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Guidance Paper
Export Jurisdiction and Classification

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Export Jurisdiction and Classification: What U.S. Universities Need to Know

Jurisdiction and classification information are key elements of export control efforts. Knowledge of both are necessary in order to determine relevant export restrictions for any given item. Jurisdiction refers to which government agency (Department of State or Department of Commerce) exercises regulatory control of the item. Classification is based on the technical characteristics of the item and correlates to specific controls and export licensing requirements.

Jurisdiction

Understanding which agency has jurisdiction over a particular item is the first critical step in determining whether an export requires a license or other government authorization.

Department of State

The Department of State's Directorate of Defense Trade Controls (DDTC) exercises jurisdiction over defense articles and services identified the United States Munitions List (USML), 22 CFR pt. 121. (Defense articles and defense services are defined terms within the International Traffic in Arms Regulations (ITAR), per 22 CFR §§ 120.6 and 120.9.) Defense articles are the hardware and technical data designated on the USML. These may include models, mockups, forgings, castings, extrusions, and machined bodies that reveal ITAR-controlled technical data. Basic marketing information on function or purpose or general system descriptions are not ITAR-controlled technical data, and thus not subject to DDTC's jurisdiction. Moreover, the results of fundamental research are not ITAR-controlled, per 22 CFR § 120.11(a)(8). Defense services consist of furnishing technical data or assistance (including training) relating to defense articles to foreign persons.

Department of Commerce

Most items subject to export controls fall under the jurisdiction of the Department of Commerce's Bureau of Industry and Security (BIS), and are classified primarily using the Commerce Control List (CCL), 15 CFR pt. 774. These include items that have both commercial and military or proliferation applications, as well as specific military items that do not possess critical military or intelligence capabilities. Refer to 15 CFR § 734.3 for detailed information regarding what is and is not subject to the Export Administration Regulations (EAR) (*i.e.*, within the regulatory jurisdiction of BIS).

Of particular relevance to U.S. universities are exclusions from the EAR that apply to aspects of fundamental research, instructional activities, and publishing. The fundamental research exclusion is explained in detail at 15 CFR § 734.8.

Other agencies

Certain items related to nuclear reactors, equipment and materials may fall under jurisdiction of the Nuclear Regulatory Commission or Department of Energy, rather than BIS or DDTC. The following table includes Code of Federal Regulations (CFR) references for additional regulatory information.

Regulator	Regulations	Control List	Items
Department of Commerce (BIS)	Export Administration Regulations (EAR) 15 CFR pts. 730-774	Commerce Control List (CCL) 15 CFR pt. 774	Dual-Use & Specified Military Items
Department of State (DDTC)	International Traffic and Arms Regulations (ITAR) 22 CFR §§120-130	U.S. Munitions List (USML) 22 CFR pt. 121	Defense Articles & Services
Nuclear Regulatory Commission	Export and Import of Nuclear Equipment and Material 10 CFR part 110		Commodities Related to Nuclear Reactor Vessels
Department of Energy	Assistance to Foreign Atomic Energy Activities 10 CFR part 810		Technology Related to Production of Special Nuclear Materials

Jurisdiction decisions

Exporters may determine for themselves whether a given item is on the USML (within DDTC's jurisdiction) vs. the CCL (within BIS's jurisdiction), but they are strictly liable for any unlawful mistakes made—for example, inadvertently exporting an ITAR-controlled item using an EAR authorization.

The only formal way to obtain binding government guidance is submission of a Commodity Jurisdiction (CJ) Request to the Department of State. CJ requests are submitted online using the DS-4076 form along with any supporting documentation, such as product specifications, brochures, schematics, technical drawings, etc. Furnishing detailed, accurate information about the function and capabilities of the item in question will help minimize potential delays. Institutions do not have to be registered with the DDTC in order to submit a CJ request. The process takes approximately 60 days, but there are variations dependent on the item under review. (A CJ request resulting in a DDTC jurisdiction determination will typically include the USML classification. A CJ request resulting in a determination of BIS jurisdiction may include a suggested CCL classification; however, formal CCL classifications must come from the BIS, as described below.)

Classification

Once jurisdiction is established, an export classification can be determined. (Classification, especially for items listed on the CCL, is a key factor in determining whether an item requires a license or qualifies for an exception or other authorization.) There are several ways to derive an export classification and no single methodology will apply to every situation.

- Manufacturer or Vendor: Usually the manufacturer of an item will be the best source for obtaining an export classification. Many companies even make export classifications available on their websites or will provide upon request. It may be more challenging to retrieve export classifications from smaller companies or manufacturers that do not typically export. In an effort to aid exporters, BIS has compiled Publicly Available Classification Information from listed companies. Since it is ultimately the exporter's responsibility to comply with export requirements, a sanity check of classifications obtained from vendors or manufacturers may be prudent.

