

# ITAR TOOL KIT

Dawnbreaker<sup>®</sup>



**Title:** The International Traffic in Arms Regulations (ITAR)

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# INTRODUCTION

This toolkit provides general guidance on the process of selling defense articles and services to foreign nations, and the process for obtaining an export license. In considering whether or not a shipment to another country will require an export license, a company needs to consider both **what** is being shipped and **where** it is going. Technologies subject to **Export Control Laws** are categorized on the following two lists:

- **Munitions List:** published by the US State Department in its
- **International Traffic in Arms Regulations (ITAR):** focused on potential military applications or technologies that are military in nature.
- **Commerce Controlled List:** published by the US Commerce Department in its Export Administration Regulations (EAR) focused on "dual use" technologies having both legitimate commercial purposes and potential military applications

Points of contact in the Federal government are listed throughout and should be consulted..

## 1. DEFENSE ARTICLES & SERVICES

### Step 1: Is the technology listed on United States Munitions List?

The first step is to determine if the technology under consideration is listed on the *United States Munitions List*.<sup>1</sup> The *Militarily Critical Technologies List*<sup>2</sup> is a compendium of information on technologies that the Department of Defense assesses as critical to maintaining superior U.S. military capabilities. The acquisition of any of these technologies by a potential adversary would lead to the significant enhancement of the military-industrial capabilities of that adversary to the detriment of U.S. security interests. Be sure to check if the technology/device is listed in the compendium.

### Step 2: Registration with the Department of Defense Trade Controls

(i) All manufacturers and brokers of defense articles, defense services, or related technical data, as defined on the United States Munitions List, are required to register with the Department of Defense Trade Controls. The website is located at <http://pmdtc.state.gov/registration.htm>. Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities.

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<sup>1</sup> See 22 CFR Parts 121 at <http://www.pmdtc.org/reference.htm#regs>. Be sure to see if your technology/device qualifies to be classified under any of the sections on this list. Please note that technical data and defense services related to this section are classified as, "Significant Military Equipment." See the definition of Significant Military Equipment at [www.a257.g.akamaitech.net/7/257/2422/04nov20031500/edocket.access.gpo.gov/cfr\\_2001/aprqttr/pdf/22cfr120.8.pdf](http://www.a257.g.akamaitech.net/7/257/2422/04nov20031500/edocket.access.gpo.gov/cfr_2001/aprqttr/pdf/22cfr120.8.pdf) i.e. articles for which special controls are warranted because of their substantial military capability.

<sup>2</sup> See [http://www.dtic.mil/mct/MCTL\\_REV.html](http://www.dtic.mil/mct/MCTL_REV.html)

(ii) A copy of the registration form that is filled out and mailed to Defense Trade Controls is available at [http://pmdtdtc.state.gov/new\\_microsoft\\_wordversion\\_forms.htm](http://pmdtdtc.state.gov/new_microsoft_wordversion_forms.htm) for forms DSP-5, DSP-61, and DSP-73 for temporary and permanent export of defense articles. The DSP-85: *Application for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data*, can only be submitted in hardcopy.

(iii) A fee is required for filing the registration form. A one-year license costs \$1,750 and 2 years costs \$3,500.

(iv) It takes approximately 2-3 weeks for one to receive a license code after mailing the form to Defense Trade Controls. Armed with this code, one can now apply for the export license.

### **Step 3: Getting the Export License**

There are two ways of obtaining an export license depending on your sales strategy:<sup>3</sup>

- (i) Temporary export—use form DSP-73 (unclassified articles)
- (ii) Permanent export (use form DSP-5, unclassified articles)
- (iii) Applications for export of classified defense articles or classified technical data are made on form DSP-85. DSP-85 can only be submitted in hard copy.
- (iv) A request for license under DSP-5 (unclassified) related to a classified defense article should specify any classified technical data that will be required for export in the event of a sale.

The Office of Defense Trade Controls asks that all information requested on the forms to be provided. Plus, you will need:

- (a) Attachments and all support technical data/brochures etc to be submitted in 7 copies.
- (b) Two copies of freight forwarded lists
- (c) A certification letter signed by a company official (could be president etc.)
- (d) Application of a license under permanent export defense articles is accompanied by a copy of a purchase order or a letter of intent from the country of destination.**
- (e) Use Form DSP-83 (classified) for permanent export of significant military equipment including classified hardware or classified technical data.
- (f) A statement concerning fees and commissions must accompany a permanent export license of defense articles

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<sup>3</sup> Forms are available at <http://pmdtdtc.state.gov/reference.htm#licensing>

valued \$500,000 or more, and/or is being sold commercially for use by the armed forces of a foreign country.

