 63 billion with Mexico and $ 11 billion with Canada last year.

NAFTA TALKS EXPECTED THIS SUMMER

oss said NAFTA's dispute resolution system needed to be changed because it had worked against the United States in the lumber dispute.

NAFTA talks are expected to begin later this summer after a 90-day legal consultation period.

The Commerce Department said West Fraser Mills (TO:) would pay the highest duty rate at 24.12 percent, followed by Canfor Corp (TO:) at 20.26 percent.

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Resolute FP Canada Ltd (N:) will pay a 12.82 percent duty, while Tolko Marketing and Sales and Tolko Industries will pay a 19.50 percent duty and J.D. Irving Ltd will pay 3.02 percent.

All other Canadian producers face a 19.88 percent duty, according to the document.

The preliminary determination directs U.S. Customs and Border Protection to require cash deposits on all softwood products imports starting 90 days ago.

To remain in effect, the duties need to be finalized by Commerce and then confirmed by the U.S. International Trade Commission after an investigation that includes testimony from both sides.

Private Sector Investment Leading Fuel Cell Surge

Growing sales are helping to bring attention to the range of benefits and markets fuel cells can serve, with high profile corporations and utilities leading both new and repeat customers, according to The Business Case for Fuel Cells 2016: Delivering Sustainable Value, a new report from the Fuel Cell and Hydrogen Energy Association (FCHEA).

Fuel cells offer a unique combination of benefits - clean, reliable, on-demand power generation; fuel flexibility with ability to utilize pure hydrogen, natural gas or renewable biogas; silent operation; and scalability, making them ideally suited for a range of applications. In addition to stationary and backup power, fuel cells are also competing and succeeding in the material handling market, with companies finding value in improved operational efficiency and cost savings using fuel cells in forklifts and other vehicles over traditional battery-powered units.

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"Many of the world's best-known companies and household brands trust fuel cell technology for reliable and affordable energy," said FCHEA President, Morry B. Markowitz. "Fuel cells enable a growing range of customers to not only achieve their environmental goals, but more significantly, obtain economic and operational benefits that boost their bottom line as well. Fuel cells are here to stay because they offer the full-package of clean, efficient power for business customers of all sizes."

Highlights of the new report include:

- The Home Depot is now the country's largest stationary fuel cell customer, with more than 140 retail sites in California, Connecticut, and New York utilizing the technology, totaling more than 28 MW. The company also relies on fuel cell forklifts at a site in Ohio and plans for an additional deployment in Georgia;
- IKEA recently installed fuel cells at four more stores in California and one in Connecticut for a total of 1.5 MW;
- eBay added 3.75 MW to its Utah data center, bringing that installation to approximately10 MW;
- New customer Pfizer installed 5.6 MW of fuel cells at its Connecticut campus.
- Utility Avangrid has four different installations totaling in excess of 10 MW

The new report profiles dynamic market sectors where fuel cells are making an impact including:
Retail Shopping; Grocers, Food & Logistics; Industrial & Consumer Products; Technology & Telecommunication; Entertainment & Sports; Financial Services; Real Estate; Healthcare & Biotechnology; Hotels; Transportation; and Utilities.

This Sub Could Attack North Korea

The U.S. Navy has deployed one of its most powerful submarines to South Korea in a naked display of military might. The *USS Michigan*'s arrival significantly escalates the Trump administration's confrontation with North Korea over Pyongyang's nuclear-weapons program.

Michigan pulled into Busan, a large port city in southern South Korea, on Tuesday for what the Navy described as "a routine visit during a regularly scheduled deployment to the Western Pacific." But the sub's arrival in South Korea is no coincidence. An Ohio-class guided-missile submarine, the 560-foot-long *Michigan* carries as many as 154 Tomahawk cruise missiles plus a mini-sub for transporting Navy SEAL commando teams ashore.

To put that into perspective, Trump's April 6 missile strike on Syria's Sharyat air base—retaliation for the Syrian regime's use of chemical weapons—involved just 59 Tomahawks.

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Michigan possesses "unprecedented strike and special-operation mission capabilities from a stealthy, clandestine platform," according to the Navy.

