

DEPARTMENT OF COMMERCE EXPORT CONTROLS



U.S. Department of Commerce
Bureau of Industry and Security
Office of Export Enforcement
Washington Field Office

OEE_WashingtonFieldOffice@bis.doc.gov

BIS Mission

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.

Build a symbiotic government-industry partnership that is reflected in the formulation, application, and enforcement of BIS rules and policies.

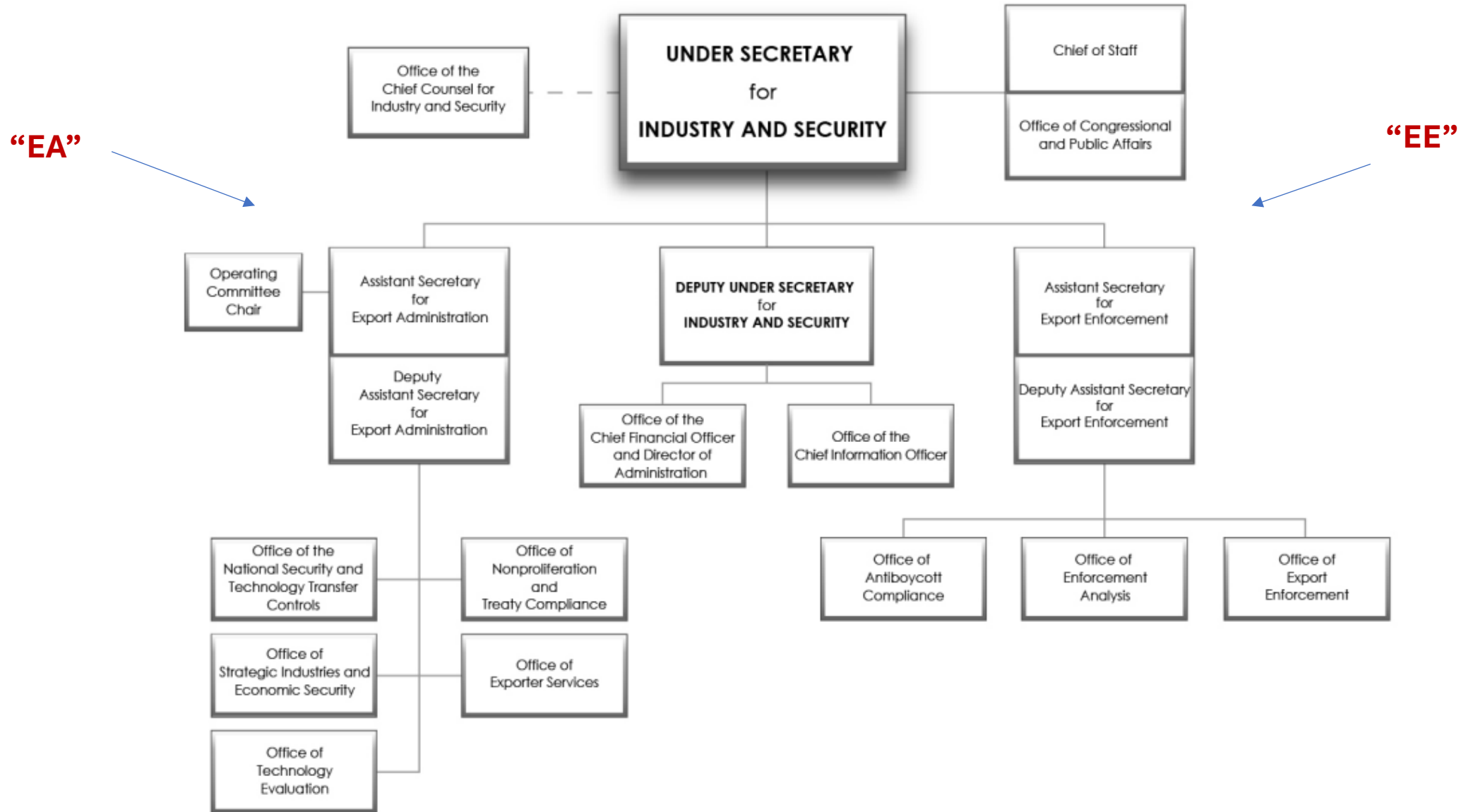
BIS MISSION

Scope and Authority

- BIS administers and enforces export controls on commercial and dual-use items (i.e., equipment, materials, and technology), and certain munitions items formerly on the U.S. Munitions List
- Export Administration Regulations (EAR) under the authority of the Export Control Reform Act of 2018 (ECRA). See Title 15 CFR Parts 730 to 774
- International Emergency Economic Powers Act, Trading With the Enemy Act, & many more!



