

Export 201: Export Controls

The Updated Government Regulations You Need to Know

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March 19, 2014



BIS Mission Statement

- ▶ Advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership.



How Do We Control Exports?

- ▶ **Export Administration Act (EAA) of 1979, as amended**
- ▶ **International Emergency Economic Powers Act, as amended**
- ▶ **BIS is responsible for implementing and enforcing these laws which regulate the export and reexport of most commercial items.**



Why Do We Control Exports?

- ▶ National Security
- ▶ Foreign Policy
- ▶ Anti-Terrorism
- ▶ Crime Control
- ▶ Regional Stability
- ▶ Nonproliferation
- ▶ Nuclear Weapons
- ▶ Chemical/Biological Weapons
- ▶ Missiles/Rocket Systems and Unmanned Air Vehicles



What Types of Transactions Does BIS Control?

BIS regulates exports, reexports and certain transfers of items “subject to the EAR” in addition to certain activities of U.S. persons.



Export Administration Regulations (EAR)

- ▶ **Implement the Export Administration Act**
- ▶ **Broad jurisdiction BUT...
narrow license requirements**



Where can you find the Export Administration Regulations?

- ▶ **Code of Federal Regulations**
 - 15 CFR 730–774
- ▶ **Available on–line:**
 - www.bis.doc.gov
 - <http://ecfr.gpoaccess.gov>
- ▶ **Order from Government Printing Office**
 - 866–512–1800 (toll–free)
 - <http://www.access.gpo.gov/bis/earorder.htm>





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Enforcement

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UPDATE
CONFERENCE ON EXPORT CONTROLS AND POLICY

Commerce Secretary Pritzker addresses 1100 attendees at the BIS Update Conference in Washington, D.C. on July 23.



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attendees
Washington



The Bureau
Update 2



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SUBCHAPTER C--EXPORT ADMINISTRATION REGULATIONS

730	730.1 to 730.10	GENERAL INFORMATION
732	732.1 to 732.6	STEPS FOR USING THE EAR
734	734.1 to 734.12	SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS
736	736.1 to 736.2	GENERAL PROHIBITIONS
738	738.1 to 738.4	COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART
740	740.1 to 740.20	LICENSE EXCEPTIONS
742	742.1 to 742.19	CONTROL POLICYCCL BASED CONTROLS
743	743.1 to 743.3	SPECIAL REPORTING
744	744.1 to 744.22	CONTROL POLICY: END-USER AND END-USER BASED
745	745.1 to 745.2	CHEMICAL WEAPONS CONVENTION REQUIREMENTS
746	746.1 to 746.9	EMBARGOES AND OTHER SPECIAL CONTROLS
747	747.1 to 747.5	SPECIAL IDAO RECONSTRUCTION LICENSE

Important EAR Terms

Part 734.2

- ▶ **Subject to the EAR**
- ▶ **Export**
- ▶ **Reexport**
- ▶ **Item**
- ▶ **Commerce Control List (CCL)**
- ▶ **Export Control Classification Number (ECCN)**



What is an export?

- ▶ An export is an actual shipment or transmission of items out of the United States.



What is a reexport?

- ▶ A reexport is an actual shipment or transmission of items subject to the EAR from one foreign country to another.



What is an Item?

Commodity



Software



Technology



What is a Release of Technology?

- ▶ Release of technology can occur through visual inspection, oral exchange, or application of knowledge
- ▶ A Deemed Export is a release of technology or software source code to a foreign national in the United States
- ▶ Considered an export to the home country of the foreign national
- ▶ Does not apply to:
 - permanent resident aliens
 - Protected individuals



What does “subject to the EAR” mean? §734.2(a)

- ▶ Items and activities under the regulatory jurisdiction of the EAR
- ▶ Remember there are other government agencies that administer export controls

“Subject to EAR” does not mean that a license is automatically required



What is the Commerce Control List? (CCL)

(§738 and 774, Supplement No. 1)

- ▶ **The list of items subject to BIS licensing authority**
- ▶ **Used to determine Export Control Classification Numbers**
- ▶ **Used to determine license requirements**



What is an Export Control Classification Number (ECCN)?

