

# Export Penalties and How to Avoid Them

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# Commodity Jurisdiction & Classification

Jurisdiction and classification information are key elements of a company's export control program

**\*\*Understanding both elements is necessary in order to determine\*\*:**

- Controlling regulatory agency (i.e., Jurisdiction)
- Licensing requirements
- License exceptions
- Other potentially applicable requirements such as reporting obligations

# Commodity Jurisdiction & Classification

Establishing commodity jurisdiction and classification for products should be included in company procedures

Commodity jurisdiction and classification is a team effort

- Bringing together both qualitative and quantitative functions to determine same

To determine commodity jurisdiction and classification must have a complete understanding of the product:

- Product description
- Origin of components and subcomponents
- Understanding of product capabilities
- Understanding of product end-uses
- Product specifications and drawings
- Actual and prospective customers for the product
- Any past jurisdiction or export history
- Comparable products, including foreign availability

# Basic Regulatory Structure – Understanding Commodity Jurisdiction

International Agreements and Treaties

U.S. National Security & Foreign Policy

International Traffic in Arms  
Regulations (“ITAR”)  
Department of State  
Directorate of Defense Trade  
Controls

22 C.F.R. Part 120-130

Export Administration Regulations  
 (“EAR”)  
Department of Commerce  
Bureau of Industry and Security

15 C.F.R. Part 730-774

Office of Foreign Assets Control  
 (“OFAC”) Sanctions

Department of Treasury

31 C.F.R. *et. seq*

# ITAR: What is Controlled?

We start with ITAR in our jurisdiction and classification assessment process, followed by EAR, as that is the order of review

Applies to:

- Inherently military items
- Some spacecraft and systems; others in EAR

Controlled items (“defense articles”) appear on the U.S. Munitions List

Controls extend to “technical data” required for the design, development, production, etc. of a defense article

Commercial good that is “specially designed” or modified for a military application could be subject to the ITAR

# Activities That May be Subject to ITAR

## Export:

- Transferring a **defense article** out of the U.S. in any manner;
- “Release” (including orally/visually) or transfer of **technical data** to a foreign person, whether in the U.S. or abroad (“deemed export”); or
- Performing a **defense service** on behalf of, or for the benefit of, a **foreign person** whether in the U.S. or abroad

## Temporary Import:

- Bringing a **defense article** into the U.S. then back to same country

## Brokering Activities:

- Action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport of a U.S. or foreign **defense article** or **service**



# USML Structure

## USML Structure:

- The USML is divided into 21 categories
- Each USML category includes paragraphs for articles, technical data, and defense services
- Review each category to determine if your item is described in an entry under that category
- Items may be described by multiple entries

**Entries are either “enumerated” or “catch-all”**

## **See 22 CFR 120.41 for “Specially designed”:**

Note 1 to paragraph (a)(1): “An example of a commodity that as a result of development has properties peculiarly responsible for achieving or exceeding the controlled performance levels, functions, or characteristics in a USML category would be a swimmer delivery vehicle specially designed to dock with a submarine to provide submerged transport for swimmers or divers from submarines.”

# United States Munitions List (“USML”)

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



# United States Munitions List (“USML”)

# Submitting a CJ Determination Request

Submit a CJ request online via  
Defense Export Control and  
Compliance System (DECCCS):

<https://deccs.pmddtc.state.gov>

DS-4076: CJ Determination Request  
Form General Instructions-----➔

## CJ Guidelines and Instructions

PDF <a href="#">DS-4076 Instructions</a>	PDF <a href="#">CJ Application Tips and FAQs</a>
PDF <a href="#">CJ Industry User Guide</a>	

## Example Form

**DS-4076 Commodity Jurisdiction (CJ) Request Form:** The DS-4076 form available below is a fully expanded version of the form to display all possible questions that may be asked of applicants. Please note, when filling out your submission in DECCS, only those questions relevant to your particular situation will appear.

*For informational purposes only. [View the entire DS-4076 data collection \(PDF\)](#).*

## Supporting Document Example

[DS-4076 Authorization Letter Example Attachment \(PDF\)](#). Letter authorizing a person to file the DS-4076 on behalf of the manufacturer.

## CJ Submission

After reading the CJ submission guidelines and amassing relevant information on the commodity or service for which you are seeking a CJ determination, you are ready to submit. To create and submit a DS-4076, go to the [DECCS CJ application](#).

## Check CJ Status

Search on [ELISA](#) system to find your current CJ Status. Please note it will take 24 to 48 business hours after submission for your case to appear in ELISA.

If you have any questions about the status of your CJ, please contact the Response Team at (202) 663-1282 or [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov)



# Self-Classification vs formal Commodity Jurisdiction (CJ)

- ITAR classification requires a good hard look; although the list of ITAR items is much shorter than the EAR side, there are still complex classification that arise
- Depending on the situation many items are self-classified either by the manufacturer/supplier or the exporter, or a coordination effort between the two takes place, and the export classification is determined without going to the US Government (i.e., a CJ)
- The CJ request process is always available where there are still questions about jurisdiction after a deep review
  - No need to be registered with DDTC, anyone can apply for a CJ
  - All CJ requests have to be filed online through DECCS.
  - Required inputs include unique characteristics of the item, proposed classification, development information, funding, etc.

# PROS AND CONS OF FILING A CJ REQUEST

Pros	Cons
- Provides certainty as to jurisdiction and applicable license and other compliance requirements (U.S. Government will indicate CCL or USML provision that applies)	- Provides certainty as to jurisdiction and applicable license and other compliance requirements [← SAME]
- Avoids lengthy RWA time if applied for license from wrong agency (for example applying to BIS for an ITAR item)	- Need to know a lot of information regarding the product in order to submit a complete CJ (CCL/USML review; product descriptions and illustrations; development and funding history; foreign availability; and previous export history for same/similar products)
- U.S. Government response time can be shorter than other types of requests (CCATS and licenses); usually 60 days or less	- Once the CJ comes back, it must be followed for all export license requests and export license exceptions
- Can advocate for jurisdiction and classification based on reasonable, good faith reading of CCL (or USML, as applicable, but typically arguing for classification on CCL rather than USML)	- CJ not valid forever; if there is a material changes to CCL or USML, it could mean the CJ is no longer valid (requires constant monitoring of applicable regulations and regulatory changes)
- Can avoid substantial compliance and export licensing requirements by avoiding ITAR jurisdiction	- Can lead to substantially increased compliance and export licensing requirement if product comes back under ITAR [← SAME]
- Gives certainty to business partners as to export classification and applicable license requirements	- Can ask for reconsideration of returned CJ, but would need materially new information and arguments to validly re-submit

# CJ Final Determinations Database

## CJ Final Determinations

Complete CJ Lists for Download:

XLSX | (05/29/19)  
CJ Final Determination Listing (Excel)

Keyword Search

Description	Final Determination Date	Final Determination	Manufacturer	Model Name
Cable assembly that transmits commands between the MK32 torpedo launcher system and the MK46/54 torpedo	2019-04-29	CCL ECCN 9A604.x	Ordnance Technology Service Inc	Torpedo Control Cable Assembly, P/N 2882745
An electronically switchable, controlled radiation pattern array antenna used in the navigation system of the Taurus KEPD 350 missile	2019-04-29	CCL ECCN 9A604.x	Antcom Corporation	4-Element CRPA Active L1/L2 GPS Antenna, Model 4CF-7.6x6.6SG1215A-XS-3-ICS
Classroom-based training and related information to help professional shooters improve their marksmanship through the science of applied ballistics	2019-04-29	USML Category I(i) and not subject to the ITAR or EAR	Applied Ballistics, LLC	Classroom-based Applied Ballistics Training and Related Information
Transmitter used for land-based, fixed-site communication with various military platforms	2019-04-25	USML Category XI(a)(5)(i)	Continental Electronics Corp	Very Low Frequency Transmitter System, M/N CEC Type 125
Coaxial cables used in the ALTAIR radar system	2019-04-25	EAR99	Calmont Wire & Cable	ALTAIR Cables, P/Ns 19-2729457-6 and 19-2729457-7
Software that translates data to NATO specifications for a German missile system	2019-04-25	USML Category XI(d)	Redondo Systems, Inc.	Data Link Processor Software
A satellite designed for collection of atmospheric data related to weather and climate by using GPS radio occultation	2019-04-21	CCL ECCN 9A515.a.5	Space Sciences and Engineering	PlanetiQ Microsatellite, Model PIQ-0001 (TBR), P/N PIQ-0001-01-001-P01 (TBR)
An airborne or ground-based detect-and-	2019-04-21	USML Category XII(a)(5)(i)	Fortem Technologies	Fortem TrueView R-20 Radar

## CJ Final Determinations

Search the list below for Commodity Jurisdiction Final Determinations. Read our frequently asked questions for additional information on CJs and CJ Final Determinations.