Additionally, unclassified material may not be shipped out under a DSP-85 "Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data." It is unlawful for anyone to ship unclassified commodities on a classified license. Unclassified material must be shipped on a Form DSP-5, "Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data." The mixing of classified and unclassified items on a license is not allowed. What is permitted is when unclassified items are part of an assembled unit or system ([actually bolted on the unit at time of export](#)). Also, only items specifically listed on the license may be shipped.

### The International Traffic in Arms Regulations (ITAR)

Department of State responsibility for the control of the permanent and temporary export and temporary import of defense articles and services is governed primarily by 22 U.S.C. 2778 of the Arms Export Control Act (AECA, see the website <http://pmdrtc.state.gov/aeca.htm>) and Executive Order 11958. The AECA, among these other requirements and authorities, provides for the promulgation of implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130).

The office you want to contact is the **Directorate of Defense Trade Controls, Bureau of Political-Military Affairs** (see [http://pmdrtc.state.gov/public\\_plan\\_standards.htm](http://pmdrtc.state.gov/public_plan_standards.htm)). This office, in accordance with §§ 38-40 of the Arms Export Control Act (AECA) (22 U.S.C. 2778-2780) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130, [www.pmdrtc.state.gov/docs/ITAR/2006/ITAR\\_Part\\_121.pdf](http://www.pmdrtc.state.gov/docs/ITAR/2006/ITAR_Part_121.pdf)), is charged with controlling the export and temporary import of defense articles and defense services covered by the United States Munitions List (USML).

The following is a list of points of contact for the several USML classes (current as of April 2007). Be sure to contact the POC related to the defense article you want to export for more guidance.

### OFFICE OF DEFENSE TRADE CONTROLS LICENSING POINTS OF CONTACT

Division	Responsibilities	Points of Contact
Military Vehicle and Naval Vessel Division (T2C) – Ruth N. Jackson- -Phone: 202-663-2738	(USML Commodity Categories II, III, VI, VII, IX, XII, XIII, XVI, XVIII, XX, and XXI)	Laurel L. Bibby-- (202) 663-2841 Malcolm Greene --(202) 261-8662 LTC Elmer D. Marcos --(202) 736-9062 George R. Moose --(202) 663-2737 JoAnne Riabouchinsky --(202) 663-

		2720 Julio A. Santiago --(202) 663-2996
Missile and Spacecraft Division (T3D) Anthony M. Dearth, Acting (202) 663-2836	USML Commodity Categories IV, V, XIV, XV	Maj. Richard J. Bailey --(202) 663-2731 Karen J. Conyers-- (202) 663-2917 Niclas J. Dahlvang-- (202) 663-2931 Yolanda P. Gantlin-- (202) 663-2721 LtCol Richard W. Koelling-- (202) 663-2843 Gregory A. Smoak-- (202) 663-2916 Robert S. Warren --(202) 663-3515
Military Electronics Division (T4M) Carol B. Basden-- (202) 663-2719	USML Commodity Category XI	Angela C. Brown-- (202) 261-8694 Lt Col Margaret A. Claytor --(202) 663-2735 MAJ Thomas P. Donovan --(202) 663-2990 Alisa M. Forby --(202) 663-2839 Paula J. Harris-- (202) 663-2840 Sebastian Liberatore --(202) 663-2793 Kalon E. Scott --(202) 663-2832
Aircraft Division (T5Z) – Mal Zerden-- (202) 663-2726	USML Commodity Categories VIII, X	Michael E. Boyd-- (202) 736-9057 MAJ Bruce M. Carswell-- (202) 663-2733 Carlarease S. Hunter --(202) 663-2728 Angela R. McDonald --(202) 663-2745 CDR Victor M. Ott --(202) 663-2722 Bruce “Chuck” Schwingler --(202) 736-9227 Norbert C. Tagge --(202) 663-2729
Firearms Division (T6F) Jo Lozovina (202) 663-2724	USML Commodity Categories I, III	Richard E. Laczynski --(202) 663-2747 Deniz R. Smith-- (202) 663-2964 Thomas J. Tinger --(202) 663-2749

**Step 4: How to get a purchase order of letter of intent?**

We spoke with the staff at DTC who indicated that this is part of a company sales strategy i.e. advertise your products in trade publications, trade shows etc. as a supplier for a particular defense article and watch out for bids (tenders). They also indicated that you could get assistance from the Defense Trade Advocacy Program. Eligibility guidelines are available at <http://export.gov/Advocacy/guidelines.html>.