BIS Organization





OFFICE OF EXPORT ENFORCEMENT (OEE)

"Keep the most sensitive goods out of the most dangerous hands"

EE protects U.S. national security, foreign policy, and economic interests by:

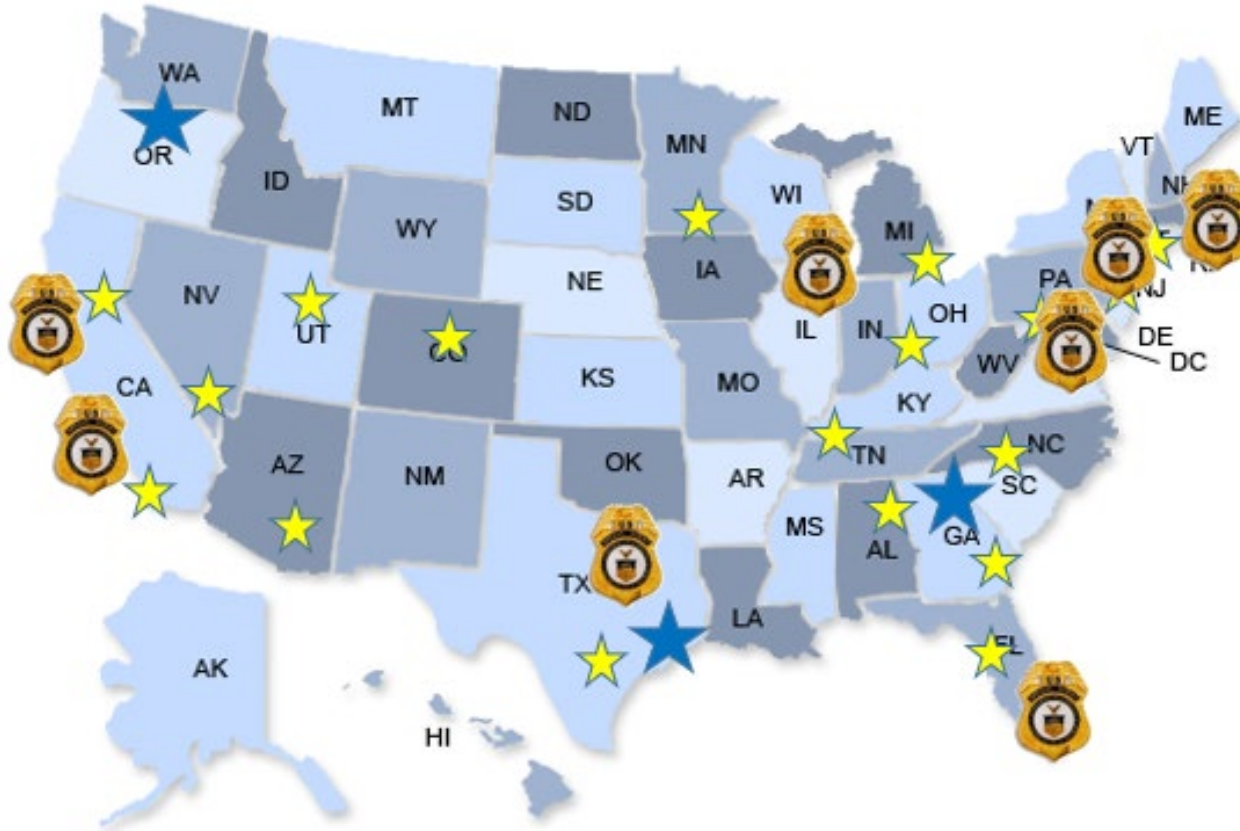
- Educating exporters on compliance practices and illicit foreign actors
- Evaluating transactions to ensure compliance
- Ensuring U.S. commercial transactions do not engage in prohibited boycott activities
- Detecting and investigating export violations
- Interdicting illegal exports
- Pursuing administrative or criminal penalties for violations



OFFICE OF EXPORT ENFORCEMENT (OEE)

- OEE Special Agents are sworn federal law enforcement officers with authority to bear firearms, make arrests, execute search warrants, serve subpoenas, detain and seize items about to be illegally exported, and order the redelivery to the United States of items exported in violation of U.S. law.
- OEE is the only federal law enforcement agency exclusively dedicated to the enforcement of export control laws, and that singular focus allows for the development of the requisite subject matter expertise to be able to effectively enforce a complex regulatory regime.