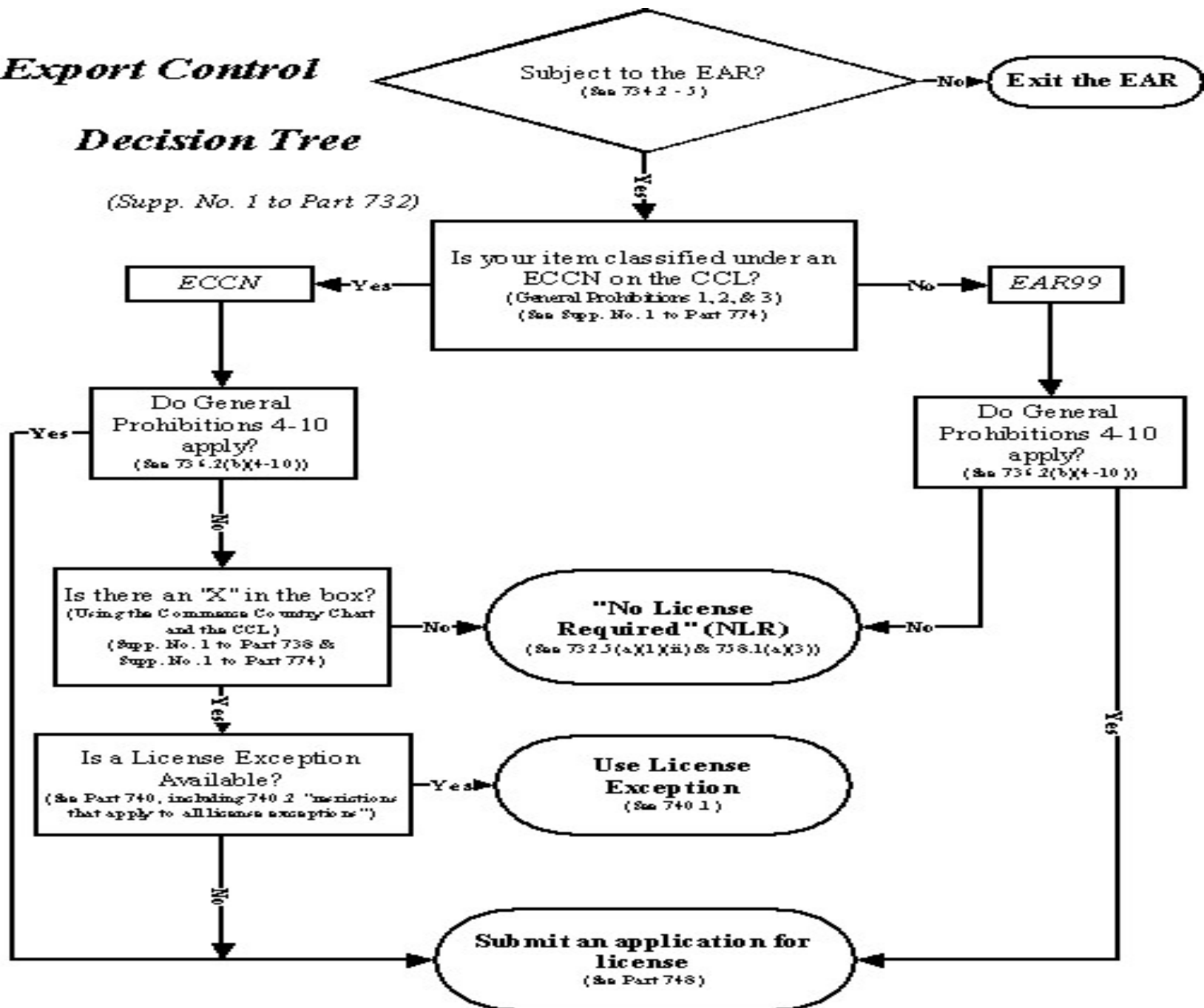
- ▶ An alpha-numeric code used in the Commerce Control List to classify items for determination of export licensing requirements
- ▶ Consists of a set of digits and a letter, e.g., 3A001



Export Control

Decision Tree

(Supp. No. 1 to Part 732)



Order of Review

For items “subject to the EAR” ...

- ▶ Review the general characteristics of the item.
- ▶ Determine the Product group, i.e., A, B, C, D, or E.

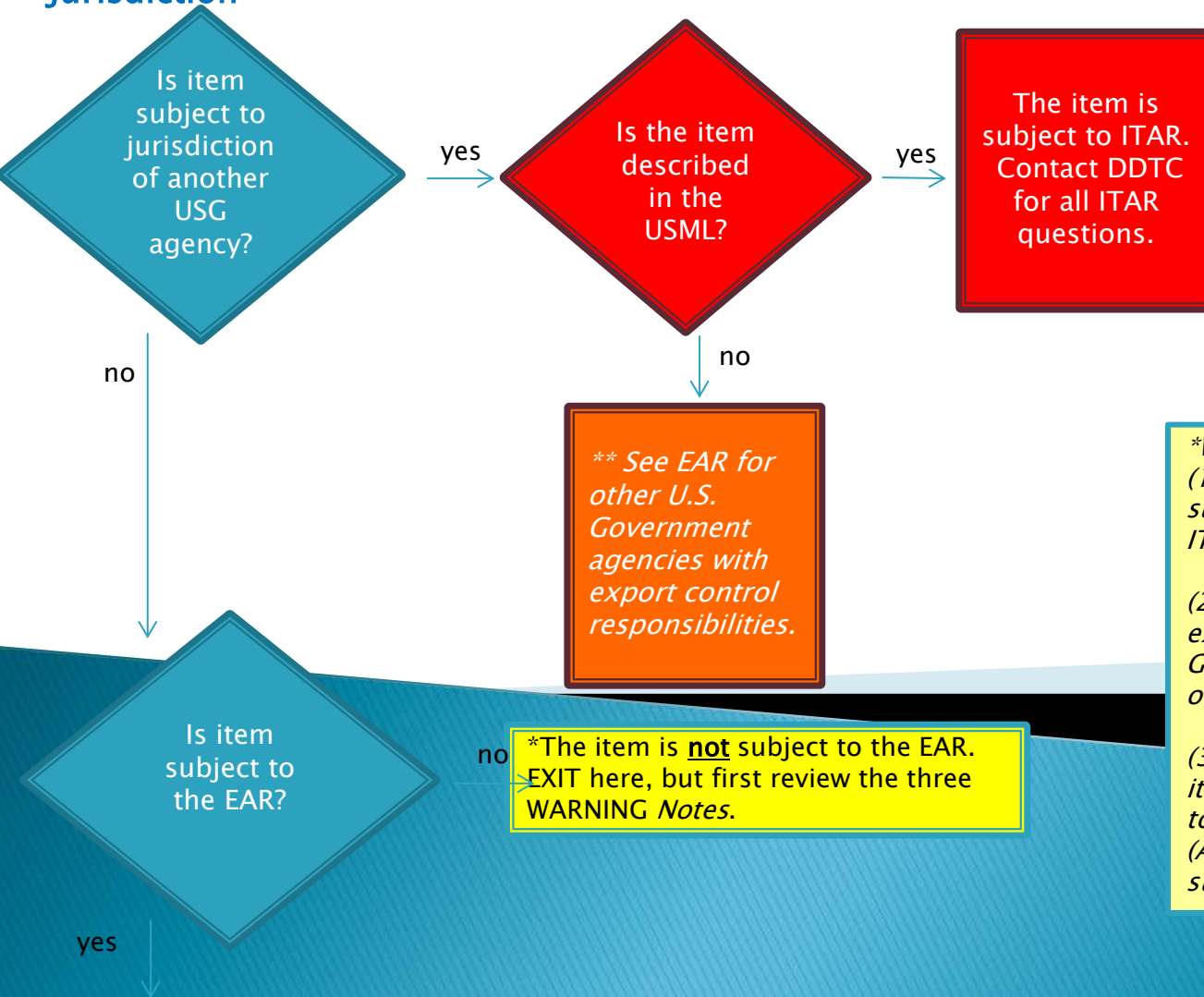
As of October 15, 2013
Supplement No. 4 to part 774