Office Phone: (202) 482-3896, Office Fax: (202) 482-3508		
Contact	Title or Geographic Responsibility	(202) 482
Stephen J. Madden	Senior Advisor	-0559
Jenny Gothard	Associate Director for MDBs	-5074
Patricia Nugent	Europe & Russia	-3392
Jonathan Stone	Europe & Russia	-2058
Bryan Lopp	Turkey, Central & South Asia	-0438
John Tocco	ASEAN & Pacific Basin	-4166
Christopher Stokes	ASEAN & Pacific Basin	-9187
Malcolm Burke	China, Mongolia & ECA Liaison	-3584
Jennifer Holyfield	China & Mongolia	-4799
Xiaobing Feng	China & Mongolia	-6427
Christopher James	Middle East	-5578
Addilyn Chams-Eddine	Middle East, Central & South Asia	-0648
Todd Fox	Western Hemisphere	-2327
Patrice Williams	Western Hemisphere	-6157
Amy Tabine	Africa	-5065
Abby Frye	Program Assistant	-9168
Sherri Lattisaw	Executive Assistant	-5127

The following personnel can provide information on opportunities and other pertinent information. U.S. Export Assistance Centers<sup>4</sup> are available to help small- or medium-sized business with local export assistance. The following personnel may be contacted for more information:

**ATLANTA:** Georgia, Alabama, Kentucky, Tennessee, and Mississippi

Ray Gibeau  
Regional Manager, International Trade Programs  
Sunbelt U.S. Export Assistance Center  
75 Fifth Street, N.W., Suite 1055  
Atlanta, Georgia 30308

<sup>4</sup> See <http://www.sba.gov/oit/export/useac.html>

Tel: 404-897-6089  
Fax: 404-897-6085  
Email: [raymond.gibeau@sba.gov](mailto:raymond.gibeau@sba.gov)

**BALTIMORE:** Maryland, Virginia, West Virginia, and District of Columbia

Patrick Tunison  
Chief International Lending Officer, International Trade Programs  
U.S. Export Assistance Center  
300 West Pratt Street, Suite 300  
Baltimore, Maryland 21201  
Tel: 202-205-6426  
Fax: 202-205-7272  
Email: [Patrick.Tunison@sba.gov](mailto:Patrick.Tunison@sba.gov)

**BOSTON:** Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island

John Joyce  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
World Trade Center, Suite 307  
Boston, Massachusetts 02210  
Tel: 617-424-5953  
Fax: 617-424-5992  
Email: [john.joyce@mail.doc.gov](mailto:john.joyce@mail.doc.gov)

**CHARLOTTE:** North Carolina, South Carolina

Dan Holt  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
521 East Morehead Street, Suite 435  
Charlotte, North Carolina 28202  
Tel: 704-333-4886  
Fax: 704-332-2681  
Email: [dan.holt@mail.doc.gov](mailto:dan.holt@mail.doc.gov)

**CHICAGO:** Wisconsin, Illinois, and Indiana

John Nevell  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
200 Adams Street, Suite 2450  
Chicago, Illinois 60606  
Tel: 312-353-8065

Fax: 312-353-8098  
Email: [john.nevell@sba.gov](mailto:john.nevell@sba.gov)

**CLEVELAND:** Ohio, Western New York, and Western Pennsylvania

Patrick Hayes  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
600 Superior Avenue, Suite 700  
Cleveland, Ohio 44114  
Tel: 216-522-4731  
Fax: 216-522-2235  
Email: [phayes@mail.doc.gov](mailto:phayes@mail.doc.gov)

**DALLAS:** Oklahoma, Texas, Louisiana, and Arkansas

Rick Schulze  
Regional Manager, International Trade Programs  
North Texas U.S. Export Assistance Center  
1450 Hughes Road, Suite 220  
Grapevine, Texas 76051  
Tel: 817-310-3749  
Fax: 817-310-3757  
Email: [richard.schulze@sba.gov](mailto:richard.schulze@sba.gov)

**DENVER:** Wyoming, Utah, Colorado, New Mexico

Dennis Chrisbaum  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
1625 Broadway Avenue, Suite 680  
Denver, Colorado 80202  
Tel: 303-844-6623 ext.18  
Fax: 303-844-5651  
Email: [dennis.chrisbaum@sba.gov](mailto:dennis.chrisbaum@sba.gov)

**DETROIT:** Michigan

John O'Gara  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
8109 E. Jefferson  
Detroit, Michigan 48214  
Tel: 313-226-3670  
Fax: 313-226-3657  
Email: [john.ogara@sba.gov](mailto:john.ogara@sba.gov)