OEE LOCATIONS



- EE Headquarters are in Washington, DC with offices in 31 cities
- SAC offices in Boston, Chicago, Dallas, Los Angeles, Miami, New York, San Jose, Northern VA (WFO)
- RAC offices in Houston, Portland, Atlanta
- OEE Special Agents co-located with FBI, HSI, and DCIS

OEE Washington Field Office (WFO)

- *The Washington Field Office (WFO) Area of Operational Responsibility (AOR) encompasses **nine (9) states**, the **District of Columbia**, and **eighteen (18) federal judicial districts**. In addition, WFO is the home office for all cases opened on a foreign target without a U.S. nexus related to another Field Office AOR.*
- Delaware
- Maryland
- Virginia (Eastern District, Western District)
- West Virginia (Northern District, Southern District)
- Ohio (Northern District, Southern District)
- Kentucky (Eastern District, Western District)
- Tennessee (Eastern District, Middle District, Western District)
- North Carolina (Eastern District, Middle District, Western District)
- South Carolina
- Washington, D.C.

WFO is also home to the three largest U.S. Express Consignment Carriers- Fed Ex, UPS, and DHL as well as 31 CBP Ports of Entry and 10 FBI Field Offices.



Office of Enforcement Analysis

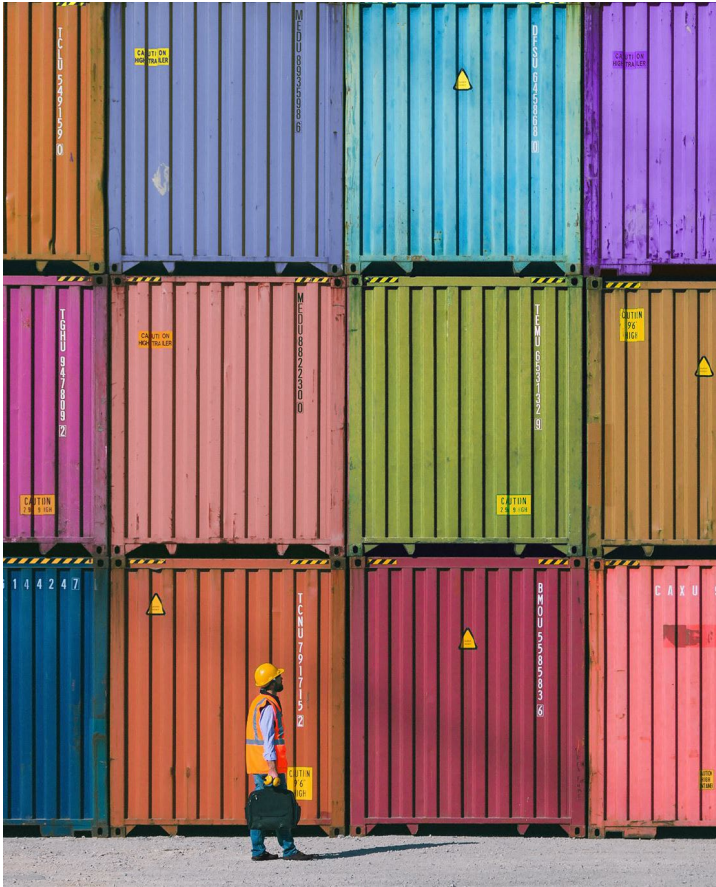
Analysts and specialists that assess the bona fides of foreign transaction parties to license applications (i.e., their reliability as recipients of U.S.-origin items); 2) coordinate the end-use check program 3) identify suspicious inquiries to alert U.S. companies; 4) develop investigative leads; 5) provide analytical case support; and 6) engage with key trading partners.

- Inform adjudication of export control license applications;
- Prevent diversion through end-use checks, outreach, and cooperation with foreign governments and industry;
- Identify violators;
- Alert exporters about suspicious inquiries;



Goals: *Bona fides assessment; prevention/detection/
assessment of export control violations*

WHAT CONSTITUTES AN EXPORT & UNDERSTANDING EXPORT CONTROLS



- Any shipment, transmission, or transfer of:
 - Commodities (articles and materials)
 - Software
 - Technology
- Occurs through:
 - Shipment of a physical item
 - Electronic transmission (email, file transfer, network access)
 - Verbal disclosure (phone, lecture, casual chats over coffee)
 - Access to technology by a foreign national

Exports can happen within the United States

REGULATORY AUTHORITIES



Who Regulates Export Controls

- Department of Commerce (BIS)
 - Manages Export Administration Regulations (EAR)
- Department of State (DDTC)
 - Oversees International Traffic in Arms Regulations (ITAR)
- Department of Treasury (OFAC)
 - Enforces economic and trade sanctions

Interconnected Roles - Multiple agencies may impact a single transaction

WHAT IS REGULATED BY BIS?