Complete CJ Lists for Downloads:

CJ Final Determination Listing (XLSX | 08/08/2022)

Enter a full or partial party name to refine your search

Download Table

Model Name	Manufacturer	Description	Final Determination	Final Determination Date
HE360 Software, HE360 Spacecraft, and Hawk Cluster	HawkEye 360, Inc	1) Satellite-based software used to generate metadata from received radio frequency signals and for performing survey and mapping from space; 2) A single spacecraft consisting of a satellite bus and payload loaded with HE360 software; and 3) A triad of spacecraft comprising three HE360 satellites	1) USML Category XI(d) – HE360 Software 2) USML Category XI(b) – HE360 Spacecraft primary payload (hardware and HE360 Software) 3) CCL ECCN 9A515.a.5 - HE360 Spacecraft, singly or a cluster, with or without the primary payload	2021-10-01
RF Mosaic Subscription Service, and Data Heat maps and Spectrograms	HawkEye 360, Inc	Service that provides to customers data heap maps and spectrograms of radiofrequency (RF) emissions over an area specified by customers, and the data heat maps and spectrograms themselves	USML Category XI(d) - Service Not subject to the ITAR - Information products	2021-10-01
KMB Airborne Radar, Part Number 3REGC	KMB Telematics, Inc	Detect and avoid radar for small, commercial, manned and unmanned aircraft systems	CCL ECCN 6A008.g	2021-09-29
Cyber Security Appliance (CSA) V1.0.0	Shift5, Inc	Security suite that prevents, detects, logs, alerts, and supports recovery from cyber threats on different platforms, including vehicles and trains	Seek CCATS	2021-09-29
Documentation for Rotor 5 in the High-Pressure Compressor of the F-135 engine	Turbocam, Inc	Five documents related to a USML Category XIX part, including engineering test results, photos, and contracting documents	EAR99 - Two documents USML Category XIX(g) - Three documents	2021-09-29
Softmount Assembly, Part Number 192066, and its following components:	American Rheinmetall	Components of a weapons system	USML Category XII(e)(1)	2021-09-28

# ITAR Licensing Determination

- First, any manufacturer or exporter of a defense article generally must be registered with Directorate of Defense Trade Controls (DDTC)
- Export license is generally required to export ITAR-controlled items
- Some license exemptions exist, but are limited in scope and purpose
- Export license applications are submitted to the U.S. Department of State, DDTC, through DECCS



# Types of Licensing Authority

- **Hardware/Tech. Data Export:**
  - Permanent Export: DSP-5 (30+ days processing time)
  - Temporary Hardware Export: DSP-73 (30+ days processing time)
  - Warehouse/ Distribution Agreement: (4++ months processing time)
- **Providing Defense Service:**
  - Technical Assistance Agreement (TAA): (30 days to 4 months processing time)
  - Manufacturing License Agreement (MLA): (2+ months processing time)
- **Import:**
  - Temporary Import: DSP-61 (5 to 30 days processing time)

# Limited Exemptions Available

- **Hardware/Technical Data Exemptions:**
  - Tech. data disclosed per written request from DoD
  - Packing cases specially designed to carry defense articles
  - Certain defense articles to “Canadian-registered persons” for end-use in Canada
  - Transfers within the same foreign company
- **Defense Service Exemptions:**
  - To NATO, Australia, Japan and Sweden for purpose of responding to a DoD quote or bid proposal
  - Certain defense services to “Canadian-registered persons” for end-use in Canada
- **Import Exemptions:**
  - Temp. import for basic servicing
  - Temp. import for “repair” and “replace
  - Temp. import for exhibition/ demonstration

# EAR vs ITAR – Key Differences

	ITAR	EAR
REGULATIONS	International Traffic in Arms Regulations (22 C.F.R. Parts 120 – 130)	Export Administration Regulations (15 C.F.R. Parts 730-774)
GOVERNING AGENCY	Department of State Directorate of Defense Trade Controls (“DDTC”)	Department of Commerce Bureau of Industry & Security (“BIS”)
ITEMS	<ul style="list-style-type: none"><li>• Inherently military</li><li>• Certain space items</li></ul>	<ul style="list-style-type: none"><li>• Commercial</li><li>• “Dual use”</li><li>• Some military/space</li></ul>
LICENSE REQUIREMENTS	State Department <b>authorization required</b> (i.e. license) for most export transactions.	Even if controlled, many <b>exceptions</b> to export license requirement available

# What Items Are Subject to the EAR? \*\*4 Ways\*\*

1. Commodities, software and technology **physically located in the U.S.** (including items in-transit through the U.S. and items located in Foreign Trade Zones)
2. **All U.S. origin** commodities, software and technology, wherever located in the world
3. U.S. origin parts, components, materials incorporated abroad or commingled abroad with foreign software/technology where the US origin content **exceeds de minimis rule** levels (15 CFR 734.4; Supp No. 2 to Part 734 *Guidelines for De Minimis Rules*)
4. Certain **foreign-made direct products of U.S. origin** technology or software (i.e., foreign direct product rules at 15 CFR 734.9)

# What Activities Are Subject to the EAR?

- Export, re-exports and transfers of “items subject to the EAR”
- “Deemed exports “of U.S. origin technology and source code
- Restrictions on activities of U.S. persons related to nuclear explosive devices, chemical or biological weapons, missile technology, semiconductor manufacturing equipment, etc. as described in 15 CFR §744.6

# “Exports” Defined

- **Export:**
  - An actual shipment or transmission of items from U.S. to foreign country
    - Can include physical, electronic, verbal or visual shipment/transmission
    - Items such as hardware, software, and/or technology
- **Deemed Export:**
  - Release of technology or source code from U.S. national to foreign persons, whether in the U.S. or abroad
  - Release is **deemed to be an export** to the individual’s home country
  - Foreign Persons
    - Any individual that is not a U.S. citizen or national, lawful permanent resident (‘green card’ holder), asylee or refugee
- **Re-export:**
  - Shipment or transmission of items subject to the EAR from one foreign location to another (third country)



# Key Steps to Determining Whether an Export License is Required under the EAR:

WHAT IS IT?

WHERE IS IT GOING?

WHO WILL RECEIVE IT?

WHAT IS IT BEING USED FOR?

# Commerce Control List (EAR 15 CFR Part 774)

**Category 0** – Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items)

**Category 1** – Materials, Chemicals, Microorganisms and Toxins

**Category 2** – Materials Processing

**Category 3** – Electronics

**Category 4** – Computers

**Category 5** – Part 1: Telecommunications; Part 2: Information Security

**Category 6** – Sensors and Lasers

**Category 7** – Navigation and Avionics

**Category 8** – Marine

**Category 9** – Aerospace and Propulsion

\*\*\*COMMERCE CONTROL LIST INDEX\*\*\* [ACCESS USING BIS WEBSITE ⇒ REGULATIONS TAB]

# EAR Licensing: Item (WHAT) + Destination (WHERE)

- There are “**Reasons for Control**” associated with each Export Control Classification Number (ECCN)
- Each item has only one correct ECCN
- Each country on the Commerce Country Chart (CCC) has distinct licensing requirements based on a Reason for Control
- If the item is controlled for a reason which requires a license to the proposed destination country, a license must be obtained
- License exceptions may be listed under the ECCN or in Part 740 of the EAR

**6A008 Radar systems, equipment and assemblies, having any of the following (see List of Items Controlled), and “specially designed” “components” therefor.**

**LICENSE REQUIREMENTS**

*Reason for Control:* NS, MT, RS, AT

Control(s)	Country Chart (See Supp. No. 1 to part 738)
NS applies to entire entry ..... MT applies to items that are designed for airborne applications and that are usable in systems controlled for MT reasons. RS applies to 6A008.j.1 ..... AT applies to entire entry .....	NS Column 2. MT Column 1.  RS Column 1. AT Column 1.



# EAR Licensing: Item (WHAT) + Destination (WHERE)

Commerce Control List	Supplement No. 1 to Part 774	Category 6—page 35
<i>to as the gravimeter’s response time) is the time over which the disturbing effects of platform induced accelerations (high frequency noise) are reduced.</i>		
<b>6A008 Radar systems, equipment and assemblies, having any of the following (see List of Items Controlled), and “specially designed” “components” therefor.</b>		
<b>License Requirements</b>		
<i>Reason for Control:</i> NS, MT, RS, AT		
		Supplement No.1 to part 740 of the EAR).
<b>List of Items Controlled</b>		
<i>Related Controls:</i> (1) See also ECCNs <a href="#">6A108</a> and <a href="#">6A998</a> . ECCN <a href="#">6A998</a> controls, inter alia, the Light Detection and Ranging (LIDAR) equipment excluded by the note to paragraph j of this ECCN ( <a href="#">6A008</a> ). (2) See USML Category XII(b) for certain LIDAR, Laser Detection and Ranging (LADAR), or range-gated systems subject to the ITAR.		
<i>Related Definitions:</i> N/A		
<i>Items:</i>		
<b>Note:</b> 6A008 does not control:		
- Secondary surveillance radar (SSR);		
- Civil Automotive Radar;		
- Displays or monitors used for air traffic control (ATC);		
- Meteorological (weather) radar;		
- Precision Approach Radar (PAR) equipment conforming to ICAO standards and employing electronically steerable linear (1-dimensional) arrays or mechanically positioned passive antennas.		
a. Operating at frequencies from 40 GHz to 230 GHz and having any of the following:		
a.1. An average output power exceeding 100 mW; or		
a.2. Locating “accuracy” of 1 m or less (better) in range and 0.2 degree or less (better) in azimuth;		
b. A tunable bandwidth exceeding ±6.25% of the ‘center operating frequency’;		
<b>List Based License Exceptions</b> (See Part 740 for a description of all license exceptions)		
<i>LVS:</i> \$5000; N/A for MT and for 6A008.j.1.		
<i>GBS:</i> Yes, for 6A008.b, .c, and I.1 only		
<b>Special Conditions for STA</b>		
<i>STA:</i> License Exception STA may not be used to ship any commodity in 6A008.d, 6A008.h or 6A008.k to any of the destinations listed in Country Group A:6 (See		
Export Administration Regulations	Bureau of Industry and Security	October 18, 2023