CCL Order of Review

(See Supp. No. 4 to part 774)

Prerequisite - Determine Jurisdiction



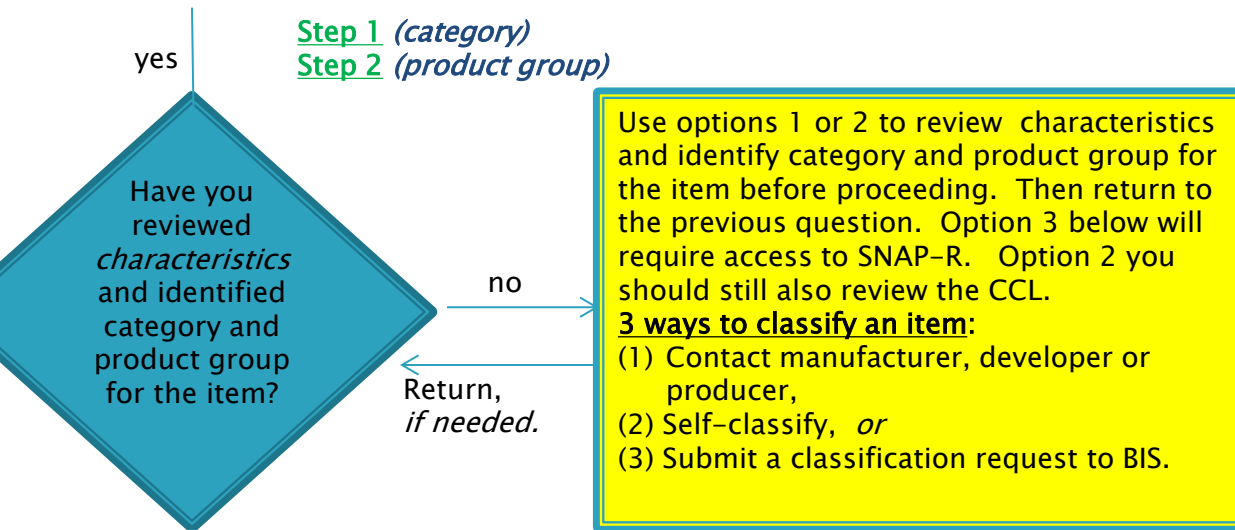
**WARNING Notes:*

*(1) Items described in the USML are subject to the ITAR. Contact DDTTC for **ALL** ITAR questions.*

(2) Certain other items are subject to the exclusive jurisdiction of other U.S. Government agencies. See Supplement 3 of Part 730

(3) EAR includes controls that extend to items not ordinarily subject to the EAR and to certain activities. See section 734.5 (Activities of U.S. and foreign persons subject to the EAR).

Steps 1-6 Guidance



****Guidance Note for Steps 3-6: You will determine if the item is described on the CCL by conducting: (A) a "600 series" ECCNs analysis, followed by (B) a Non-"600 series" ECCNs analysis. If subject to the EAR, but not described, see Step 6.**

**** (A) "600 series" ECCNs analysis - Steps 3 and 4**

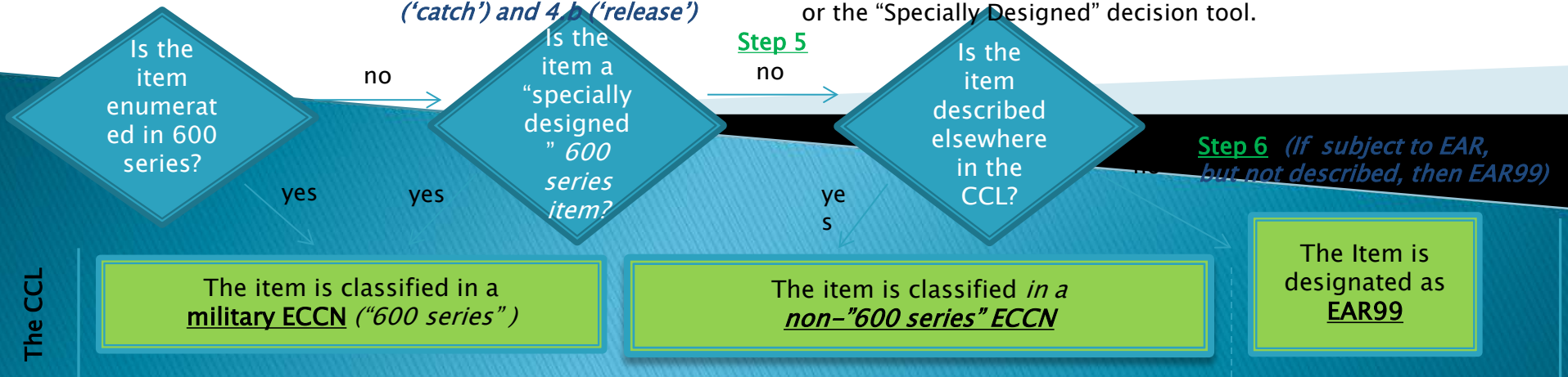
(B) Non-"600 series" ECCNs analysis - Step 5 (including 4.a and 4.b, if needed) If entry uses "specially designed," determine whether the item is "specially designed" by reviewing the definition in section 772.1. See 4.a ('catch') and 4.b ('release') or the "Specially Designed" decision tool.