See 15 CFR 734.3

- **The export of items subject to the Export Administration Regulations (EAR)**
- **“Subject to the EAR”** is a term to describe those items and activities over which BIS exercises regulatory jurisdiction under the EAR.
- Conversely, items and activities that are not subject to the EAR are outside the regulatory jurisdiction of the EAR and are not affected by these regulations.

What does “Subject to the EAR” mean?



“Subject to the EAR” means that the Export Administration Regulations (EAR) are the applicable regulations (i.e., BIS exercises regulatory authority)



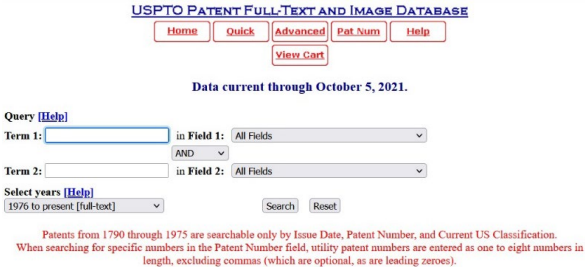


“Subject to the EAR” does not automatically mean that a license to export is required



Items “subject to the EAR” are exported or reexported under an authorization (e.g., license or license exception), or designated No License Required (NLR)

Items not “Subject to the EAR”

<p>15 CFR 734.3(b)(1): Items exclusively controlled for export or reexport by another federal agency</p>	
<p>15 CFR 734.3(b)(2): Certain printed material</p>	
<p>15 CFR 734.3(b)(3): Certain information and software</p>	

Items not “Subject to the EAR”

- 734.7(a) – Certain “published” technology and software
- 734.8 (a) – “Technology” or “software” that arises during, or results from fundamental research and is intended to be published is not subject to the EAR. (Note: Section 734.8 does not apply to physical objects such as pathogens or equipment.)
- 734.8(c) – *Fundamental research definition*. Fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

Items that are “Subject to the EAR”

Items on the **Commerce Control List** and **EAR99** items that are:

- In the United States
 - Including items moving in-transit through the United States
- U.S.-origin items, wherever located
- Items produced abroad using U.S.-origin content or U.S.-origin technology
 - *de minimis* rule and Foreign Direct Product Rules
- Specific conduct of U.S. and foreign persons
 - Proliferation of nuclear explosive devices, chemical or biological weapons, missile technology
 - Activities prohibited by any order issued under the EAR

Items that are “Subject to the EAR”

Categories of Regulated Items

- Goods: *Machinery, equipment, materials*
- Software: *Encryption software, proprietary programs*
- Technology & Technical Data: *Blueprints, manuals, designs*

Affected Industries

- Aerospace
- Telecommunications
- Biotechnology
- Computing & Electronics

Dual-Use Technology

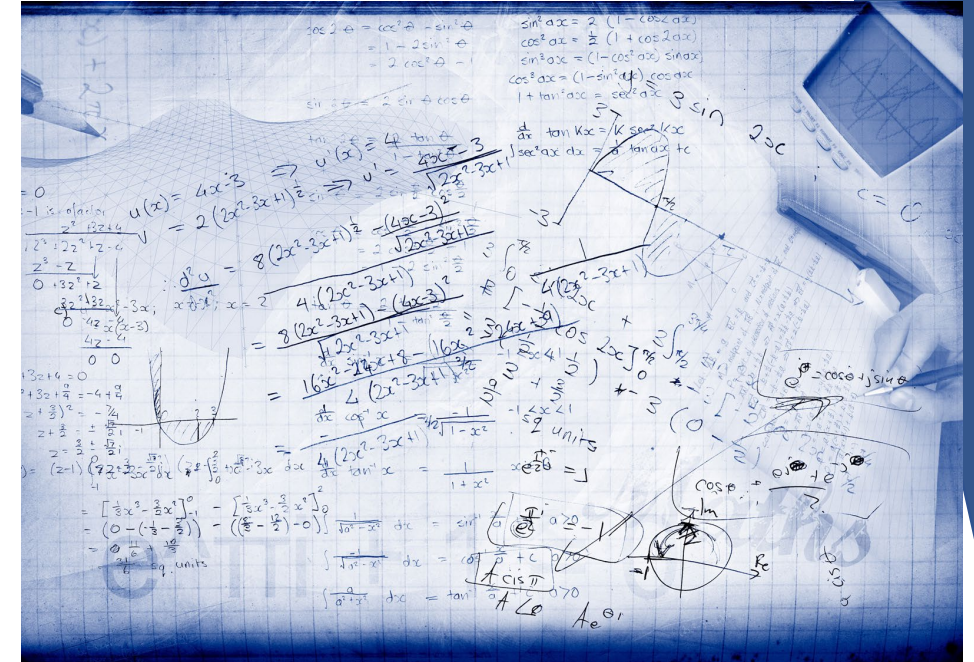
- Items with commercial and military applications
- Examples: High-performance computers, advanced materials (e.g., carbon fiber)