Commerce Control List	Supplement No. 1 to Part 774	Category 6—page 36
<b>Technical Note:</b> For the purposes of 6A008.b, the ‘center operating frequency’ equals one half of the sum of the highest plus the lowest specified operating frequencies.		
c. Capable of operating simultaneously on more than two carrier frequencies;		
d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) radar mode, or sidelooking airborne (SLAR) radar mode;		
e. Incorporating electronically scanned array antennae;		
<b>Technical Note:</b> For the purposes of 6A008.e, electronically scanned array antennae are also known as electronically steerable array antennae.		
f. Capable of heightfinding non-cooperative targets;		
g. “Specially designed” for airborne (balloon or airframe mounted) operation and having Doppler “signal processing” for the detection of moving targets;		
h. Employing processing of radar signals and using any of the following:		
h.1. “Radar spread spectrum” techniques; or		
h.2. “Radar frequency agility” techniques;		
i. Providing ground-based operation with a maximum ‘instrumented range’ exceeding 185 km;		
<b>Note:</b> 6A008.i does not control:		
a. Fishing ground surveillance radar;		
b. Ground radar equipment “specially designed” for en route air traffic control, and having all of the following:		
1. A maximum ‘instrumented range’ of 500 km or less;		
2. Configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;		
3. Contains no provisions for remote control of the radar scan rate from the en route ATC center; and		
4. Permanently installed;		
c. Weather balloon tracking radars.		
<b>Technical Note:</b> For the purposes of 6A008.i, ‘instrumented range’ is the specified unambiguous display range of a radar.		
j. Being “laser” radar or Light Detection and Ranging (LIDAR) equipment and having any of the following:		
j.1. “Space-qualified”;		
j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 μrad (microradians); or		
j.3. Designed for carrying out airborne bathymetric littoral surveys to International Hydrographic Organization (IHO) Order 1a Standard (5 <sup>th</sup> Edition February 2008) for Hydrographic Surveys or better, and using one or more “lasers” with a wavelength exceeding 400 nm but not exceeding 600 nm;		
<b>Note 1:</b> LIDAR equipment “specially designed” for surveying is only specified by 6A008.j.3.		
<b>Note 2:</b> 6A008.j does not apply to LIDAR equipment “specially designed” for meteorological observation.		
Export Administration Regulations	Bureau of Industry and Security	October 18, 2023

Commerce Control List	Supplement No. 1 to Part 774	Category 6—page 37
<b>Note 3:</b> Parameters in the IHO Order 1a Standard 5th Edition February 2008 are summarized as follows:		
Horizontal Accuracy (95% Confidence Level)= 5 m + 5% of depth.		
Depth Accuracy for Reduced Depths (95 % confidence level)= ±√(a <sup>2</sup> +(b*d) <sup>2</sup> ) where:		
a = 0.5 m = constant depth error, i.e. the sum of all constant depth errors		
b = 0.013 = factor of depth dependent error		
b*d = depth dependent error, i.e. the sum of all depth dependent errors		
d = depth		
Feature Detection = Cubic features > 2 m in depths up to 40 m; 10% of depth beyond 40 m.		
k. Having “signal processing” sub-systems using “pulse compression” and having any of the following:		
k.1. A “pulse compression” ratio exceeding 150; or		
k.2. A compressed pulse width of less than 200 ns; or		
<b>Note:</b> 6A008.k.2 does not apply to two dimensional ‘marine radar’ or ‘vessel traffic service’ radar, having all of the following:		
a. “Pulse compression” ratio not exceeding 150;		
b. Compressed pulse width of greater than 30 ns;		
c. Single and rotating mechanically scanned antenna;		
d. Peak output power not exceeding 250 W;		
<b>Technical Notes:</b>		
<i>and</i>		
e. Not capable of “frequency hopping”.		
l. Having data processing sub-systems and having any of the following:		
l.1. ‘Automatic target tracking’ providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage; or		
<b>Note:</b> 6A008.l.1 does not control conflict alert capability in ATC systems, or ‘marine radar’.		
<b>Technical Note:</b> For the purposes of 6A008.l.1, ‘automatic target tracking’ is a processing technique that automatically determines and provides as output an extrapolated value of the most probable position of the target in real time.		
l.2. [Reserved]		
l.3. [Reserved]		
l.4. Configured to provide superposition and correlation, or fusion, of target data within six seconds from two or more ‘geographically dispersed’ radar sensors to improve the aggregate performance beyond that of any single sensor specified by 6A008.f, or 6A008.i.		
<b>Technical Note:</b> For the purposes of 6A008.l.4, sensors are considered ‘geographically dispersed’ when each location is distant from any other more than 1,500 m in any direction. Mobile sensors are always considered ‘geographically dispersed’.		
<b>N.B.:</b> See also the U.S. Munitions List (22 CFR part 121).		
<b>Note:</b> 6A008.l does not apply to systems, equipment and assemblies designed for ‘vessel traffic services’.		
Export Administration Regulations	Bureau of Industry and Security	October 18, 2023

# Commerce Country Chart

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738 page 1


Commerce Country Chart																
Countries	Reason for Control															
	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 <sup>2,3</sup>	X	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		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia <sup>3</sup>	X					X		X	X							



# SNAP-R/CCATS for ECCN Classification Requests

- CCATS: Commodity Classification Automated Tracking System
- SNAP-R: Simplified Network Application Process – Redesign

[Home](#) [About BIS](#) [Regulations](#) [Licensing](#) [Enforcement](#) [Compliance & Training](#) [Policy Guidance](#) [Add'l Programs](#) [Data](#) [TAC](#)

 **Simplified Network Application Process - Redesign (SNAP-R)**

For the Submission of License Applications, Commodity Classification Requests, and AGR Notifications [Print](#)

**SNAP-R Access**

SNAP-R allows users to submit export license applications, commodity classification requests, reexport license applications, and license exception AGR notifications via the Internet. You must have a Company Identification Number (CIN) and an active user account to access SNAP-R. The procedures and requirements for obtaining a CIN and user account are set forth below. [Click here](#) to log into SNAP-R.

**On-line Registration and Account Self-Management**

BIS has implemented an on-line registration system for obtaining a Company Identification Number (CIN) and an active user account. Additionally, users are provided the ability to keep the information in their accounts current via the self-management portion of the system.

**On-line Registration**


Every applicant who requires authorization to use SNAP-R will be assigned a CIN. In order to submit electronic requests in SNAP-R, an applicant must register with BIS via the on-line registration process by entering the requested information and agreeing to the stated terms and conditions. The individual submitting the information will be designated as the account administrator, who has the same abilities within SNAP-R as other users in the system, but additionally has the responsibility and authority to maintain the account via the self-management portion of the system.

**Self-Management**

Account Administrators have the following abilities within the self-management portion of the system:

- Submit applications, classification requests, and notifications to BIS on behalf of the company just as any user would;
- Add new individual users who will be able to submit applications, classification requests, and notifications to BIS on behalf of the company;
- Deactivate the user account of any existing individual user who has been authorized to submit on behalf of the company;
- Reactivate the account of any individual user whose account was previously deactivated;
- Designate any individual user who has the power to submit on behalf of the company as an account administrator who will have all of the powers described in this statement;
- Remove account administrator authority from any user designated as an account administrator for the company;
- Update the company's identifying information, such as name and address as listed in its SNAP-R account;
- Update the identifying information, such as name and telephone number of any individual user who is authorized to submit on behalf of the company; and
- Reset passwords of individual users who are authorized to submit on behalf of the company.

**Company Information Entry Guidance**

 **SNAP- R**

ABOUT SNAP-R

BIS HOME

SNAP-R FAQ

LOGIN HELP

REGISTRATION HELP

NEW FEATURES!

STELA

WARNING WARNING WARNING WARNING WARNING WARNING WARNING

USE OF THIS SYSTEM IS RESTRICTED AND MONITORED !!!

You are accessing a U.S. Government information system, which includes: 1) this computer, 2) this computer network, 3) all computers connected to this network, and 4) all devices and storage media attached to this network or to a computer on this network. You understand and consent to the following: you may access this information system for authorized use only; you have no reasonable expectation of privacy regarding any communication of data transiting or stored on this information system; at any time and for any lawful Government purpose, the Government may monitor, intercept, and search and seize any communication or data transiting or stored on this information system; and any communications or data transiting or stored on this information system may be disclosed or used for any lawful Government purpose.

Unauthorized use of the system is prohibited and subject to criminal and civil penalties.

WARNING WARNING WARNING WARNING WARNING WARNING WARNING

Login to SNAP-R

Login ID

Password

CIN (Applicant ID)

Login

Clear

[Forgot Password/Login ID/CIN\(Applicant ID\)?](#)

[Register online for a SNAP-R account](#)

Privacy Act Statement

The Export Administration Act of 1979, as amended (50 U.S.C. app Sec 2401 et seq.), authorizes collection of this information. The primary use of this information is for the submission of:

2024 Global Trade Educational Conference



# License Exceptions

- 1. If a license is required as determined by ECCN + destination country, and
- 2. No license exceptions apply,
- 3. A DOC license will be required.

**List Based License Exceptions** (See Part 740 for a description of all license exceptions)

*LVS:* \$5000; N/A for MT and for 6A008.j.1.