Step 3

Step 4 - including 4.a. ('catch') and 4.b ('release')

Step 5

Step 6 (If subject to EAR, but not described, then EAR99)



Determining Changes in Jurisdiction As of October 15, 2013:

- ▶ **Is my item(s) still subject to the ITAR?**
 - Review the relevant revised and existing USML categories
- ▶ **What if I have a prior commodity jurisdiction (CJ) determination?**
 - **CJs that determined item was subject to the ITAR**
 - If item is moving from the USML to the CCL, then CJ superseded.
 - **CJs that determined item was subject to EAR**



Facts in Hand

Must know for every export transaction

- ▶ What is my item?
- ▶ Where is it going?



ECCN and Destination
(General Prohibitions 1–3)

- ▶ Who will receive it?
- ▶ What will be the end use?



Other License
Requirements
(General Prohibitions 4–
10)

“Subject to the EAR”

§734.3–734.5

- ▶ **Items in the United States**
- ▶ **Some items located outside of the United States**
- ▶ **Activities of U.S. and Foreign Persons**



“Subject to the EAR”

Items in the United States

§734.3(a)(1)

- ▶ **ALL** Items in the United States, **except**:
 - Publicly available technology & software (excluding encryption)
 - Items subject to the exclusive jurisdiction of another federal department or agency
 - Literary publications, such as newspapers or literary works (non-technical in nature)



Publicly Available

- ▶ **Published Information and Software (Section 734.7)**
- ▶ **Fundamental Research (Section 734.8)**
- ▶ **Educational Information (Section 734.9)**
- ▶ **Patent Information (Section 734.10)**



“Subject to the EAR”

Some items outside the United States

- ▶ Items located outside the United States:
 - U.S.–origin items wherever located
 - Certain foreign–made items, if:
 - The value of the U.S. content exceeds the de minimis percentage
 - The foreign–product item is the direct product of U.S. technology or software



Reexport Considerations

As of October 15 - changes for the “600 series”:

- ▶ *De minimis*: when foreign-made items incorporating below *de minimis* levels of controlled U.S. content are **not subject**:
 - 0% *de minimis* amount for 600 series items destined for Country Group D:5 countries (maintains ITAR status quo for 126.1 countries such as China)
 - 25% *de minimis* for 600 series items destined for all other countries (more liberalized treatment than ITAR)
- ▶ **Direct product rule**: certain foreign-made items that are the direct product of certain U.S. origin technology or software **are subject**:
 - Foreign-made 600 series items that are the direct product of U.S.-origin 600 series technology or software require authorization under the EAR when reexported to certain country groups



“Subject to the EAR”

U.S. Persons and Foreign Persons

§734.5

- ▶ **Certain activities of U.S. persons (§744.6)**
 - **Related to proliferation**
- ▶ **Activities of U.S. or foreign persons prohibited by any order issued under the EAR.**



Summary

- ▶ BIS regulates exports, reexports and certain transfers of items subject to the EAR in addition to certain activities of U.S. persons.
- ▶ Important terms: “subject to the EAR”, items, export, reexport, CCL & ECCN
- ▶ **First order of business is to determine whether or not your transaction is subject to the EAR.**



Commerce Control List (“CCL”) Part 774, Supplement No. 1

- ▶ Contains lists of those items subject to the licensing authority of BIS
- ▶ Each entry is called an Export Control Classification Number (“ECCN”)
- ▶ Most items are described in terms of their technical parameters



What does the Export Control Classification Number (“ECCN”) tell us?

- ▶ What items are controlled?
- ▶ Why BIS controls the item?
- ▶ Which destinations will require a license?
 - Country Chart in Supp. 1 to part 738,
- ▶ What (if any) list-based license exceptions may apply?



The Structure of the ECCN

1

C

350

1

- Category

C

- Product Group

350

- Type of Control



Categories of the Commerce Control List

0	Miscellaneous & Nuclear Materials
1	Materials, Chemicals, Microorganisms, and Toxins
2	Materials Processing
3	Electronics
4	Computers
5	Part 1 – Telecommunication
5	Part 2 – Information Security
6	Sensors & Lasers
7	Navigation & Avionics
8	Marine
9	Aerospace & Propulsion



Product Groups of the Commerce Control List

A	Systems, Equipment & Components
B	Test, Inspection & Production Equipment
C	Materials
D	Software
E	Technology



Type of Controls Associated w/Entry

000-099	National Security Reasons
100-199	Missile Technology Reasons
200-299	Nuclear Nonproliferation Reasons
300-399	Chemical & Biological Weapons Reasons
600-699	COMING OCT. 15! Munitions Items from the ITAR
900-999	Anti-terrorism
	Crime Control
	Regional Stability
	Short Supply
	UN Sanctions
	Surreptitious Listening

Reasons for Control

- ▶ AT = Anti-Terrorism
- ▶ CB = Chemical & Biological Weapons
- ▶ CC = Crime Control
- ▶ CW = Chemical Weapons Convention
- ▶ EI = Encryption Item
- ▶ FC = Firearms Control
- ▶ MT = Missile Technology
- ▶ NP = Nuclear Nonproliferation
- ▶ NS = National Security
- ▶ RS = Regional Stability
- ▶ SI = Significant Item
- ▶ SL = Surreptitious Listening
- ▶ SS = Short Supply
- ▶ UN = United Nations Embargo

Most of the time related items are grouped in series

3A001

Equipment,
assemblies and
components

3B001

Test, inspection
and production
equipment

3C001

Materials

3D001

Software

3E001

Technology



How to Read an ECCN entry

- ▶ **Number and Heading**
 - **License Requirements**
- ▶ **Reasons For Control**
- ▶ **License Exceptions (List-based)**
- ▶ **List of Items Controlled**
 - **Units**
 - **Related Controls**
 - **Related Definitions**
 - **Items**



How to Read an ECCN

0A979 Police helmets and shields; and parts, n.e.s.

Heading:
*ECCN &
Description*

License Requirements

Reason for Control: CC

Control(s)

CC applies to entire entry

Country Chart

CC Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.



How to Read an ECCN

0A979 Police helmets and shields; and parts, n.e.s.