How to Determine if an Item is Subject to the EAR:

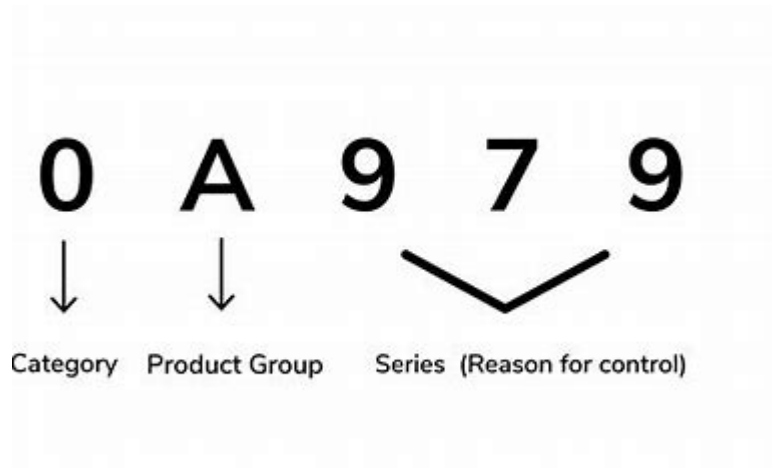
The **Commerce Control List (CCL)** describes items (i.e., commodities, software and technology) subject to BIS authority.

- Items are categorized by **Export Control Classification Numbers (ECCNs)**. ECCNs fall under certain “**categories**,” and within those categories are “**product groups**.”

In addition, those items “subject to the EAR” but not identified on the CCL under a specific ECCN are identified by the designator “**EAR99**.”



EXPORT CONTROL CLASSIFICATION NUMBER (ECCN)



- Export Control Classification Number (ECCN)
 - Five-character alphanumeric code
- Structure of ECCN
 - Category (0-9)
 - Product Group (A-E)
 - Type of Control

COMMERCE CONTROL LIST (CCL) IS A CATALOG OF ITEMS SUBJECT TO THE EAR, COMPRISED OF CATEGORIES AND PRODUCT GROUPS.

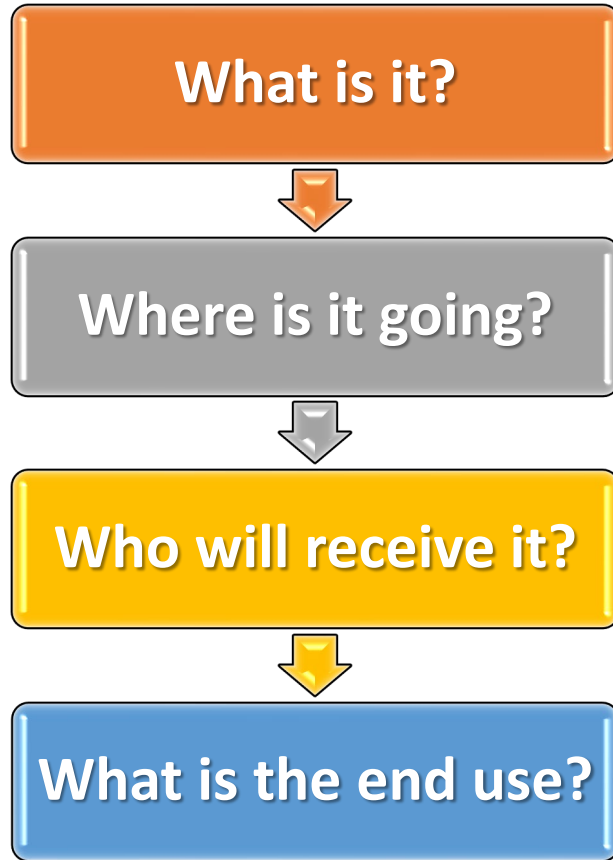
Categories	
0	Firearms (previously on the USML), Nuclear Materials, Facilities & Equipment, & Misc. Items
1	Materials, Chemicals, Microorganisms, & Toxins
2	Materials Processing (i.e., making plastics, metals)
3	Electronics Development
4	Computers (development and programs)
5	Telecommunications & Information Security
6	Sensors & Lasers
7	Navigation & Avionics
8	Marine
9	Aerospace & Propulsion Systems, Space Vehicles, and Related Equipment

EAR99 Almost Everything Else

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



How to Determine if an Item Can be Exported- When is a License Needed?