*GBS:* Yes, for 6A008.b, .c, and l.1 only

*CIV:* Yes, for 6A008.b, .c, and l.1 only

<b>List-Based</b> License Exceptions	GBS (Group B Shipments) CIV (Civilian End-Users and Uses) LVS (Low Value Shipments) APP (Computers based on Adjusted Peak Performance) TSR (Technology and Software Restricted) ENC (Encryption Items)
<b>Transaction-Based</b> License Exceptions	TMP (Temporary Exports and Reexports) RPL (Repair and Parts License) GOV (US and certain other Government end users) BAG (Baggage Personally Owned by the Traveler) TSU (Technology and Software Unrestricted) GFT (Gift Parcels and Humanitarian Donations) AVS (Aircraft and Vessels) APR (Additional Permissive Reexports) AGR (Agricultural Commodities) STA (Strategic Trade Authorization)

# WHO: End-User Assessment under EAR, OFAC, State, Etc.

- There are various U.S. government lists that may prohibit dealings with certain parties
- The prohibition will depend on the individual and/or the type of transaction
- It is important to assess each potential match separately
- Examples:
  - BIS “Entity List”, “Unverified List”, and “Denied Persons List”
  - OFAC Specially Designated Nationals List
  - DDTC Debarred Parties List
  - U.S. Department of State Nonproliferation Sanctions List

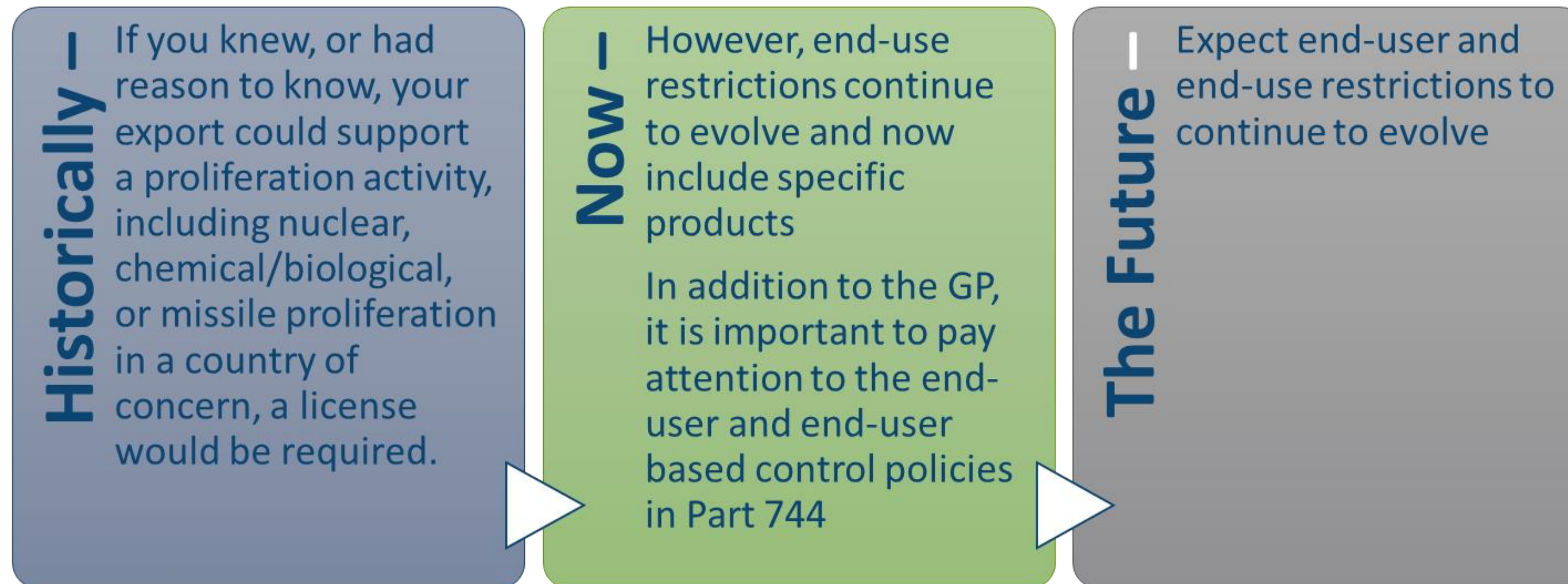
## **Practice Tip: Restricted Party Resolution**

If you get a “hit” or potential match when screening parties to your transactions – it is important to know what list it is coming from, the extent of the prohibition, and what it means to comply.



# WHAT: End-Use Inquiry

- General Prohibitions (“GP”)
  - **GP 1 – 3:** Relate to items on the CCL – ECCN (**WHAT**) + destination (**WHERE**)
  - **GP 4 – 10:** License requirements for enumerated prohibited end-users (**WHO**), end-uses (**WHAT**), and embargoed/sanctioned countries (**WHERE**)



# Let's Recap

**WHAT** is it?

Hardware/software/technology, function, and technical parameters?

**WHERE** is it going?

License required per Commerce Country Chart?  
If so, is a license exception available?

**WHO** will receive it?

Is your end-user named on any U.S. government restricted party lists?

**WHAT** will it be used for?

Check Part 744 for specific end-user and end-use controls, either product and/or country specific

# U.S. Export Controls & Sanctions is all about Protecting National Security Interests

- ✓ Not a money maker but a penalty avoiding effort...criminal & civil prosecutions are the norm
- ✓ Complicated, ever evolving regulations enforced by various US agencies as well as foreign jurisdictions
- ✓ Operationally difficult -- impacts almost every corporate function



# Export Violations Can Result in Significant Penalties

- Criminal penalties can reach 20 years imprisonment and \$1 million per violation
- Civil penalties can reach +\$367K per violation or twice the value of the transaction, whichever is greater
- Penalties may be suspended in whole or in part as a result of exceptional cooperation with the investigation





# CJ AND CLASSIFICATION WORKSHOP – EXAMPLE



MISSION CRITICAL BALLISTIC SOLUTIONS

MODEL:  
**AS-200**

DESC:  
AFFORDABILITY, RELIABILITY, CAPABILITY, TACTICAL BALLISTIC HELMET FOR MILITARY USE.

The ArmorSource AS-200 Ballistic Helmet is the most affordable ACH/MICH Shape NU Level IIIA protection helmet on the market today.

Offering proven fragmentation protection capabilities matched by our dedication to trim unwanted weight, the AS-200 is adaptable for use with all ArmorSource accessories, rails and shrouds and is relied on today by the U.S. Military and other military organizations worldwide.

**FEATURES**

Provides **INCREASED PROTECTION AGAINST HANDGUN BULLETS** (9mm and .44 Magnum)

**UNIVERSAL SHAPE** used and accepted by most military and law enforcement organizations worldwide

Available in **BOLTED AND BOLTLESS** versions

Proudly **MADE IN THE USA**

**SYSTEM SNAPSHOT**

SHAPE/DESIGN	U.S. Army ACH Geometry
SHELL CONSTRUCTION	Proprietary blend of Aramid and Composite Materials
BALLISTIC PROTECTION	NIJ Level IIIA 0108.01/0106.01
FRAGMENT PROTECTION	17 grain V50 > 2130 f/s (650 m/s) in accordance with MIL-STD-662F
SHMBFD/TRAUMA	Up to 1" at NIJ IIIA velocity in average
CERTIFICATION	From an NIJ certified laboratory
AVAILABLE HEAD SIZES	X-Small / Small / Medium / Large / X-Large / XX-Large
AVAILABLE SHELL SIZES	Small / Medium / Large / X-Large
EXTREME TESTING CONDITIONS	Performs under temperature between 160 °F (71°C) and -60 °F (-51°C); Performs after 3 hours sea water immersion
CONFIGURATION	100% Boltless (Durability Verified)
USE	Law Enforcement; Patrol Units

**AVAILABLE COLORS**



FOLIAGE GREEN   OLIVE GREEN   SHIFTER BLACK   DESERT TAN   COYOTE BROWN

**AVAILABLE CUTS**



HIGH-CUT   MID-CUT   REGULAR-CUT

**SHELL INFO**

SHELL THICKNESS	0.4" (±0.1") / 10 mm (±2.5mm)
FINISHED SHELL NOMINAL WEIGHT*	Medium 2.7 lbs. / 1.22 kg; Large 2.8 lbs. / 1.27 kg; X-Large 3 lbs. / 1.37 kg

**SYSTEM INFO**

FINISHED HELMET NOMINAL WEIGHT**	Medium 3.1 lbs. / 1.4 kg; Large 3.2 lbs. / 1.45 kg; X-Large 3.4 lbs. / 1.55 kg
FULLY LOADED HIGH-CUT NOMINAL WEIGHT***	Medium 3.2 lbs. / 1.45 kg; Large 3.3 lbs. / 1.48 kg; X-Large 3.5 lbs. / 1.58 kg

\* Regular cut shell / \*\* A Regular cut helmet installed with retention and suspension systems  
\*\*\* Special Command configuration: the complete kit with ASR dial rails, NVG Shroud and Operational Loop System

