

Export Jurisdiction and Classification

Quick Reference Guide

CAUTION: *Export jurisdiction and classification can be very complex and time-consuming. It is highly recommended that you seek experienced trade professionals or legal counsel for advice and assistance with commodity jurisdiction and classification.*

Determining the appropriate U.S. Government agency that has jurisdiction over export controls for a commodity, technology, or service, is a mission-critical element for effective export compliance. Determination of the governing agency directly corresponds to the body of U.S. laws and regulations that subsequently apply to the export of the commodity, technology, or service. Exporting a commodity, technology, or service without first determining the accurate jurisdiction and classification for export can expose the exporter to potentially severe penalties and fines.

This quick reference focuses on determining export jurisdiction and classification for the two U.S. Government agencies that have significant control over virtually all tangible and intangible commodities (physical items, technology, and services) exported from the U.S., and their applicable regulations: i) U.S. Department of State and the International Traffic in Arms regulations (commonly referred to as “ITAR”); and ii) U.S. Department of Commerce and the Export Administration Regulations (commonly referred to as “EAR”).

There are two basic methods of determining ITAR or EAR export Jurisdiction and Classification: i) Self-determination, performed by the exporter; and ii) Requesting a jurisdiction or classification determination from the relevant U.S. government agency.

In most cases, a self-determination is sufficient. Following are the basic steps to undertake when performing a self-determination of export jurisdiction and classification. Be sure to perform the steps in order. ITAR jurisdiction is always determined first. If it is determined that ITAR regulations do not apply, then EAR classification determination follows.

Basic Steps for ITAR Jurisdiction and Classification

Step 1: Gather information about the commodity (physical item, technology, or service).

What is the commodity and what is its basic intended use, performance capabilities, and functions?

Who developed the commodity and where was it developed?

Is it intended for military use, civilian use, or both?

Is the commodity a finished item, part, component, accessory, or attachment?

Step 2: Look for the commodity on the U.S. Munitions List (“USML”). The USML is Part 121 of the ITAR (www.ecfr.gov/USML).

If you find the commodity on the USML, then the ITAR regulations apply to that commodity.

If the commodity is not specifically on the USML, determine if the commodity is “Specially Designed” for use in or with an ITAR-controlled commodity.

Step 3: Complete a “Specially Designed” analysis (See ITAR 120.41 www.ecfr.gov/specially-designed), also referred to as “catch and release.”

Review ITAR 120.41 Section (a) to determine if the commodity is described or “caught” as “Specially Designed.”

If “caught,” move on to ITAR 120.41 Section (b) to determine if the commodity is “released” from “Specially Designed,” meaning “Specially Designed” does not apply to the commodity due to one or more of the given criteria.

If a “release” does not apply, then the commodity is considered “Specially Designed” under the ITAR.

If a “release” applies, then the commodity is not considered “Specially Designed” under the ITAR.

Move on to EAR classification determination.

Basic Steps for EAR Classification

Step 1: Look for the Export Control Classification Number (“ECCN”) of the commodity; a 5-character alpha-numeric code that describes the item.

All ECCN's are listed in the Commerce Control List ("CCL") (Supplement No. 1 to Part 774 of the EAR <https://www.ecfr.gov/CCL>). The CCL is divided into 10 categories, and each category is further divided into five product type groups.

Look for the commodity in the 10 CCL categories. For any category that may apply, also review the sub-categories.

If you find the commodity on the CCL, then the EAR regulations apply to that commodity.

Step 2: Complete an EAR "Specially Designed" analysis (See Supplement No. 4 to Part 774 of the EAR – Commerce Control List Order of Review <https://www.ecfr.gov/order-of-review>). This process is similar to the "catch and release" review under the ITAR.

Review EAR 772.1, definition of "Specially Designed," Section (a), to determine if the commodity is "caught" as "specially designed."

If "caught," move on to Section (b) to determine if the commodity is "released" from "Specially Designed."

If a "release" does not apply, then the commodity is considered "Specially Designed" under the EAR.

If a "release" applies, then the commodity is not considered "Specially Designed" under the EAR.

Step 3: If released, determine the appropriate non-"specially designed" ECCN from the CCL. Review the "List of Items Controlled" in the applicable CCL sub-category.

Step 4: Once the ECCN has been identified, identify the Control Criteria that apply. The Control Criteria are listed at the beginning of each ECCN subsection.

Identify the "License Requirements" using the "Reason for Control." The 2-letter codes in the "Reason for Control" are identified in Supplement No. 1 to Part 738 of the EAR and determine if an export license is required to export the commodity to specific countries.

Determine if any "License Exceptions" apply. The "License Exceptions," if any, are listed after the "License Requirements." Descriptions of the License Exceptions are found at Part 740 of the EAR.