Items are controlled for **four reasons**:

1. **Item** – The commodity itself is controlled to a certain end user;
2. **Country** – The country it is going to is on a sanctions list, such as: Iran, North Korea, Syria, Cuba; or, most recently the roll out of State Department’s high-risk country list where exporting firearms and their accessories are more heavily controlled.
3. **End user** – Individuals or companies that are limited (e.g., would require a license) or entirely prohibited from receiving U.S.-origin items.
4. **End use** – The item would be for military end-use in countries such as China, Venezuela, Russia, and Belarus.

DEEMED EXPORTS & FOREIGN PERSONS

■ What Is a Deemed Export

- Release of controlled technology to foreign nationals in the U.S.
- Treated as an export to the individual's home country.

■ Defining a Foreign Person

- Not a U.S. citizen or permanent resident.
- Includes foreign corporations, governments, and organizations.

■ Common Scenarios

- Sharing technical data with foreign national employees.
- Plant or lab tours or meetings revealing controlled information.
- Collaborative research with foreign nationals.
- Foreign students or scholars conducting research



SANCTIONED COUNTRIES

■ Sanctioned Countries

- Iran
- North Korea
- Syria
- Cuba
- Russia & Belarus

■ Types of Sanctions

- Comprehensive (aim to restrict trade and financial transactions with specific countries/regions)
- Broad restrictions (e.g., on items for military end users/uses)
- Limited (bans on specific items)
- Specific sectors or items (e.g., defense, aerospace, oil/gas)



RESTRICTED PARTIES

- Restricted Parties
 - Individuals and entities prohibited from receiving exports
- Key Lists
 - Entity List
 - Denied Persons List
 - Specially Designated Nationals (SDN) List
 - Can be found on the Consolidated Screening List



DETERMINING RESTRICTED PARTIES

■ Screening Process

- Use the Consolidated Screening List (CSL)
- Implement automated screening tools

■ Best Practices

- Screen all parties at multiple stages
- Keep screening databases updated
- Document screening results

■ Resources

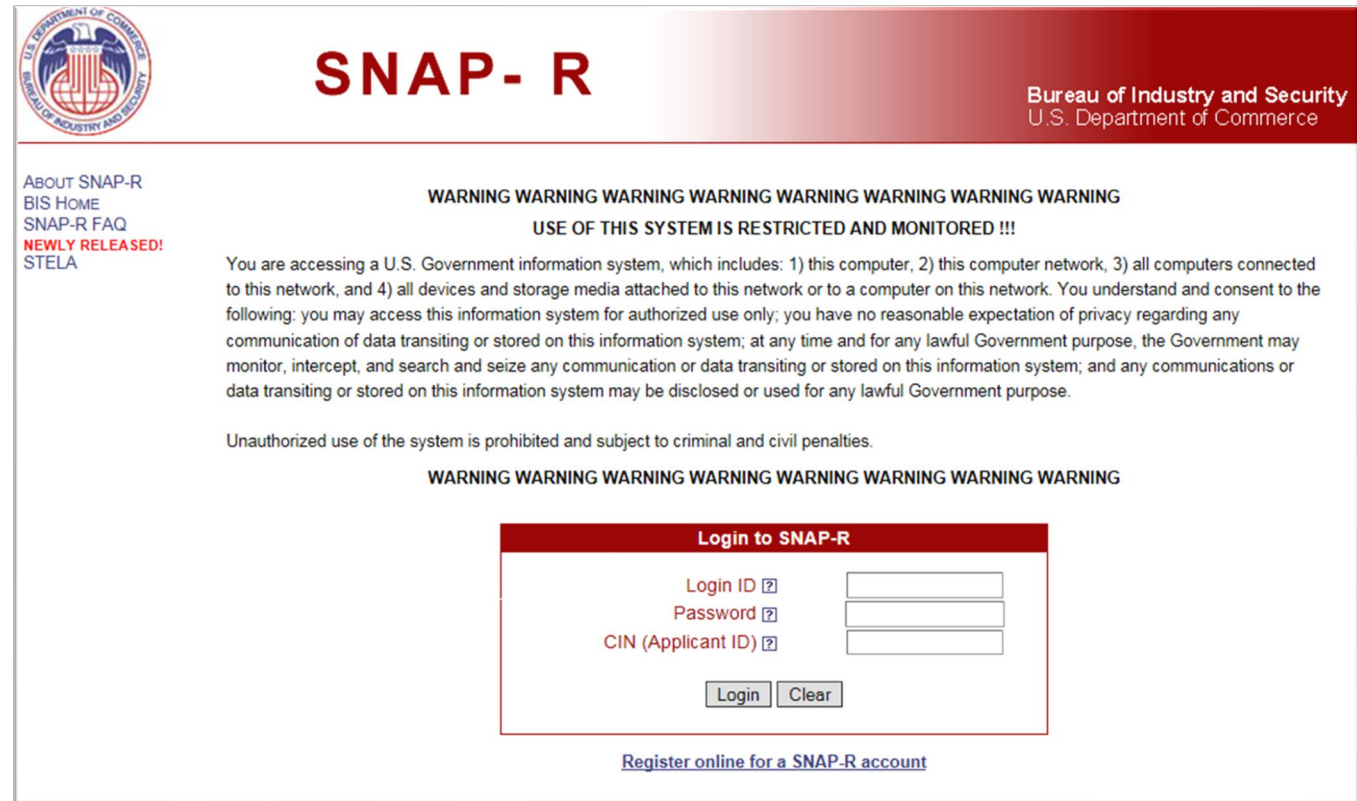
- Government Websites
 - www.export.gov or <https://www.trade.gov/consolidated-screening-list> for CSL
- Compliance Software