License Requirements

Reason for Control: CC

Control(s)

Country Chart

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**License
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List-Based

License Requirements

Reason for Control: CC

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Country Chart

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How to Read an ECCN

0A979 Police helmets and shields; and parts, n.e.s.

List of Items Controlled:

Units

Related Controls

Related Definitions

Items

License Requirements

Reason for Control: CC

Control(s)

CC applies to entire entry

Country Chart

CC Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.



“Specially Designed”

- ▶ **New definition of “specially designed” is based on a catch-and-release construct**
- ▶ **Requires answering a series of yes/no questions that lead to an objective determination whether an item is “specially designed”**
- ▶ **Definition is found in Part 772 and will be described in an online decision tree tool BIS will publish**



EAR99 Items

- ▶ Items that are not specifically listed on the Commerce Control List yet subject to the EAR, use the designation EAR99 in place of an ECCN.
- ▶ This designation may be found at the end of every category of the CCL:

“EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.”



Classification

Determining an ECCN

- 1) Check with the Manufacturer
 - Work with company engineer/someone who knows the item
 - CCL is organized in a logical manner
- 2) ECCN entries are based on the technical parameters of an item and contain important information regarding export controls
- 3) Submit classification request to BIS



General Prohibitions 1–3

Part 736

- ▶ You may not without a License or License Exception:
 - No. 1: Export or reexport controlled items to listed countries.
 - No. 2: Reexport foreign made items incorporating more than the allowed *de minimis* levels of controlled U.S. content
 - No. 3: Reexport foreign produced direct product of U.S. technology or software



Commerce Country Chart

Part 738, Supplement No. 1

- ▶ **Reasons for Control/Country Chart**
- ▶ **“X” marks the spot:**
 - **An “X” in the box indicates a license requirement based on the ECCN and destination.**
 - **No “X” in the box indicates no license requirement based on the ECCN and destination.**



Commerce Country Chart

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738 page 1

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
	Afghanistan	X	X	X	X		X	X	X	X	X		X		X	
Albania ^{2,3}	X	X		X		X	X	X	X							
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia ³	X					X		X	X							
Austria ^{3,4}	X					X		X	X			X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		

No License Required ("NLR")

- ▶ You may use NLR for:
 - ECCNs where there is no "X" on the Country Chart under reason(s) for control; or
 - EAR99 items, if
 - the transaction does not require an export license based on any other licensing requirement (e.g., end-use/user requirements; restricted destinations)



Determining Licensing Requirements based on ECCN & Destination:

- ▶ An “X” in the box indicates a license requirement based on the ECCN and destination.
- ▶ No “X” in the box indicates no license requirement based on the ECCN and destination.



General Prohibitions 4–10

§736.2(b)

4. Denial Orders
5. Knowledge of end–use and end–user controls
6. Embargoed Countries
7. U.S. person support of proliferation
8. Transit through certain countries
9. Terms or conditions of licenses, etc.
10. Knowledge of a violation



What do we mean by “knowledge”?

▶ Includes:

- Positive knowledge that a circumstance exists or is substantially certain to occur
- An awareness of a high probability of its existence or future occurrence

Know = reason to know = reason to believe



License Requirement due to... End-user/End-use Controls Part 744

- ▶ Prohibits exports, reexports and transfers in-country of items for various reasons
- ▶ If you “know” or are informed
- ▶ “Knowledge” is defined in Part 772
- ▶ Entity List, Supplement No. 4 to Part 744



Make Sure to Check the Parties to the Transaction!

NEW Consolidated USG Screening List

http://export.gov/ecr/eg_main_023148.asp

- ▶ Includes the “Lists to Check”:
 - Denied Persons
 - Entity List
 - Unverified List
 - OFAC Lists
 - Nonproliferation Sanctions
 - Debarred List

Available at:
www.bis.doc.gov



The Denied Persons List

Note: Where the Expiration Date is blank the denial order has no expiration.

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Last Modified: Monday, April 15, 2013

Name and Address	Effective Date	Expiration Date	Type of Denial
A. ROSENTHAL (PTY) LTD. P.O. BOX 44198, 65 7TH STREET, DENMYR BUILDING, LINDEN, ZA Appropriate <i>Federal Register</i> Citations: 62 F.R. 43503 8/14/97	08/08/1997	08/08/2017	standard
A. ROSENTHAL (PTY) LTD. P.O. BOX 97 292 INDEPENDENCE AVENUE, WINDHOEK, NA Appropriate <i>Federal Register</i> Citations: 62 F.R. 30841 6/5/97	05/20/1997	05/29/2017	standard
ACE, IAN 4 MIMOSA WAY, PINELANDS, ZA Appropriate <i>Federal Register</i> Citations: 62 F.R. 43503 8/14/97	08/08/1997	08/08/2017	standard
ADT ANALOG AND DIGITAL TECHNIK 8019 NIEDERSEEON, HOUSE 21, DE Appropriate <i>Federal Register</i> Citations: 46 F.R. 46154 9/17/81 and 46 F.R. 19290 3/30/81	09/10/1981		standard
AGNESE, ANDREE 22 RUE DU 11 NOVEMBER 1918, PANTIN, FR Appropriate <i>Federal Register</i> Citations: 50 F.R. 29244 7/18/85	07/11/1985		standard
AGNESE, HELENE 37 RUE DE LA QUINTINIE, PARIS, FR Appropriate <i>Federal Register</i> Citations: 50 F.R. 29245 7/18/85	07/11/1985		standard
AGNESE, SABA 37 RUE DE LA QUINTINIE, PARIS, FR Appropriate <i>Federal Register</i> Citations: 50 F.R. 29244 7/18/85	07/11/1985		standard
AHMAD, TARIQ 612 BUSINESS CENTRE MUMTAZ HASAN ROAD OFF I.I. CHUNDRIGAR ROAD, KARACHI, PK Appropriate <i>Federal Register</i> Citations: 74 F.R. 18690 4/24/09	04/17/2009	04/17/2016	standard
AHMED, TARIQ 612 BUSINESS CENTRE MUMTAZ HASAN ROAD OFF I.I. CHUNDRIGAR ROAD, KARACHI, PK Appropriate <i>Federal Register</i> Citations: 74 F.R. 18690 4/24/09	04/17/2009	04/17/2016	standard
AHMED, YASMIN 612 BUSINESS CENTRE, MUMTAZ HASAN ROAD OFF I.I. CHUNDRIGAR ROAD, KARACHI, PK Appropriate <i>Federal Register</i> Citations: 73 F.R. 63678 10/27/08	10/16/2008	10/16/2015	standard
AHUJA, AJAY POST BAG #17652, A/2/10 TAPOVAN, DONGRE PARK, CHEMBUR, MUMBAI, IN Appropriate <i>Federal Register</i> Citations: 72 F.R. 61609 10/31/07	10/24/2007	10/24/2022	standard
AL KAYALI CORPORATION 605 TRAIL LAKE DRIVE, RICHARDSON, US Appropriate <i>Federal Register</i> Citations: 68 F.R. 38290 6/27/03 72 F.R. 4236 1/30/07	06/19/2003	06/29/2056	standard
AL KAYALI, MAYSOON 605 TRAIL LAKE DRIVE, RICHARDSON, US Appropriate <i>Federal Register</i> Citations: 67 F.R. 56530 9/4/02 67 F.R. 10890 3/11/02 68 F.R. 38290 6/27/03	03/04/2002	06/29/2056	standard