MODEL: AS-200

OFFICIAL SUPPLIER TO  
U.S. Department of Defense   NATO OTAN



HIGH-CUT w/ AIRLOCK SYSTEM



MID-CUT w/ AIRLOCK PLUS & AIRSUPPORT PRIME



REGULAR-CUT w/ AIRLOCK PLUS & AIRSUPPORT PRIME



REGULAR-CUT w/ AIRLOCK & AIRSUPPORT

**SYSTEM CAPABILITIES CHECKLIST**

BALLISTIC PERFORMANCE*	ENVIRONMENTAL PERFORMANCE*	COMPATIBILITY AND ADD-ONS*
NIJ LEVEL IIIA ✓	SHOCK ABSORPTION* ✓	UNIVERSAL SIDE-RAILS ✓
FRAGMENTATION PROTECTION ✓	RESISTANCE FOR PENETRATION* ✓	STRAP EXTENDERS ✓
SBD/TRAUMA ✓	ADVANCED BOLTLESS ADHESIVE SYSTEM ✓	VISOR/GOOGLES ✓
		COMMUNICATIONS / EAR PROTECTION ✓
		GAS MASK ✓
		CARRYING BAG ✓

In accordance with ArmorSource technical specifications and applicable standards

**AVAILABLE RETENTION SYSTEMS**



**AIRLOCK**  
STANDARD RETENTION SYSTEM  
BLACK, FOLIAGE GREEN, TAN, OLIVE GREEN, COYOTE BROWN



**AIRLOCK PLUS**  
DIAL RETENTION SYSTEM  
BLACK, FOLIAGE GREEN, TAN, OLIVE GREEN, COYOTE BROWN

**AVAILABLE SUSPENSION SYSTEMS**



**AIRSUPPORT**  
STANDARD SUSPENSION SYSTEM  
BLACK, GREEN



**AIRSUPPORT PRIME**  
ADVANCED SUSPENSION SYSTEM  
BLACK, GREEN

**AVAILABLE ACCESSORIES**



**AIRRAIL**  
LIGHTEST UNIVERSAL RAILS ON THE MARKET  
BLACK / OLIVE / FOLIAGE TAN / COYOTE



**AIREMOUNT**  
LIGHTEST NVG SHROUD ON THE MARKET  
BLACK / GREEN FOLIAGE / TAN



**HELMET COVER**  
BLACK / OLIVE / FOLIAGE / TAN / COYOTE / 4 Other Upon Request



**OPERATIONAL LOOP SYSTEM**  
BLACK / OLIVE / FOLIAGE TAN / COYOTE



**COUNTERWEIGHT**  
ALL NEW TEXTILE AND LEAD-FREE DESIGN  
BLACK / GREEN / TAN



**CARRYING BAG**  
TAN / COYOTE

**FEATURES**

MEETS ALL APPLICABLE MILITARY STANDARDS

**PERSONALIZED FIT AND COMFORT TECHNOLOGY**

ALLOWS AIR MOVEMENT

**COVERS 99.9% OF ALL HEAD TYPES**

COMES WITH 3D ADJUSTMENT CAPABILITIES

**ADVANCED DIAL SYSTEM**

COMES WITH A PREMIUM CHINSTRAP

**PROVEN TO PROTECT**

REGISTERED ISO 9001:2015

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# CJ AND CLASSIFICATION WORKSHOP – EXAMPLE

- Ballistic military helmet
- NIJ Type IIIA ballistic protection
- Classification Choices:
  1. USML Category X(a)(6);
  2. ECCN 0A979;
  3. ECCN 1A613.y.1; or
  4. ECCN 1A613.c?



# CJ AND CLASSIFICATION WORKSHOP – EXAMPLE

## Category X—Personal Protective Equipment

(a) Personal protective equipment, as follows:

(1) Body armor providing a protection level equal to or greater than NIJ Type IV;

Note 1 to paragraph (a)(1): For body armor providing a level of protection of Type I, Type II, Type IIA, Type IIIA, or Type III, see ECCNs 1A005 and 1A613.

Note 2 to paragraph (a)(1): See USML Category XIII(e) for controls on related materials.

(2) Personal protective clothing, equipment, or face paints specially designed to protect against or reduce detection by radar, IR, or other sensors at wavelengths greater than 900 nanometers;

Note to paragraph (a)(2): See USML Category XIII(j) for controls on related materials.

(3)-(4) [Reserved]

(5) Integrated helmets, not specified in USML Category VIII(h)(15) or USML Category XII, incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions;

(6) Helmets and helmet shells providing a protection level equal to or greater than NIJ Type IV;

(7) Goggles, spectacles, visors, vision blocks, canopies, or filters for optical sights or viewers, employing other than common broadband absorptive dyes or UV inhibitors as a means of protection (e.g., narrow band filters/dyes or broadband limiters/coatings with high visible transparency), having an optical density greater than 3, and that protect against:

(i) Multiple visible (in-band) laser wavelengths;

(ii) Thermal flashes associated with nuclear detonations; or

(iii) Near infrared or ultraviolet (out-of-band) laser wavelengths; or

Note 1 to paragraph (a)(7): See paragraphs (d)(2) and (3) of this category for controls on related parts, components, and materials.

Note 2 to paragraph (a)(7): See USML Category XII for sensor protection equipment.

(8) Developmental personal protective equipment and specially designed parts, components, accessories, and attachments therefor, developed for the U.S. Department of Defense via contract or other funding authorization.

Note 1 to paragraph (a)(8): This paragraph does not control personal protective equipment and specially designed parts, components, accessories, and attachments (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(8): Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (a)(8): This paragraph is applicable only to those contracts and funding authorizations that are dated January 5, 2015, or later.

(b)-(c) [Reserved]

(d) Parts, components, assemblies, accessories, attachments, and associated equipment for the personal protective equipment controlled in this category, as follows:

(1) Ceramic or composite plates that provide protection equal to or greater than NIJ Type IV;

(2) Lenses, substrates, or filters "specially designed" for the articles covered in paragraph (a)(7) of this category;

(3) Materials and coatings specially designed for the articles covered in paragraph (a)(7) of this category with optical density greater than 3, as follows:

(i) Narrowband absorbing dyes;

(ii) Broadband optical switches or limiters (i.e., nonlinear material, tunable or switchable agile filters, optical power limiters, near infrared interference based filters); or

(iii) Narrowband interference based notch filters (i.e., multi-layer dielectric coatings, rugate, holograms or hybrid (i.e., interference with dye)) protecting against multiple laser wavelength and having high visible band transparency; or

(4) Any component, part, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note to paragraphs (a) and (d): See National Institute of Justice Classification, NIJ Standard-0101.06, or national equivalents, for a description of level of protection for armor.


(e) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (d) of this category.

(f)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

# CJ AND CLASSIFICATION WORKSHOP – EXAMPLE



**0A979 Police helmets and shields; and "specially designed" "components," n.e.s.** License Requirements *Reason for Control:* CC

Control(s)	Country Chart (See Supp. No. 1 to part 738)
CC applies to entire entry	CC Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions) *LVS:* N/A *GBS:* N/A List of Items Controlled *Related Controls:* N/A *Related Definitions:* N/A *Items:* The list of items controlled is contained in the ECCN heading.



# CJ AND CLASSIFICATION WORKSHOP – EXAMPLE

**1A613 Armored and protective "equipment" and related commodities, as follows (see List of Items Controlled).** License Requirements *Reason for Control:* NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except 1A613.y	NS Column 1.
RS applies to entire entry except 1A613.y	RS Column 1.
RS applies 1A613.y	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.
UN applies to entire entry, except 1A613.y	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions) LVS: \$1500 GBS: N/A Special Conditions for STA STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR ) may not be used for any item in 1A613. List of Items Controlled *Related Controls:* (1) Defense articles, such as materials made from classified information, that are controlled by USML Category X or XIII of the ITAR, and technical data (including software) directly related thereto, are "subject to the ITAR." (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a de minimis amount of US-origin "600 series" controlled content. (3) See ECCN 9A610.g for anti-gravity suits ("G-suits") and pressure suits capable of operating at altitudes higher than 55,000 feet above sea level. (4) For other military helmet "components," or "accessories," not specified in 1A613.c, see the relevant ECCN in the CCL or USML Entry. *Related Definitions:* References to "NIJ Type" protection are to the National Institute of Justice Classification guide at NIJ Standard 0101.06, Ballistic Resistance of Body Armor, and NIJ Standard 0108.01, Ballistic Resistant Protective Materials. *Items:*

a. Metallic or non-metallic armored plate "specially designed" for military use and not controlled by the USML.

*Note to paragraph a:*

For controls on body armor plates, see ECCN 1A613.d.2 and USML Category X(a)(1).

b. Shelters "specially designed" to:

b.1. Provide ballistic protection for military systems; or

b.2. Protect against nuclear, biological, or chemical contamination.

c. Military helmets (other than helmets controlled under 1A613.y.1) providing less than NIJ Type IV or "equivalent standards" protection.

*Note 1:*

See ECCN 0A979 for controls on police helmets.

*Note 2:* See USML Category X(a)(5) and (a)(6) for controls on other military helmets.

*Note 3:* 1A613.c does not apply to helmets that meet all the following:

a. Were first manufactured before 1970; and

b. Are neither designed or modified to accept, nor equipped with items specified by the U.S. Munitions List (22 CFR 121) or another "600 series" ECCN.

d. Body armor and protective garments, as follows:

d.1. Soft body armor and protective garments manufactured to military standards or specifications, or to their equivalents, that provide ballistic protection equal to or less than NIJ level III (NIJ 0101.06, July 2008) or "equivalent standards"; or  
*Note:*

For 1A613.d.1, military standards or specifications include, at a minimum, specifications for fragmentation protection.

d.2. Hard body armor plates that provide ballistic protection equal to NIJ level III (NIJ 0101.06, July 2008) or "equivalent standards".