Now What?

If there is a license requirement, the exporter has TWO options:

- Apply for a license via SNAP-R (BIS Web Portal)
- Determine if eligible for License Exception



The screenshot shows the SNAP-R web portal interface. At the top left is the U.S. Department of Commerce seal. The header features the text "SNAP- R" in large red letters, with "Bureau of Industry and Security" and "U.S. Department of Commerce" to its right. On the left side, there are links: "ABOUT SNAP-R", "BIS HOME", "SNAP-R FAQ", "NEWLY RELEASED!", and "STELA". The main content area has a red warning banner that reads "WARNING WARNING WARNING WARNING WARNING WARNING WARNING WARNING" followed by "USE OF THIS SYSTEM IS RESTRICTED AND MONITORED !!!". Below this is a paragraph of legal disclaimer text. Underneath is a statement: "Unauthorized use of the system is prohibited and subject to criminal and civil penalties." This is followed by another red warning banner with the same text. The login section is titled "Login to SNAP-R" and contains three input fields: "Login ID [?]", "Password [?]", and "CIN (Applicant ID) [?]", each with a help icon. Below the fields are "Login" and "Clear" buttons. At the bottom of the login section is a link: "Register online for a SNAP-R account".

Applying for a License – Part 748

- Licenses are valid for four years
 - You can apply for a license that will cover multiple shipments over a 4-year period
 - You may submit a reasonable estimate of items to be shipped throughout the validity of the license
 - You do not need a purchase order to apply for a license
- Do not wait until the license you're using expires before submitting a new application
 - You may submit a new application prior to the expiration or full utilization of your current license in order to ensure uninterrupted shipping
- There is no cost to register for SNAP-R or apply for export licenses

License Exceptions

- **Definition:** A “license exception” is an authorization described in Part 740 of the EAR that takes the place of a license, fulfilling a license requirement **without the need to obtain a license.**
- In most instances exporter does not require anything in writing from BIS
- Identified by a **three letter acronym** (e.g., AVS, LVS, TSR, STA)
- If more than one license exception is available, use the least restrictive license exception

Two Types of License Exceptions

List-Based: Availability for use is specified in the Commerce Control List	Transaction-Based: Availability for use is based on the specific transaction (Item + Destination + End User + End Use)
<p>ACE - Authorized Cybersecurity Exports</p> <p>ACM - Advanced Compute Manufacturing</p> <p>AIA - Artificial Intelligence Authorization</p> <p>APP - High Performance Computers</p> <p>ENC - Encryption Commodities, Software, & Technology</p> <p>GBS - Group B Shipments</p> <p>HBM - High Bandwidth Memory</p> <p>IEC - Implemented Export Controls</p> <p>LPP - Low Processing Performance</p> <p>LVS - Limited Value Shipment</p> <p>TSR - Technology & Software Under Restriction</p>	<p>ACA - Advanced Computing Authorized</p> <p>AGR - Agricultural Commodities</p> <p>APR - Additional Permissive Reexports</p> <p>AVS - Aircraft, Vessels, and Spacecraft</p> <p>BAG - Personal Baggage</p> <p>CCD - Consumer Communication Devices</p> <p>GFT - Gift Parcels and Humanitarian Donations</p> <p>GOV - Governments and International Organizations</p> <p>MED - Medical Devices</p> <p>NAC - Notified Advanced Computing</p> <p>RFF - Restricted Fabrication "Facility"</p> <p>RPL - Servicing & Replacement of Parts & Equipment</p> <p>SCP - Support of the Cuban People</p> <p>STA - Strategic Trade Authorization</p> <p>TMP - Temporary Imports, Exports, Reexports, & Transfers</p> <p>TSU - Technology & Software Unrestricted</p>