What is the Entity List?

Part 744, Supplement 4

- ▶ Foreign persons for which there are concerns regarding
 - proliferation of weapons of mass destruction
 - acting contrary to the national security or foreign policy interests of the United States
- ▶ May require license for all items subject to EAR – requirements vary
- ▶ To be informed of changes, subscribe to:
BIS Email Notification Service



COUNTRY	ENTITY	LICENSE REQUIREMENT	LICENSE REVIEW POLICY	FEDERAL REGISTER CITATION
	<p>33 Institute, a.k.a., the following three aliases:</p> <ul style="list-style-type: none"> -Beijing Automation Control Equipment Institute (BACEI); -Beijing Institute of Automatic Control Equipment, China Haiying Electromechanical Technology Academy; <i>and</i> -No. 33 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC). <p>Yungang, Fengtai District, Beijing.</p>	<p>For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are “999”, e.g., XX999.</p>	<p>See §744.3(d) of this part.</p>	<p>66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.</p>
	<p>35 Institute, a.k.a., the following four aliases:</p> <ul style="list-style-type: none"> -Beijing Hangxing Machine Building Corporation; -Beijing Huahang Radio Measurements Research Institute, China Haiying Electronic Mechanical Technical Research Academy; -Huahang Institute of Radio Measurement; <i>and</i> -No. 35 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC). 	<p>For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are “999”, e.g., XX999.</p>	<p>See §744.3(d) of this part.</p>	<p>66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.</p>
	<p>54th Research Institute of China, a.k.a., the following three aliases:</p> <ul style="list-style-type: none"> -China Electronics Technology Group Corp. (CETC) 54th Research Institute; -Communication, Telemetry and Telecontrol Research Institute (CTI); <i>and</i> -Shijiazhuang Communication Observation and Control Technology Institute. 	<p>For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are “999”, e.g., XX999.</p>	<p>See §744.3(d) of this part.</p>	<p>66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.</p>
	<p>A.G. International, Room 1104, North Tower, Yunnan City</p>	<p>For all items subject to the EAR</p>	<p>Documentation of</p>	<p>73 FR 54504</p>

What are Red Flags?

Part 732, Supplement 3

- ▶ Possible indicators that an unlawful diversion might be planned by the customer
- ▶ Abnormal or suspicious circumstances
 - Product capabilities do not fit buyer's business
 - Buyer evasive about destination or use
 - Routine on-site service is declined



Know Your Customer Guidance

Part 732, Supplement 3

- ▶ Decide whether there are **red flags**
- ▶ If there are red flags – inquire
- ▶ Do not **self blind**
- ▶ Reevaluate transaction
- ▶ Absent red flags or special EAR provision, there is no affirmative duty to **investigate** customer's representations



License Requirement due to... a Country Sanction under the EAR

- ▶ Comprehensive Embargo
 - Iran – §746.7 & §742.8
 - Cuba – §746.2
 - Sudan – §742.10
- ▶ Sanctioned
 - Syria – §746.9 & Supp. No. 1 to part 736
 - N. Korea – §746.4 & §742.19
- ▶ UN Arms Embargo
- ▶ Iraq – §746.3



Where to go...for Guidance

Cuba	
Exports and reexports to Cuba	BIS
Financial transactions and personal travel to Cuba	OFAC
Iran	
Exports of CCL and EAR99 items to Iran	OFAC
Reexports of CCL items to Iran	OFAC
Reexports of EAR99 items to Iran by U.S. Person	OFAC
Reexports of EAR99 items to Iran by non-U.S. persons	BIS
Sudan	
Exports and reexports of CCL items to Sudan	OFAC & BIS
Exports and reexports of EAR99 items to Sudan for most end-uses and end-users	OFAC
Exports and reexports of EAR99 items to Part 744 end-uses and end-users in Sudan	BIS & OFAC
Syria	
Exports and reexports to Syria	BIS
North Korea	
Exports and reexports to North Korea	BIS



Some In-Transit Shipments are prohibited

- ▶ In transit shipment and items to be unladed from vessels or aircraft
- ▶ No export, reexport, transit through Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam
 - Unless such export (reexport) is eligible to such country of transit without a license or with a license exception.



Extra
Attention
Forwarders!

General Prohibition 8

What is a License Exception?

Part 740

- ▶ An authorization that allows you to export or reexport, under stated conditions, items subject to the EAR that would otherwise require a license.
- ▶ The ITAR has “exemptions”. The EAR exception mechanism is different.
- ▶ Effective Oct. 15, license exceptions also cover in-country transfers



When can't you use a License Exception?