*Note:*

See ECCN 1A005 for controls on soft body armor not manufactured to military standards or specifications and hard body armor plates providing less than NIJ level III or "equivalent standards" protection. For body armor providing NIJ Type IV protection or greater, see USML Category X(a)(1).

e. Atmospheric diving suits "specially designed" for rescue operations for submarines controlled by the USML or the CCL.

f. Other personal protective "equipment," "specially designed" for military applications not controlled by the USML, not elsewhere controlled on the CCL.

g. to w. [Reserved]

x. "Parts," "components," "accessories," and "attachments" that are "specially designed" for a commodity controlled by ECCN 1A613 (except for 1A613.y) or an article enumerated in USML Category X, and not controlled elsewhere in the USML.

*Note:*

1A613.x includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities specified in ECCN 1A613.x.

y. Other commodities as follows:

y.1 Conventional military steel helmets.

*Note:* 1A613.y.1 does not apply to helmets that meet all the following:

a. Were first manufactured before 1970; and

b. Are neither designed or modified to accept, nor equipped with items specified by the U.S. Munitions List (22 CFR 121) or another "600 series" ECCN.

*N.B. to paragraph y.1:* For other military helmet "components" or "accessories," see the relevant ECCN in the CCL or USML Entry.

y.2 [Reserved]

# CJ AND CLASSIFICATION WORKSHOP – EXAMPLE

- If helmet was NIJ level IV protection or greater, it would be controlled by the USML
- Helmet is not ECCN 0A979 as this ECCN is only applicable to police helmets
- Helmet is not 1A613.y.1 (for steel military helmets) because the helmet is constructed from aramid composite
- The helmet is, therefore, controlled by 1A613.c

# Client Compliance Issues -- Example #1

- U.S. company in the solder-related products space (solder preforms, wire, etc.); all EAR99 products
- Was unaware of the EAR Part 746 supplements prohibiting items for export to Russia based on HTS Code (including for EAR99 products)
- Sent almost 20 shipments of Part 746-prohibited items (all EAR99) to parties in Russia that were eventually listed on the SDN List
- Also sent several shipments to Entity List parties in China (slipped through company compliance protocols)
- Received a subpoena from OFAC last year which kicked off the review that led to discovery of the above-mentioned Commerce/BIS/EAR violations
- Submitted initial and final VSD last year (submitted the initial VSD before OFAC subpoena response so we could get mitigation credit for VSD)
- During final VSD review, special agent reviewing materials requested all commercial documents and emails related to the violations (not usually the case there is a request for additional materials)
- Emails produced as part of the request clearly show discussions between company and Russian customer regarding changing documentation (i.e., removing reference to Russian individuals, addresses, phone numbers, shipping routes (through Hong Kong, for example) to make it easier to get the products into Russia); however, company did not know it was doing anything wrong at the time and only some of the Russian customer's requests were granted
- Waiting to hear back from BIS regarding additional information requests or warning/penalty letter



# Client Compliance Issues -- Example #2

- U.S. company that produces furniture, fixtures and equipment (FFE) for hotels around the world (but not including in the USA)
- Company coordinates production of FFE across three different factories in China, Vietnam and Indonesia and then ships FFE directly to hotel end-user
- Vast majority of the company's transactions/products are not subject to the EAR (completely foreign-produced, items never arrive to the USA, and no issues of de minimis or FDPs)
- However, from time to time, company must send fabric from USA to factories for incorporation into FFE; because the fabric, regardless of origin, is physically located in the USA before shipment to the factories in China, Vietnam and/or Malaysia, the fabric is subject to the EAR
- Customs recently detained a shipment of the fabric outbound and company had no idea why it was detained
- We reviewed the commercial documentation and after screening the parties, including the intermediary consignee, we discovered the intermediary consignee is on the Entity List
- Because company only deals in fabrics and FFE (all EAR99), company was not aware of its restricted party obligations
- Entity List party is a sister entity to USA-based freight forwarder that the company has done business with for many decades
- Filed an initial VSD based on reason to think there are 20+ shipments including this intermediary; working with company to conduct internal review and assess violation count

# Client Compliance Issues -- Example #3

- U.S. company that produces ruggedized, mil-spec boat motors for U.S. military special forces and special forces around the world
- Motors and related parts assessed thus far controlled under ECCNs 8A609.x, 8A992.g and EAR99; 8A609.x is highly controlled “600” series whereas 8A992.g is controlled or AT only and EAR99 of course is lowest level of control
- Company misclassified motors and parts and were exporting to various countries around the world without export licenses
- License exception STA would apply but only after initial licensed shipments
- Would have been granted licenses most likely had they been applied for (\*\*very important fact in this case; certainly not the case for the two previous examples)
- Review was kicked off by an EPA inquiry related to an import
- Company filed an initial VSD as soon as we confirmed misclassification and unlicensed exports
- Could be substantial number of violations/shipments

# Lessons/Takeaways

- **\*\*MUST HAVE AN EFFECTIVE, CONSTANTLY-UPDATED AND WRITTEN EXPORT COMPLIANCE AND SANCTIONS PROGRAM\*\***
- **\*\*RELEVANT FUNCTIONS MUST BE REGULARLY TRAINED ON POLICIES AND PROCEDURES\*\***
- Effective policies and procedures will address the following (non-exhaustive list):
  - Restricted parties and screening
  - Export classification
  - Export licensing
  - Diversion
  - China and Russia-specific issues (such as Part 746/HTS Code restrictions for export for Russia)
  - End-use review and screening
  - Antiboycott screening and compliance
  - EEI/AES – Routed and Non-Routed Transactions and SLIs
  - Contract language for all exports
  - Destination Control Statement language when required

# The Freight Forwarder

The BIS's [“Know Your Customer”](#) Guidance and Red Flags  
[Freight Forwarder Guidance](#) and Best Practices

## Freight Forwarder Roles and Responsibilities

- ☐ Obtain the exporter/USPPI's expectations of the service to be provided by the freight forwarder.
- ☐ Obtain clear instructions from the exporter/USPPI on who will be responsible for filing the Electronic Export Information (EEI) in the Automated Export System (AES).
- ☐ Complying with the ten general prohibitions in the EAR.
- ☐ Being knowledgeable of the EAR and other Federal agencies' export regulations.
- ☐ Looking for red flags, including checking documents for boycott language.
- ☐ When there is a license, ensuring that the transaction, transportation, and the EEI filing are consistent with the license.
- ☐ Upon request, providing the exporter/USPPI with a copy of the export information filed in a mutually agreed-upon format.
- ☐ Retaining records as required in 15 CFR 762, including documentation to support the information reported to the AES, communications, shipping documents, licenses, and other documents related to the shipment.



# The Freight Forwarder

## Freight Forwarder Best Practices

- ☐ Screening known parties to the transaction.
- ☐ Providing resources to the exporter/USPPI
- ☐ Informing BIS of any exporters/USPPIs or other freight forwarders in non-compliance with the EAR.
- ☐ Being knowledgeable of the EAR and other Federal agencies' export regulations.

## Roles and Responsibilities for Non-Routed and Routed Shipments

### Non-Routed (Standard) Export Transaction

- ☐ The exporter/USPPI is responsible for providing the authorized U.S. agent with the information necessary to prepare and submit the EEI and maintaining documentation.
- ☐ The authorized U.S. agent is responsible for preparing and submitting the EEI, maintaining documentation, and providing the USPPI with copy of EEI upon request.

### Routed Export Transaction

- ☐ The FPPI must provide a POA or written authorization to the U.S. agent. The exporter as defined in the EAR is responsible for providing the authorized U.S. agent with the information necessary to prepare and submit the EEI and maintaining documentation.
- ☐ The authorized U.S. agent is responsible for preparing and submitting the EEI, maintaining documentation, and providing the USPPI with copy of EEI upon request.

# The Freight Forwarder

## Freight Forwarder Expectations of Exporters/USPPIs

- ☐ Be knowledgeable in applicable U.S. regulations and understand the role and responsibilities of exporters/USPPIs in the export transaction.
- ☐ Provide clear, accurate, and complete transaction information in writing.
- ☐ Meet with the freight forwarder regularly to discuss forwarder's performance, concerns, communicate changes and maintain an open dialogue with the freight forwarder.

## Selecting a Freight Forwarder

Just as exporters/USPPIs should “Know Your Customer” and who they are selling to, they should know to whom they are entrusting their goods and, in some circumstances, their reputations and legal responsibilities. Use the list of questions provided in this section to help select your freight forwarder.

## Antiboycott Overview and Best Practices

The antiboycott provisions of the EAR apply to certain activities of U.S. persons, including freight forwarders, undertaken with the intent to comply with, further, or support an unsanctioned foreign boycott. The antiboycott regulations encourage and, in specified cases, require U.S. persons to refuse to take part in foreign boycotts that the United States does not sanction. They have the effect of preventing U.S. firms from advancing foreign policies of other nations which run counter to U.S. policy. The antiboycott laws apply to all boycotts that are unsanctioned by the United States, including the Arab League boycott of Israel.