IDENTIFYING RED FLAGS



- Common Red Flags
 - Unusual payment methods or terms
 - Customer hesitant to provide end-use/user information
 - Requests for excessive confidentiality
 - Shipments to inconsistent destinations
- Reflection
 - Have you ever been asked to alter product descriptions?
 - Does the customer's order make sense for their business?
- Action Steps
 - Investigate any inconsistencies
 - Consult with compliance officers
 - Document findings and decisions

Export Clearances

- Once you've determined (and obtained) the proper authorization or designation, you're ready to ship.
- Electronic Export Information (EEI) filed in Automated Export System (AES)
 - System administered by U.S. Census Bureau
- Exporter responsible for details on the export, not forwarder
- Critical information required
 - Classification (ECCN or EAR99)
 - License Number or License Exception Code

WHAT IS A VIOLATION?

15 CFR §764.2 Violations.

- (a) Engaging in prohibited conduct. No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.
 - See 15 CFR §758 – Export Clearance Requirements
 - See 15 CFR §736 – General Prohibitions
- (b) Causing, aiding, or abetting a violation.
- (c) Solicitation and attempt.
- (d) Conspiracy.

WHAT IS A VIOLATION?

- (e) Acting with knowledge of a violation.
- (f) Possession with intent to export illegally.
- (g) Misrepresentation and concealment of facts.
- (h) Evasion.
- (i) Failure to comply with reporting, recordkeeping requirements.
- (j) License alteration.

CONSEQUENCES OF VIOLATIONS

- Financial Penalties
 - Civil fines up to \$375,000 or twice the value per violation (whichever is greater)
 - Criminal fines up to \$1 million per violation
- Legal Actions
 - Imprisonment for individuals (up to 20 years)
 - Revocation of export privileges
- Reputational Damage
 - Loss of customer trust
 - Negative media attention
- Operational Setbacks
 - Supply chain disruptions



BEST PRACTICES FOR COMPLIANCE

■ Immediate Actions

- Conduct Compliance Audits
 - Review current procedures and policies
- Implement Screening Procedures
 - Screen customers, partners, and transactions
- End-User Statements
 - BIS-711 Form or self-generated

■ Long-term Strategies

- Develop a Compliance Program
 - Establish clear policies and responsibilities
- Regular Training
 - Educate employees on regulations and updates
- Documentation
- Continuous Improvement



Voluntary Self Disclosures (VSD)

<https://www.bis.gov/voluntary-self-disclosure>

- Identified a violation? Submit a VSD.
- BIS encourages the submission of Voluntary Self Disclosures (VSDs) by parties who believe they may have violated the Export Administration Regulations (EAR)

BIS_VSD_INTAKE@bis.doc.gov

- VSDs are an excellent indicator of a party's intent to comply with U.S. export control requirements and may provide BIS important information on other ongoing violations
- It is a “great weight” mitigating factor in administrative decisions

FURTHER TRAINING OPPORTUNITIES

- Workshops & Seminars

- BIS Seminars: In-depth training on EAR:
<https://www.bis.gov/bis-seminar-schedule>

- Online Resources

- BIS Online Training Room: Webinars and tutorials:
<https://www.bis.gov/videos>

- Conferences

BURAEU OF INDUSTRY AND SECURITY CONTACT INFORMATION

- Contact Information
 - Exporter Services: 202-482-4811
 - Website: www.bis.gov
- Services Offered
 - Compliance assistance
 - General inquiries
- Reporting Suspected Violations
 - 800-424-2980



CALL TO ACTION

- Conduct Internal Audit
 - Assess your export control compliance status
- Implement Compliance Programs
 - Develop or update policies and procedures
- Engage in Training
 - Schedule staff training sessions
- Stay Informed
 - Subscribe to regulatory update services
- Connect with Experts
 - Reach out to compliance professionals or legal counsel

QUESTIONS