- Self –Classification: If a classification is not available from an outside source, it can be determined by someone with access to the technical specifications of the item and familiarity with the structure of the relevant export control list. Referencing the definitions section of the applicable regulations may be needed for key terminology encountered such as "specially designed," "technical data," "technology," "commodity," "development," "production," and "use." Defined terms can have a direct impact on classification and definitions may vary between regulators. Running key words through electronic search tools may also be used to work through control lists; however, results of these tools are only as accurate as the terms entered and search criteria settings.

  - **CCL Items** - These items are classified by an alphanumeric code known as an Export Control Classification Number (ECCN)—"6A003," for example. The first digit of the code indicates the main category of the item.

Export Control Categories

0 = Nuclear materials, facilities and equipment (and miscellaneous items)
1 = Materials, Chemicals, Microorganisms and Toxins
2 = Materials Processing
3 = Electronics
4 = Computers
5 = Telecommunications and Information Security
6 = Sensors and Lasers
7 = Navigation and Avionics
8 = Marine
9 = Propulsion Systems, Space Vehicles, and Related Equipment

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The second digit of the code indicates the product group of the item.

Five Product Groups

A. Systems, Equipment and Components
B. Test, Inspection and Production Equipment
C. Material
D. Software
E. Technology

The next three digits of the code indicate the reasons for control of the item. Controls are not all equivalent. National Security controls are more restrictive and apply to nearly all countries, while Anti-Terrorism controls are less restrictive and apply to only a handful of countries.

Reasons For Control

0xx = National Security
1xx = Missile Technology
2xx = Nuclear Proliferation
3xx = Chemical / Biological Weapons
5xx = Foreign Policy
6xx = Former USML or Wassenaar Arrangement Munitions List
9xx = Anti-Terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, Etc.

Following these five digits, there may be additional paragraph designations. For example, as of this publication date, the full ECCN for a general purpose analog-to-digital converter with 16 bit resolution and an output rate greater than 65 million words per second would be 3A001.a.5.a.5.

The Department of Commerce has released an online training video The Commerce Control List and Self-Classification which provides additional guidance on how to classify items. Be aware that some emerging technologies may be classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 as described in Supplement 5 to Part 774 of the EAR. Low-sensitivity items subject to the EAR that do not meet the technical parameters of any specific ECCN listed on the CCL fall into the default catch-all ECCN of EAR99.

- Formal Classification Request: If an item falls under the jurisdiction of BIS but the export classification is unknown, a formal Commodity Classification Automated Tracking System (CCATS) request can be submitted to the Department of Commerce electronically via the SNAP-R system. BIS's Classification Request Guidelines describe the CCATS process for obtaining an ECCN. Processing times can vary, but generally CCATS determinations do not take as long as license applications. For items under the jurisdiction of DDTC, the previously discussed CJ request can be used.

o **USML Items** – Defense articles and services are classified by USML category and paragraph. There are 21 enumerated categories:

> I – Firearms, Close Assault Weapons and Combat Shotguns
> II – Guns and Armament
> III – Ammunition/Ordnance
> IV – Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
> V – Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
> VI – Surface Vessels of War and Special Naval Equipment
> VII – Ground Vehicles
> VIII – Aircraft and Related Articles
> IX – Military Training Equipment and Training
> X – Personal Protective Equipment
> XI – Military Electronics
> XII – Fire Control, Range Finder, Optical and Guidance and Control Equipment
> XIII – Materials and Miscellaneous Articles
> XIV – Toxicological Agents including Chemical agents, Biological Agents and Associated Equipment
> XV – Spacecraft and Related Articles
> XVI – Nuclear Weapons Related Articles
> XVII – *Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
> XVIII – Directed Energy Weapons
> XIX – Gas Turbine Engines and Associated Equipment
> XX – Submersible Vessels and Related Articles
> XXI – Articles, Technical Data and Defense Services Not Otherwise Enumerated

The characteristics of the item should guide reviewers to the correct category. Then paragraphs within the relevant category should be reviewed to see if the item meets control parameters. Be aware that some entries incorporate "specially designed" catch-all paragraphs that can include a wide range of items associated with a particular defense article. The DDTC has published an Order of Review Decision Tool that may be helpful in determining the export classification of ITAR controlled items.

Recordkeeping

Generally speaking, export control records must be retained for a minimum of five years from the date of export or of license expiration—whichever occurs later—per 15 CFR pt. 762 and 22 CFR pt. 123. Records reflecting export jurisdiction and classification decisions should also be retained for at least five years. Such records prove useful references when there is a need to review the logic behind why a particular classification was assigned. They are also helpful when determining how future regulatory changes impact previous determined classifications.

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