§740.2

- ▶ Authorization has been suspended or revoked
- ▶ Export subject to a General Prohibition that is not eligible for License Exceptions.
- ▶ Surreptitious Interception Devices
- ▶ Crime Control items to most destinations
- ▶ Most Missile Technology control items
- ▶ Embargoed destinations, in most instances



The way the EAR sees the world...

Country Groups

Supplement 1 to Part 740

- ▶ **Group A: Regimes and Allies**
- ▶ **Group B: Less Restricted**
- ▶ **Group D: Countries of Concern**
- ▶ **Group E: Terrorist Supporting**



Commerce Control List–Based License Exceptions

Availability Based on ECCN

- ▶ Shipments to B Countries (GBS)
- ▶ Limited Value Shipments (LVS)



Group B Shipments

§740.4



- ▶ Shipments to Country Group B
- ▶ Commodities requiring a license to the ultimate destination for national security reasons only



2B007 “Robots” having any of the following characteristics described in the List of Items Controlled and specially designed controllers and “end-effectors” therefor.

License Requirements

Reason for Control: NS, NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
NS applies to entire entry	NS Column 2
NP applies to equipment that meets or exceeds the criteria in ECCNs 2B207	NP Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: \$5000, except 2B007.b and .c

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value



Limited Value Shipment §740.3



- ▶ **Country Group B**
- ▶ **Commodities**
- ▶ **Net value cannot exceed LVS value limit**
- ▶ **Annual value restriction**
 - 12 x LVS value of same ECCN to same consignee
- ▶ **Single shipment**



NO splitting orders!

2B007 “Robots” having any of the following characteristics described in the List of Items Controlled and specially designed controllers and “end-effectors” therefor.

License Requirements

Reason for Control: NS, NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
NS applies to entire entry	NS Column 2
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License Exceptions

LVS: \$5000, except 2B007.b and .c

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value



Transaction Based License Exceptions

- ▶ **TMP – Temporary Imports, Exports & Reexports**
- ▶ **RPL – Service & Replacement of Parts & Equipment**



Temporary Imports, Exports and Reexports

§740.9



- ▶ Temporary Exports and Reexports
 - §740.9(a)

- ▶ Items temporarily in the U.S.
 - § 740.9(b)

- ▶ Beta Test Software
 - § 740.9(c)



Servicing & Replacement of Parts & Equipment §740.10



Exports and Reexports for:

- (a) One-for-one Replacement of Parts
- (b) Servicing & Replacement of Commodities and Software
 - Servicing of commodities and software sent to US or foreign party
 - Replacements for defective or unacceptable US-origin equipment



Part 740 (Changes as of Oct. 15)

- ▶ Allows in-country transfers if they meet the terms and conditions of reexports.
- ▶ New Country Groups:
 - A:5 – STA-36 (Only A:5 useful for “600 series.”)
 - A:6 – STA-8
 - D:5 – U.S. arms embargoed countries (§ 126.1 of the ITAR destinations)
- ▶ Comprehensive streamline of GOV and TMP



Part 740 (Changes as of Oct. 15)

- LVS (§ 740.3): \$1500 for most 600 series commodity ECCNs
- TMP (§ 740.9): streamlined; expanded scope for exports to U.S. person's subsidiary, affiliate, or facility abroad
- RPL (§ 740.10): allows 600 series parts to repair EAR or ITAR items under certain conditions
- GOV (§ 740.11): streamlined; expanded to authorize contractor support personnel and to provide for certain shipments for or on behalf of USG and DoD-directed shipments
- TSU (§ 740.13): expanded to allow releases of technology and source code in the U.S. to bona fide, full time regular employees of U.S. universities.



ITAR Exemption to EAR License Exception

ITAR Exemption	EAR License Exception
§ 123.4	RPL, TMP
§ 123.16(b)(2)	LVS
§ 123.16(b)(5)	TMP
§ 123.16(b)(9)	TMP
§ 123.16(b)(10)	TSU
§ 123.19	TMP
§ 125.4(b)(1)	GOV
§ 125.4(b)(3)	GOV
§ 125.4(b)(4)	TSU
§ 125.4(b)(5)	TSU
§ 125.4(b)(10)	TSU
§ 126.4	GOV
§ 126.6(a)	GOV

License Exceptions

- ▶ Make sure your transaction requires a license (i.e., there is an “X” in the box, or some other licensing requirement) before reviewing the License Exceptions.
- ▶ Before going to a specific license exception, make sure there are no general restrictions.
- ▶ Each exception is unique, make sure you meet of all of the criteria.



How to Submit an Application: How to Get Started in SNAP-R

- ▶ **SNAP–R Online Registration at**
- ▶ **<https://snapr.bis.doc.gov/registration>**
- ▶ **Respond to the confirmation email**
- ▶ **A Company Identification Number (CIN) will be assigned, and your account with administrator’s privilege will be created**



Where Industry and Security Intersect

About BIS

News

Policies And
Regulations

Licensing

Compliance And
Enforcement

Seminars And Training

International
ProgramsDefense Industrial
Base Programs

SNAP-R Company Registration

Company Information

Country: *

Company Name: *

Address Line 1: *
*PO Boxes are not allowed

Address Line 2:

City: *

State (U.S. only): *

Zip/Postal Code: *

Administrator Information

First Name: *

Last Name: *

Phone: *

Fax:

Email Address: *

Confirm Email Address: *

Certifications

1. COMPANY CERTIFICATION

The applicant company (herein "company") hereby requests authorization for the company to submit export license applications, reexport authorization requests, AGR license exception notifications, and classification Security (BIS) using BIS's Simplified Network Application Processing (SNAP-R) system. The company understands that an electronic submission has the same legal force and effect as a written submission. The company's export licenses (as opposed to reexport authorizations, notifications or classification requests), the company must be in of the United States.