**Freight Forwarder and Exporter/USPPI Red Flags:**     [BIS Red Flag Indicators](#)

# In The News

## BIS' "Don't Let This Happen To You"

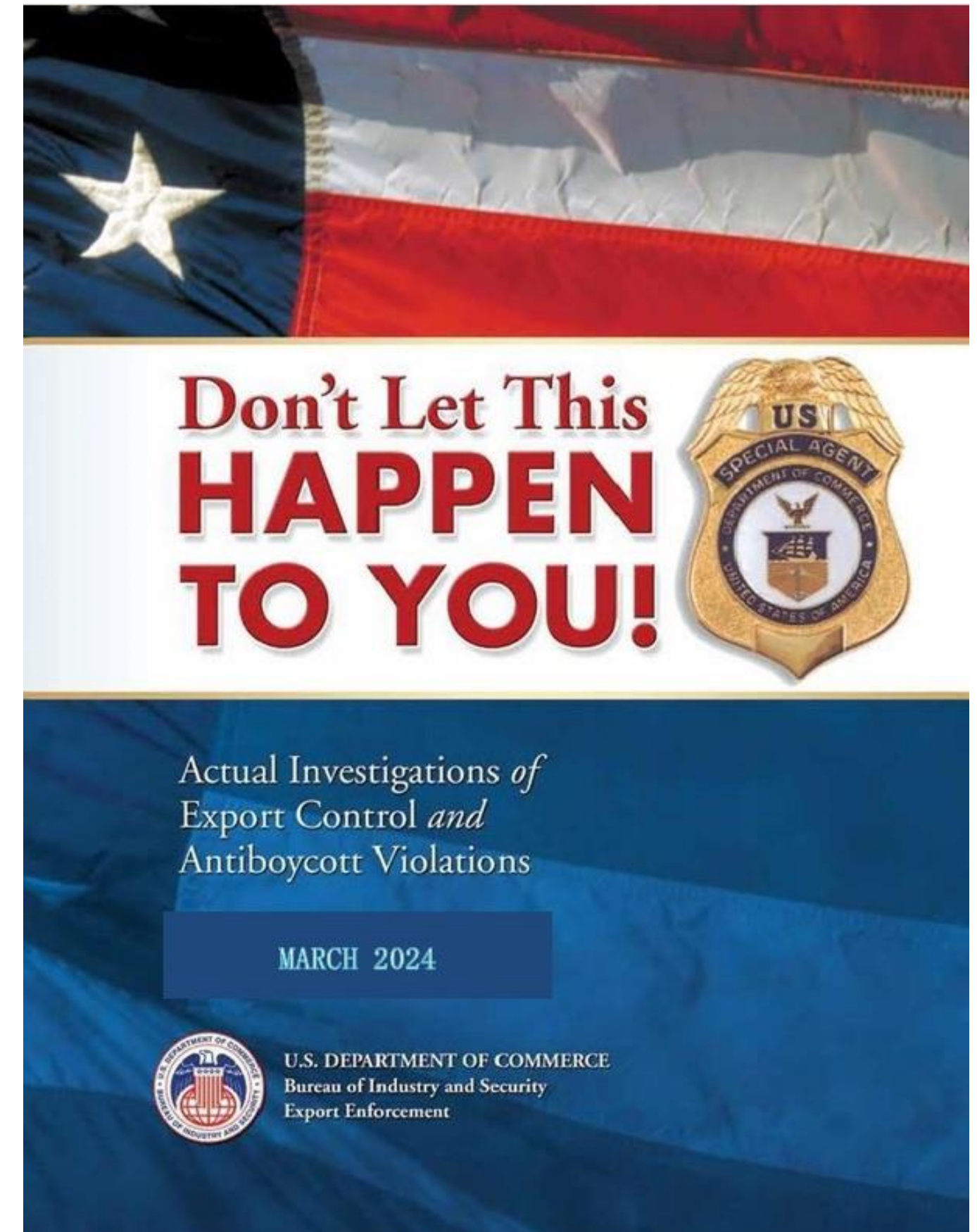
Department of Commerce publication that list companies who have violated export control laws over the years.

## Office of Antiboycott Compliance

The Office of Antiboycott Compliance (OAC) within BIS published a list of companies that have had a history of antiboycott violations under the [Alleged Antiboycott Violations](#) list.

## Other Publications

- Various U.S. government agencies have their own news pages, blogs and/or web pages that provide export penalties cases to the public.
- Trade industry newsletters and blogs
- Public news papers and news broadcast



[Don't Let This Happen To You](#)

# The USGoBuy, LLC Case



**FEDERAL REGISTER**  
The Daily Journal of the United States Government



Notice

## In the Matter of: USGoBuy, LLC, 6804 NE 79th Ct., Building A, Portland, OR 97218, Respondent; Order Activating Suspended Portion of Civil Penalty and Activating Suspended Denial of Export Privileges Against USGoBuy, LLC

A Notice by the Industry and Security Bureau on 06/21/2024



PUBLISHED DOCUMENT														
    	<p>On June 17, 2021, then-Acting Assistant Secretary of Commerce for Export Enforcement, Kevin J. Kurland signed an order (the “June 17, 2021 Order”) approving the terms of a settlement agreement (the “Settlement Agreement”) between the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), and USGoBuy, LLC (“USGoBuy” or “the Company”). USGoBuy is a package forwarding company based in Portland, Oregon that offers a service that allows non-U.S.-based customers to purchase items online from U.S. retailers and have those items shipped to the Company’s warehouse in Oregon. USGoBuy then consolidates various items ordered by its customers and re-packages the items for export from the United States. USGoBuy also offers a “BuyForMe” service in which it purchases U.S.-origin items on behalf of its customers, and then exports the items to a foreign addressee and address provided by the customer.</p>													
	<table><tr><th colspan="2">DOCUMENT DETAILS</th></tr><tr><td>Printed version:</td><td><a href="#">PDF</a></td></tr><tr><td>Publication Date:</td><td>06/21/2024</td></tr><tr><td>Agencies:</td><td><a href="#">Department of Commerce</a> <a href="#">Bureau of Industry and Security</a></td></tr><tr><td>Document Type:</td><td>Notice</td></tr><tr><td>Document Citation:</td><td>89 FR 52022</td></tr><tr><td>Page:</td><td>52022-52024 (3 pages)</td></tr></table>	DOCUMENT DETAILS		Printed version:	<a href="#">PDF</a>	Publication Date:	06/21/2024	Agencies:	<a href="#">Department of Commerce</a> <a href="#">Bureau of Industry and Security</a>	Document Type:	Notice	Document Citation:	89 FR 52022	Page:
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## The USGoBuy BIS press release dated Monday, June 17, 2024

Bureau of Industry & Security - Office of Congressional and Public Affairs. (2024, June 17). *Commerce Department denies export privileges of Package Forwarding Company USGoBuy*: Bureau of Industry and Security. Commerce Department Denies Export Privileges of Package Forwarding Company USGoBuy | Bureau of Industry and Security. <https://www.bis.gov/press-release/commerce-department-denies-export-privileges-package-forwarding-company-usgobuy>



# The USGoBuy, LLC Case

Source: [89 FR 52022 Notice](#), Dated: June 21, 2024

- ❑ The Settlement Agreement and the June 17, 2021 Order relate to an enforcement action brought by BIS against USGoBuy for exporting riflescopes, items classified under Export Control Classification Number (“ECCN”) 0A987.a, controlled for Crime Control reasons, to China and the United Arab Emirates, without seeking or obtaining the licenses required for these exports, in violation of the Export Administration Regulations (the “Regulations”).
- ❑ The Settlement Agreement and June 17, 2021 Order imposed on USGoBuy a civil penalty of \$20,000. USGoBuy was required to pay \$5,000 of this amount to the Department of Commerce by July 17, 2021. Payment of the remaining \$15,000 was suspended for a probationary period of three years from the date of the June 17, 2021 Order, after which it would be waived, provided that during this three-year probationary period, USGoBuy paid the \$5,000 non-suspended portion of the civil penalty, committed no other violation of the Regulations, and completed an independent, external audit (the “Export Compliance Audit” or “Audit”).
- ❑ BIS has brought to my attention that following the imposition of the June 17, 2021 Order, USGoBuy failed to implement corrective actions in response to the 2015 violations and committed additional violations of the Regulations during the probationary period in violation of the June 17, 2021 Order.<sup>[2]</sup> Moreover, even after identifying violations that occurred during the probationary period, USGoBuy failed to implement corrective actions to address those additional violations.
- ❑ As a result of the conduct described above, USGoBuy has violated the probationary conditions relating to the suspension of the denial of their export privileges. In accordance with sections 766.17(c) and 766.18(c) of the Regulations, by letter dated May 15, 2024 (the “Notice Letter”), I provided USGoBuy with notice of my preliminary determination that the Company violated the probationary conditions of the June 17, 2021 Order and included a summary of the facts on which I based my preliminary determination, which are also outlined above. The Notice Letter provided the Company with an opportunity to respond and to show why I should not activate the \$15,000 suspended penalty amount, issue an active three-year denial order against them, or take both actions.



## U.S. Treasury Office of Foreign Assets Control

<https://ofac.treasury.gov/>



## U.S. Department of Commerce Bureau of Industry and Security

<https://www.bis.gov/>



## U.S. State Department Directorate of Defense Trade Controls

[https://www.pmddtc.state.gov/ddtc\\_public/ddtc\\_public?id=ddtc\\_public\\_portal\\_homepage](https://www.pmddtc.state.gov/ddtc_public/ddtc_public?id=ddtc_public_portal_homepage)

# Export Compliance Program - EAR

Developing an effective company compliance program is essential not only for preventing export violations, but also for enabling BIS to differentiate violations by individual employees from larger patterns of corporate noncompliance.

Export Enforcement may afford significant mitigation to companies or universities with effective compliance programs while at the same time may aggravate penalties when companies or universities make a deliberate decision not to disclose a significant possible violation.

<https://www.bis.doc.gov/index.php/documents/enforcement/1005-don-t-let-this-happen-to-you-1/file>

# Export Compliance Program - EAR

## ❖ Elements of an Export Compliance Program (ECP)

1. Management Commitment
2. Risk Assessment
3. Export Authorization
4. Recordkeeping
5. Training
6. Audits
7. Handling Violations and Corrective Actions
8. Build and Maintain Your Export Compliance Manual



# Export Compliance Program - EAR

## 1. Management Commitment

Have strong and continuous management commitment.

# Export Compliance Program - EAR

## 1. Management Commitment

Build and maintain an effective program senior management must:

- Publicly support compliance policies & procedures
- Provide sufficient resources
- Support export compliance training

# Export Compliance Program - EAR

## 1. Management Commitment

Management Commitment Statement

- Create and send to all employees
- Specific content outlined in the Export Compliance Guidelines document

# Export Compliance Program - EAR

## 2. Risk Assessment

Identify and mitigate your organization's potential vulnerabilities by conducting frequent risk assessments.



# Export Compliance Program - EAR

## 2. Risk Assessment

### COMMON RISKS

EXPORT ITEM	ORGANIZATION OPERATIONS	CUSTOMER(S)
Export without a license	Weak or no compliance structure	Unknown End-User or End-Use
Unauthorized release of sensitive information or controlled technology	Lack of communication within the organization	Unaware of diversion risk
Servicing items located outside the U.S.	Poor relationships with export facilitators	Violating Anti-boycott Laws
	No or Underdeveloped Export Clearance Procedures	

# Export Compliance Program - EAR

## 3. Export Authorization

Write and implement export authorization procedures on:

- Jurisdiction
- Classification
- Licensing, and
- Denied Party Screening

This is vital for preventing your organization from exporting unauthorized items and possibly facing export penalties.

# Export Compliance Program - EAR

## 3. Export Authorization

Write and implement export authorization procedures on:

- Jurisdiction (ITAR or EAR)
- Classification (ECCN)
- Licensing (Reasons for Control against the Country Chart)
- Denied Party Screening (BIS, State, OFAC)

# Export Compliance Program - EAR

## 4. Recordkeeping

Assign individuals roles in recordkeeping and ensure procedures meet the requirements in § 762.4 of the EAR.



# Export Compliance Program - EAR

## 4. Recordkeeping

- Five-year requirement from last transaction
- Some documentation to keep that is not required by the EAR
  - Classification documents
    - Technical decisions
    - Who was involved
  - Due diligence
    - Red flag reviews
    - Denied party screening false hits



# Export Compliance Program - EAR

## 5. Training

Require training for all employees, including support staff, whose responsibilities relate to exports in order to keep up with changing regulations and to network with other export compliance practitioners.

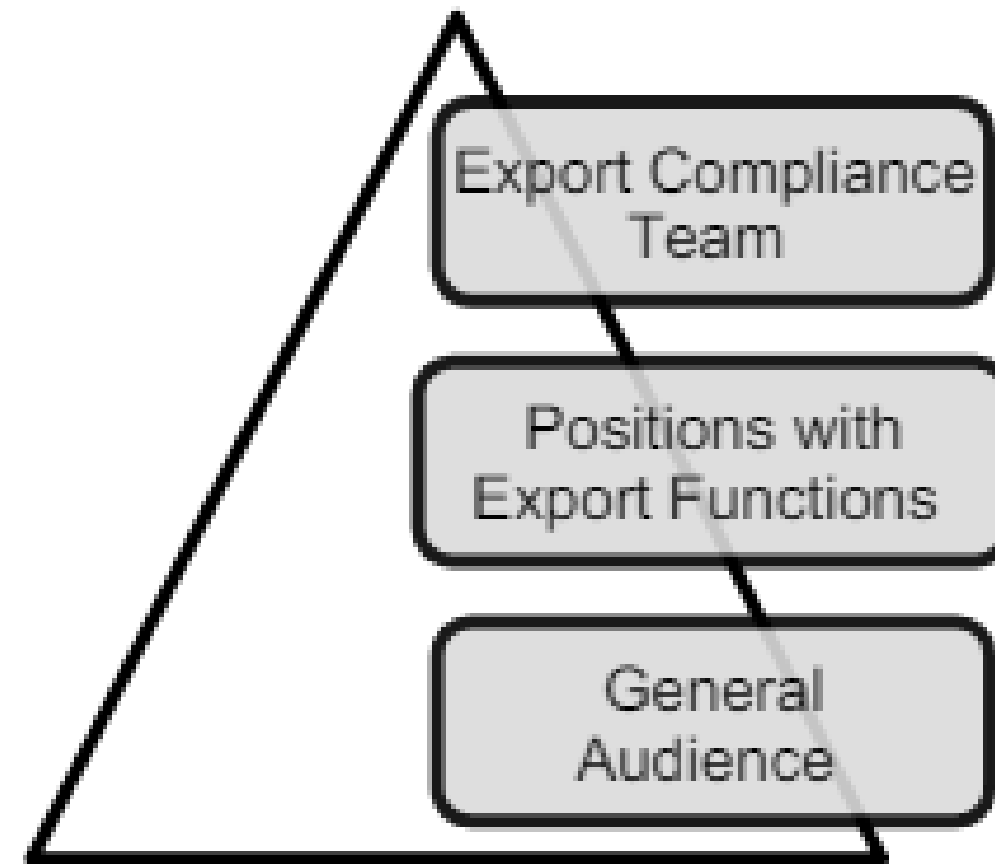
# Export Compliance Program - EAR

## 5. Training

- Provides job-specific knowledge based on need
- Communicates the export responsibilities for each employee
- Holds employees accountable for export training through assessments

# Export Compliance Program - EAR

## 5. Training





# Export Compliance Program - EAR

## 6. Audits

Perform regular audits to gauge how well procedures are implemented and how elements need to be augmented.

# Export Compliance Program - EAR

## 6. Audits

- Specific Unit/Functional Level
  - Specific Unit or Functional Level audits are more focused audits that look at specific areas of the export process such as recordkeeping or shipping procedures.
- Program Level
  - At the corporate-level, organizations should schedule internal audits to be conducted at least on an annual basis that involve a comprehensive assessment of their export compliance program.

# Export Compliance Program - EAR

## 7. Handling Violations and Corrective Actions

Implement a program to handle compliance issues, including how to prevent export violations and how to complete corrective actions when a violation is found.

# Export Compliance Program - EAR

## 7. Handling Violations and Corrective Actions

- Create internal and external reporting procedures for suspected violations of noncompliance that is supported by management
- Written internal processes to investigate, confirm there indeed is a noncompliance issue, and correct the issue as needed
- Establish disciplinary actions for noncompliance with your organization's compliance policies and with U.S. export laws.



# Export Compliance Program - EAR

## 8. Build and Maintain Your Export Compliance Manual (ECM)

Whether writing an ECM for the first time or maintaining an ECM, make sure to keep the manual current and relevant to the members of your organization.

# Export Compliance Program - EAR

## 8. Build and Maintain Your Export Compliance Manual (ECM)

- get upper management support and buy-in
- create a formal export compliance manual for your organization
- will help employees know their specific responsibilities and how they integrate with other parts of the organization

# Export Compliance Program - EAR

## Skyline USA - Sanford, FL June 2021

- fined \$140,000
- 15 violations of exporting without a license (exported stun guns, police batons, handcuffs, and/or pepper spray to Columbia, Guatemala, Mexico, Nigeria, Pakistan, Panama Trinidad and Tobago, or Uruguay)
- 1 violation of failure to comply with recording keeping requirement.

**No export control compliance program** in place despite approximately a decade of experience as an exporter prior to making the 15 unlicensed exports at issue. The company **lacked procedures to determine the classification** under the Regulations of the products it sold and the licensing requirements for exports to its foreign customers, including exports of the Crime Control items described above.

During interviews conducted by BIS, Skyline USA's Managing Director demonstrated unfamiliarity with basic export control concepts and practices, including asserting that he had **no knowledge of the U.S. Government's lists of restricted persons or, more generally, the Regulations.**

<https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2021/1316-e2669/file>

# Export Compliance Program - EAR

## Schlumberger Oilfield Holdings Ltd (subsidiary of Schlumberger Ltd)—May 2015

- Fined \$232.7 million and a 3-year corporate probation
- Violation:
  - Drilling & Measurements (D&M), a United States-based Schlumberger business segment, provided oilfield services to Schlumberger customers in Iran and Sudan through non-U.S. subsidiaries of SOHL.
- Although SOHL, as a subsidiary of Schlumberger Ltd., had policies and procedures designed to ensure that D&M did not violate U.S. sanctions, SOHL **failed to train** its employees adequately to ensure that all U.S. persons, including non-U.S. citizens who resided in the United States while employed at D&M, complied with Schlumberger Ltd.'s sanctions policies and compliance procedures.

<https://www.justice.gov/opa/pr/schlumberger-oilfield-holdings-ltd-agrees-plead-guilty-and-pay-over-2327-million-violating-us>





**10th Anniversary**

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