The Navy has just four guided-missile submarines, only one or two of which are normally available for combat. Sending *Michigan* to South Korea is big deal. That the Navy announced the sub's arrival in an official press release is equally significant—the sailing branch doesn't normally comment on the comings and goings of its elusive submarines.

"The beauty of submarine operations is that only our team knows where they are, and that keeps the enemy guessing," Eric Wertheim, an independent naval analyst and author of *Combat Fleets of the World*, told The Daily Beast.

In other words, the Trump administration wanted the *Michigan* to be on hand as the crisis on the Korean Peninsula worsens. And it wanted Pyongyang, and the world, to know that *Michigan* was hanging around.

"By announcing her presence in the region, our government is likely sending a message of strength, which when combined with the other military assets in the region is probably aimed at both our potential adversary and our allies as a demonstration of American resolve," Wertheim said.

North Korea, which already possesses a small number of atomic warheads, tested an apparently nuclear-capable ballistic missile on April 15. "The missile blew up almost immediately," the U.S. Defense Department noted.

But the test failure hasn't defused tensions. Having declared in mid-March that America's "policy of strategic patience" with North Korea "has ended," Secretary of State Rex Tillerson was scheduled Wednesday, along with Defense Secretary James Mattis, to brief the U.S. Senate on President Donald Trump's plan to deal with North Korea.

The Trump administration is apparently trying to achieve decisive results on the Korean Peninsula before South Korea's May 9 election. Voters will elect a successor to former President Park Geun-hye, who was removed from office in early March amid corruption allegations and a bizarre scandal involving a shamanistic cult.

The frontrunners for the next president are all left-leaning and have advocated a softer approach to Pyongyang.
In other words, if Trump plans to pre-emptively attack North Korea—an act that, to be clear, could plunge the world into wide-ranging, catastrophic warfare—then he probably needs to do so before May 9. After that date, South Korea could become a far less hospitable place for the *Michigan* and the thousands of U.S. troops who are permanently based in the country.

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For their part, South Koreans are unimpressed by the *Michigan*'s visit and Trump's saber-rattling. The submarine's arrival is "minor news on the website of one of the more hawkish dailies," Robert Kelly, a professor at Busan National University—yes, that Robert Kelly—told The Daily Beast. "It has been made reference to on TV," Kelly said of the submarine. "But not that much."

Despite the Trump administration's rhetoric and *Michigan*'s high-profile deployment, South Koreans don't expect war between the United States and North Korea, Kelly said. South Koreans "have been living with this threat for a long time. They are pretty sanguine about it."

If Trump does choose to strike North Korea, *Michigan* would probably need help. The submarine's Tomahawk cruise missiles could inflict heavy damage on North Korean airfields and any exposed military installations. But Pyongyang has concealed many of its most important facilities, including nuclear sites, in tunnels hundreds of feet underground. To destroy those, the U.S. Air Force developed the world's biggest non-nuclear bomb.

Maine Real ID only needs LePage's signature to become law

The Maine Senate on Tuesday enacted legislation by Sen. Bill Diamond, D-Windham, to bring Maine into compliance with federal Real ID standards, thus ensuring Mainers' unrestricted travel rights. Having previously been enacted by the House of Representatives, the bill now goes to Gov. Paul LePage, who has indicated he will sign it into law.

The bill's enactment ends a decade-old policy in Maine prohibiting the Secretary of State from complying with the federal Real ID Act of 2005, which required additional security features and protocols in the issuance of state identification cards and driver's licenses. Maine was one of just five states that continued to flout the Real ID Act.

In January, the federal government initiated preliminary enforcement steps against Maine and other states that were in noncompliance with the federal Real ID law — which prevented Mainers from using their state driver's licenses and ID cards to access federal facilities. That included veterans who missed medical appointments as they were turned away from Veterans Administration Hospitals, according to a news release from the Senate Democratic Office. Firefighters and police officers also had been stymied in efforts to obtain federal certifications.

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Continued noncompliance threatened to create greater problems for Mainers, starting in January 2018, when the federal government stated the Transportation Security Administration would not allow non-compliant state IDs to be used for boarding on domestic flights.