The company agrees that each submission made via SNAP-R shall constitute a certification that:

- To the best of its knowledge and belief, all information submitted to BIS, including the description of the items and their end-uses or end-users, and any documents in support of such submissions, are correct and accurately disclose all material facts;
- Submissions will conform to the Export Administration Regulations (EAR) (15 CFR parts 730 through 774);

- I have read, understand, and agree to the terms and conditions of the company certification and I have authority to do so on behalf of the company.
- I have read, understand, and agree to the terms and conditions of the account administrator certification and I have authority to act as account administrator on behalf of the company.

Submit My Registration

How to use SNAP-R?

- ▶ Access SNAP-R at:
 - <https://snapr.bis.doc.gov>
- ▶ Create and submit a new license application
 - Export License
 - Reexport License
 - Agriculture License Exception Notice
 - Commodity Classification including Encryption Review
 - Encryption Registration
 - Special Comprehensive License (For approved companies only)
- ▶ Manage license applications within company
- ▶ Receive/Respond requests from BIS licensing officers
- ▶ Receiving final license validations



Who may submit a commodity classification?

§748.3

- ▶ Any person, wherever located, may submit a request for a commodity classification.



Who can apply for an export license?

§748.4(a)(1)

- ▶ Only a person in the U.S. can apply for a license to export from the United States
- ▶ Types of export transactions:
 - Standard export transaction
 - Routed export transaction



Standard Export Transactions

§748.4(a)(1)

- ▶ **Exporter – U.S. principal party in interest (USPPI)**
 - Determines authority to export
 - Obtains license or other export authorization
 - Complies with terms and conditions of the authorization
- ▶ **Forwarder or other agent**
 - May be hired to perform the first two tasks listed above
 - Does not relieve exporter of compliance for those tasks
 - Is responsible for compliance with the EAR



Routed Export Transaction

§748.4(a)(2)

▶ Exporter

- USPPI or
- U.S. agent of foreign principal party in interest (FPPI)
 - USPPI must obtain from the FPPI a writing if the FPPI takes responsibility for determining the license requirements for the export
 - agent must obtain written authorization from FPPI



Who can apply for a reexport license?

§748.4(a)(3)

- ▶ U.S. or foreign principal party in interest
- ▶ Other duly authorized U.S. agent of FPPI
 - agent must usually obtain written authorization from FPPI



What support documentation do I need for my license application?

§748.9

- ▶ If you do not meet any of the exemptions under the EAR, your license application may need to be supported by various documents such as:
 - Import Certificate
 - End–User Statement
 - Statement by Ultimate Consignee and Purchaser



When are support documents not required?

§748.9(a)

- ▶ For most South and Central American countries (except for ECCNs 0A984, 0A986, 0A987)
- ▶ When ultimate consignee or purchaser is government or government agency, other than the PRC
- ▶ Software or technology
- ▶ Encryption items



What is the status of my license application?...

- ▶ **Accepted**
- ▶ **Held Without Action (HWA)**
- ▶ **Pending**
 - **with one of the agencies: DoD, DoE, State**
- ▶ **Returned Without Action (RWA)**
- ▶ **Approved / Denied**





Bureau of Industry and Security

U.S. Department of Commerce
Where Industry and Security Intersect

- Home
- About BIS
- Regulations
- Licensing
- Enforcement
- Compliance and Training
- Policy Guidance
- Other Areas



BIS issues Temporary Denial of Origin Aircraft to Iran

- Simplified Network Application Process Redesign (SNAP-R)
- Track Your Application (STELA)
- Forms & Documents
- Commerce Control List Classification
- Reexports and Offshore Transactions
- Validated End User Program

BIS issues Temporary Denial of Re-export of U.S.-origin Aircraft to Iran
Monday, 23 April

Office of Export Administration assigned to the task of engage targets of weapons training
Wednesday, 18 April

The Mascot from the U.S. Export Administration
personnel from the Administration science research

WOULD YOU LIKE TO...

Select from the list below:

Find your ECCN?

CONSOLIDATED SCREENING LIST



The following list may be relevant to your export or reexport transaction

EXPORTER PORTAL



Everything you need for exporting



Bureau of Industry and Security

U.S. Department of Commerce
Where Industry and Security Intersect

- Home
- About BIS
- Regulations
- Licensing
- Enforcement
- Compliance and Training
- Policy Guidance
- Other A

Licensing

- Licensing
- Simplified Network
 - Application Process
 - Redesign (SNAP-R)
- Track Your Application (STELA)
- Forms and Documents
- Commerce Control List
 - Classification
- Reexports and Offshore
 - Transactions
- Validated End User Program

Track Your Application (STELA)

To better serve the exporting community, BIS has launched an on-line version of its System for Tracking E (STELA). You may now check the status of your export/reexport license applications, classification request <https://snapr.bis.doc.gov/stela>. Applicants must input their BIS assigned application control number(s) (AC

Initial Review and Technical Analysis §750.4(c)

- ▶ Contact applicant for additional information
- ▶ Verify classification of items
- ▶ RWA – Return application if license not required
- ▶ Refer to other agencies if required
- ▶ HWA – Hold without action
- ▶ Approve or notify of intent to deny



Interagency Review

§750.4(d)

- ▶ Review by other agencies or interagency groups
 - State, DoD, DOE
 - MTEC, SNEC, Shield
- ▶ Recommendation by reviewing agencies
 - Must provide regulatory basis for denials
 - If no response within 30 days, agency deemed to have no objection to BIS decision



Escalation Procedure

§750.4(f)

- ▶ **Operating Committee (OC)**
- ▶ **Advisory Committee on Export Policy (ACEP)**
- ▶ **Export Administration Review Board (EARB)**



Final Decision

- ▶ **Possible Outcomes**
 - Return Without Action
 - Approval with Conditions
 - License approval found in SNAP-R
 - Denial

- ▶ **Issuance §750.7**
 - Validity period – 4 years



REMEMBER!!! We are all on this journey together.....



Thank you for coming!

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202-482-4524



**U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY**