

Overview of the U.S. Dual Use Export and Re-export Controls

Overview of the
EAR

Classification of
Items on the CCL

License
Requirements
Based on ECCN
and Destination

Determining
Other Licensing
Requirements

License
Exceptions

License Process

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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?

(Legal and Regulatory Basis)

- Statute: Export Administration Act (EAA) of 1979, as amended.
- Implementing Regulations: Export Administration Regulations
- BIS is responsible for implementing and enforcing these laws which regulate the export and reexport of most commercial items as well as some military items.
- BIS regulates exports, reexports and certain transfers of items “subject to the EAR.”

Code of Federal Regulations 15 CFR 730-774

Available on-line: www.bis.doc.gov



Why Do We Control Exports?

- Multilateral Export Control Regime Commitments
 - Wassenaar Arrangement (National Security (NS))
 - Missile Technology Controls Regime (Missile Technology (MT))
 - Nuclear Suppliers Group (Nuclear Proliferation(NP))
 - Australia Group (Chemical/Biological (CB))
- United Nations Security Council Resolutions
- Unilateral Controls for Foreign Policy Reasons
 - Anti-Terrorism
 - Crime Control
 - Short Supply
 - Regional Stability



USML to CCL Objectives

- To enhance national security, the U.S. Government determined that the export control system needed to be reformed to:
 - Increase interoperability with NATO and other close allies;
 - Reduce the current incentives for companies in non-embargoed countries to design out or avoid US-origin content; and
 - Allow the U.S. Government to focus its resources on the transactions of greater concern.



USML TO CCL Background

Framework:

- Items providing a significant military or intelligence capability are listed on the USML, which is now a more “positive” list.
- Military items no longer listed on the USML are subject to the EAR’s “600 series.”
- Commercial spacecraft items no longer on the USML are listed in the EAR’s 9x515 ECCNs.
- When items cannot be positively enumerated, they will be described using the defined term “specially designed.”

License Requirements:

- Licenses from BIS will still be required to export or reexport most 600 series items worldwide (minus Canada), unless an EAR license exception is available.



“Subject to the EAR”

- **First order of business is to determine whether or not your transaction is “subject to the EAR.”**
 - Items in the United States
 - Some items located outside of the United States
 - Not under another Agency’s licensing jurisdiction



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

“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
 - 25 percent de minimis
 - 10 percent de minimis
 - No de minimis
 - The foreign-product item is the direct product of certain U.S. technology or software



What is a Technology Export?

- Controlled “technology” includes “development,” “production” and “use.”
- 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: U.S. citizens, legal permanent residents
- A Deemed Reexport is a release of technology or software source code to a foreign national in another country (e.g., an Iranian foreign national in Germany)



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
- Used to determine license requirements



The Structure of the ECCN

1

C

350

1

- Category

C

- Product Group

350

- Type of Control



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.”



Commodity 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



Commerce Country Chart

Part 738, Supplement No. 1

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							



End-User/End-Use Based Controls

- General Prohibitions 4-10
- Prohibited exports based on knowledge about the transaction
 - End-use/end-user, parties to the transaction, activities of the parties
- Screening parties involved in the transaction
- Prohibited exports to destinations under embargo or with special controls
- Other Prohibitions



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



License Requirement due to...

End-user/End-use Controls

Part 744 (Catch-All)

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



Summary: Other Licensing Requirements

- Licensing requirements based on knowledge of the end-use/end-user, parties to the transaction, activities and destinations
- Various lists published by BIS, and other USG agencies; “Know Your Customer” and “Red Flags” guidance
- Policies for each embargoed country differ, but in most cases, even exports of EAR99 items require a license
- General Prohibitions 4-10



License Exceptions

Part 740

- An authorization that allows you to export or re-export, under stated conditions, items subject to the EAR that would otherwise require a license.
- Country Groups
 - Group A: Regimes and Allies
 - Group B: Less Restricted
 - Group D: Countries of Concern
 - Group E: Terrorist Supporting



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



Commerce Control List-Based License Exceptions

- ***Availability Based on ECCN***
 - Limited Value Shipments (**LVS**)
 - Shipments to B Countries (**GBS**)
 - Technology and Software Restricted (**TSR**)
 - Encryption (**ENC**)
- ***Availability Based on Transaction***
 - Temporary Imports, Exports & Reexports (**TMP**)
 - Service & Replacement of Parts & Equipment (**RPL**)
 - Technology & Software Unrestricted (**TSU**)



The License Process:

- Initial Review and Technical Analysis (9 Days)
 - Applicant may be contacted for additional information
 - Classification of items are verified
 - Return application (RWA) if license not required
- Staffed to other Agencies for review and recommendations (30 Days)
 - Departments of State, Defense and Energy
 - Must provide regulatory basis for denials



Burma

- On October 7, 2016, under Executive Order 13742, the United States rescinded restrictions on former Specially Designated Nationals
- On December 27, 2016, BIS amended the EAR to removed Section 744.22 and moved Burma from Country Group D:1 to Country Group B



Hong Kong Import/Export License

- On January 19, 2017, the Bureau of Industry and Security (BIS) updated the Export Administration Regulations (82 FR 6216) regarding U.S. exports to Hong Kong
- 90-day delayed effective date (April 19, 2017)
- Affects items controlled for National Security (NS), Missile Technology (MT), Nuclear Nonproliferation (NP column 1), Chemical and Biological Weapons (CB)



Hong Kong Import/Export License

- If Hong Kong law requires an import or export license for NS, MT, NP1, or CB items:
 - A copy of the Hong Kong import license must be obtained prior to shipping to Hong Kong under a BIS license or license exception
 - A copy of the Hong Kong export license must be obtained prior to shipping from Hong Kong under a BIS license or license exception



North Korea

- All items subject to the EAR
 - Except food & medicine designated EAR99
- Limited License exceptions
- Policy of denial
 - Especially “luxury items”
 - Items controlled for nuclear nonproliferation and missile technology
- Favorable review
 - Humanitarian items



Iran

- OFAC is primary license agency
 - OFAC controls “secondary sanctions”
 - JCPOA provided relief for “secondary sanctions only”
- BIS maintains controls on CCL items only
- If OFAC authorized the transaction no need for a BIS license for same transaction
 - **Unless** in 3 instances
 - Prohibited end users and end uses
 - Persons subject to denial orders
 - Deemed Exports



BIS URLs & Phone Numbers

- BIS website: <https://www.bis.doc.gov/>
- General exporting help desk: 202-482-4811
- Exporter Portal:
<https://www.bis.doc.gov/index.php/exporter-portal>
- Foreign Policy Division : 202-482-4252
Foreign.Policy@bis.doc.gov