"Passage of this bill will guarantee Mainers have the same ability to come and go as the please that any other United States citizen enjoys," Diamond said in the news release. "In my communication with the Department of Homeland Security, I've been assured that passage of this law will end these punitive enforcement actions and free Maine veterans and other residents to go about their business. People expect their elected officials to solve the problems they face. This law avoids a bureaucratic nightmare that would have brought normal life in Maine to a grinding halt."

The bill was amended by the Legislature to include a provision giving Mainers the option to "opt out" of Real ID-compliant licenses. Those who opted out would still be credentialed to drive, but their IDs would continue to be deemed illegitimate by federal authorities.

Mainers who opt out would be required to obtain a U.S. passport or some other form of identification recognized by the federal government as compliant with the Real ID Act in order to access federal properties or board flights.

Tillerson Plans Major Staff Cuts In State Department Restructuring

The State Department is planning to reduce staffing by thousands as Secretary of State Rex Tillerson moves forward with efforts to streamline the agency that conservative critics say has outgrown its core functions.

As many as 2,300 foreign and civil service positions — about 9 percent of the Americans in State's workforce worldwide — will be cut over the next two years, department sources told Bloomberg. Most of the reduction will come from attrition: 1,700 employees won't be replaced after they retire. The remaining 600 will be asked to leave State early through buyouts, according to sources who spoke to Bloomberg on the condition of anonymity.

The staff reduction is part of a larger restructuring plan Tillerson has initiated in order to satisfy President Donald Trump's demand to cut spending across the federal government. A budget outline released in March for fiscal year 2018 asked Congress to cleave 28.5 percent of State's funding from fiscal 2016 levels.

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The secretary and his inner circle are currently on a "listening tour" of the department, which they hope will provide a better picture of which bureaus and offices have become bloated or redundant. Tillerson spokesman R.C. Hammond says the secretary will be able to fill nearly 200 vacant senior leadership positions and map out further restructuring once the tour is finished.

Trump administration critics fear that Tillerson will take a broadsword to State when a scalpel is the right tool for the job.

"Just cutting without deciding what change you want to make is simply mindless," Stephen Sestanovich, a professor at Columbia University's School of International and Public Affairs, told Bloomberg.

"A new administration is right to look at what Cabinet departments do, but does it want the United States to do less in the world — and if so, exactly what?" he asked. "Those are the questions that need to be answered before you make big cuts at State."

Tillerson will address department staff next week to mark the first 90 days of his tenure and lay out his vision for State's future, Bloomberg reported. The secretary told NPR Friday that State is probably trying to do too many things that aren't related to its core mission to "provide the national security needs of the American people, and to advance America's economic interest around the world."

"If one looks at the State Department over the last, say, decade, if you look at a chart from 10 years ago and you look at a chart today, there's a lot of added boxes on that chart," Tillerson added.

"We are undertaking a reorganization of the State Department, but it's not just a collapse of boxes. What we really want to do is examine the process by which the men and women [of the department] … deliver on that mission."

USTR Releases 2017 Special 301 Report on Intellectual Property Rights

Report Underscores Administration's Trade Priority for Protecting & Enforcing U.S. IP Rights

Washington, D.C. – The Office of the United States Trade Representative (USTR) today released the 2017 "Special 301" Report, reviewing global developments on trade and intellectual property (IP) and identifying trading partners with harmful records on protection, enforcement, or market access for U.S. innovators and creators. The Report calls on U.S. trading partners to address IP-related trade barriers, with a special focus on the countries identified on the Watch List and Priority Watch List.

The 2017 Special 301 Report underscores the Administration's key trade priority of ensuring that U.S. owners of IP have full and fair opportunity to use and profit from their IP around the globe. The theft of IP has resulted in distorted markets and unfair trade practices that harm American workers, innovators, service providers, and small and large businesses.

The Administration is committed to using all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services and provide adequate and effective protection and enforcement of U.S. IP rights. The Report reflects the Administration's resolve to aggressively defend Americans from harmful IP-related trade barriers.

According to U.S. Government estimates, in total, IP-intensive industries directly and indirectly support 45.5 million American jobs, about 30 percent of all employment in the United States. By identifying the IP-related trade barriers, the Report helps focus efforts towards protecting and creating U.S. jobs, and promoting free and fair trade that benefits all Americans.

Significant elements of the 2017 Special 301 Report include the following:
USTR continues to place China on the Priority Watch List. Longstanding and new IP concerns merit attention, including with respect to coercive technology transfer requirements, structural impediments to effective IP enforcement, and widespread infringing activity – including trade secret theft, rampant online piracy and counterfeiting, and high levels of physical pirated and counterfeit exports to markets around the globe.

India also remains on the Priority Watch List this year for lack of sufficient measurable improvements to its IP framework on longstanding challenges and new issues that have negatively affected U.S. right holders over the past year, particularly with respect to patents, copyrights, trade secrets, and enforcement.

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USTR highlights troubling trends in counterfeiting and piracy. The problem of trademark counterfeiting continues on a global scale and involves the production of and trade in a vast array of fake goods, which harms consumers, legitimate producers, and governments. Digital piracy of U.S. movies, music, books, software and other works presents unique enforcement challenges for right holders in countries around the world. In many of the countries identified in the Report, including our neighbors Canada and Mexico, USTR notes the lack of adequate authority for customs officials to seize and destroy counterfeit and pirated goods at the border.

The Report also focuses on the negative market access effects of the European Union's approach to the protection of geographical indications in the EU and third-country markets on U.S. producers and traders, particularly those with prior trademark rights or who rely on the use of common food names.

USTR closes the Out-of-Cycle reviews for Pakistan and Spain who have both undertaken improvements in recent years. Pakistan has maintained positive momentum in its efforts to reform its IP regime and Spain has strengthened its criminal laws for IP infringement and demonstrated a continued commitment to tackling online piracy. USTR also announces that it will continue Out-of-Cycle reviews for Colombia and Tajikistan, and initiate an Out-of-Cycle review for Kuwait to promote engagement and progress on specific IPR opportunities and challenges identified in this year's review.

BACKGROUND
The "Special 301" Report is an annual review of the global state of IP protection and enforcement. USTR conducts this review pursuant to Section 182 of the Trade Act of 1974, as amended. After a review of more than 100 countries, USTR placed thirty-four (34) of them on the Priority Watch List or Watch List. **Trading partners on the Priority Watch List present the most significant concerns this year regarding insufficient IP protection or enforcement or actions that otherwise limited market access for persons relying on intellectual property protection. Eleven (11) countries — Algeria, Argentina, Chile, China, India, Indonesia, Kuwait, Russia, Thailand, Ukraine, and Venezuela — are on the Priority Watch List. These countries will be the subject of intense bilateral engagement during the coming year.**
PUBLIC ENGAGEMENT

USTR continued its enhanced approach to public engagement activities in this year's Special 301 process. USTR requested written submissions from the public through a notice published in the Federal Register on December 28, 2016.

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On March 8, 2017, USTR hosted a public hearing that provided the opportunity for interested persons to testify before the interagency Special 301 Subcommittee of the Trade Policy Staff Committee about issues relevant to the review. The hearing featured testimony from witnesses representing foreign governments, industry, academics, and non-governmental organizations. USTR offered a post-hearing comment period during which hearing participants and interested parties could submit additional information in support of, or in response to, hearing testimony and posted on its public website the full transcript of the Special 301 hearing (https://ustr.gov/issue-areas/intellectual-property/special-301/2017-special-301-review).

The December 2016 notice in the Federal Register — and post-hearing comment period — drew submissions from 57 interested parties, including 16 trading partner governments. The submissions that USTR received are available to the public online at www.regulations.gov, docket number USTR-2016-0026.

Training

Registration is now open for "Complying with U.S. Export Controls" seminars in Salt Lake City, UT; Orange County, CA; and Seattle, WA.

- June 8 and 9, 2017, Seattle, WA Click here to register: http://tinyurl.com/seattleseminar

"Complying with U.S. Export Controls" is a two-day program led by BIS's professional counseling staff and provides an in-depth examination of the Export Administration Regulations (EAR). The program will cover the information exporters need to know to comply with U.S. export control requirements. Presenters will conduct a number of "hands-on" exercises that will prepare you to apply the regulations to your own company's export activities. Continuing legal education credit (MCLE) is available, and varies with the length of each seminar, for California State Bar members.