**NEWPORT BEACH:** Southern California, Nevada, Arizona, and Hawaii

Martin Selander  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
3300 Irvine Avenue, #307  
Newport Beach, California 92660-3198  
Phone: 949-660-1688 X307  
Fax: 949-660-1338  
Email: [martin.selander@sba.gov](mailto:martin.selander@sba.gov)

**MIAMI:** Florida

Mary Hernandez  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
5835 Blue Lagoon Drive Suite 203  
Miami, Florida 33126  
Phone: 305-526-7425 x21  
Fax: 305-526-7434  
Email: [mary.hernandez@sba.gov](mailto:mary.hernandez@sba.gov)

**MINNEAPOLIS:** Minnesota, North Dakota

Nancy Libersky  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center, U.S. Small Business Administration  
100 North Sixth Street 210-C, Butler Square  
Minneapolis, MN 55403  
Phone: 612-348-1642  
Fax: 612-348-1650  
Email: [nancy.libersky@sba.gov](mailto:nancy.libersky@sba.gov)

**PHILADELPHIA:** Eastern Pennsylvania, Delaware, New Jersey

Robert Elsas  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
The Curtis Center  
601 Walnut Street, Suite 580 West  
Philadelphia, Pennsylvania 19106  
Phone: 215-597-6101  
Fax: 215-597-6123

Email: [robert.elsas@sba.gov](mailto:robert.elsas@sba.gov)

**PORTLAND:** Southern Washington, Oregon, Southern Idaho, Montana

Inga Fisher Williams  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
One World Trade Center  
121 SW Salmon Street, Suite 242  
Portland, Oregon 97204  
Phone: 503-326-5498  
Fax: 503-326-6351  
Email: [inga.fisherwilliams@mail.doc.gov](mailto:inga.fisherwilliams@mail.doc.gov)

**SEATTLE:** Northern Washington, Alaska, Northern Idaho

Pru Balatero  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
4th & Vine Building  
2601 4th Avenue  
Suite 320  
Seattle, Washington 98121  
Phone: 206-553-0051  
Fax: 206-553-7253  
Email: [pru.balatero@sba.gov](mailto:pru.balatero@sba.gov)  
Seattle U.S. Export Assistance Center Website

**ST. LOUIS:** South Dakota, Nebraska, Iowa, Kansas, and Missouri

John Blum  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
8235 Forsyth Blvd., Suite 520  
St. Louis, Missouri 63105  
Phone: 314-425-3304  
Fax: 314-425-3381  
Email: [john.blum@mail.doc.gov](mailto:john.blum@mail.doc.gov)

## 2. SELLING TO NATO

### How to get a purchase order of letter of intent? Selling to NATO

The NATO Security Investment Program<sup>5</sup> may be a good place to start looking for how to sell to NATO. The program is NATO funded and it offers U.S. firms an opportunity to fulfill NATO's infrastructural requirements. "Infrastructure" is defined as anything from installations to goods and services such as signals and telecommunications, radar, missile, storage etc. The U.S. Department of Commerce is the U.S. agency that has been designated to work with U.S. firms interested in business opportunities with the NATO Security Investment Program. The Department's primary responsibility is to certify U.S. companies that are bidding on NSIP contracts. The website states that *U.S. firms that are interested in participating in NSIP procurements must be certified by the Bureau of Industry and Security within the Department of Commerce*. The certification application form BIS-0423P is available at <http://www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/NATOprograms/> (form is on bottom of page). NATO document AC/4-D/2261 (1996 Edition) available at [http://www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/NATOprograms/TOC\\_Procedures.htm](http://www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/NATOprograms/TOC_Procedures.htm) gives more information on NATO bidding process and other information. NATO's standard procedure is given as,

"At the earliest possible moment, which may be before the request for authorization to commit funds is submitted, the host nation must issue a Notification of Intent to Invite Bids. This notification must be received in writing within at least 28 days, and in cases where security clearances are required 35 days, before the final date by which firms must make known their desire to be invited to bid. The notification must be submitted to the diplomatic representative of the participating countries in the capital of the host nation, with copies to NATO delegations of participating countries and to the International Staff."

### Where are NATO bidding (i.e. Tender) opportunities published?

According to the documents available at the following URL, the process works in the following manner.

<http://www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/ExportMarketGuides/Default.htm>

- (i) Member countries notify the commercial section of the U.S. embassy in their respective countries of the bid.
- (ii) Bids considered significant by the U.S. embassy personnel in the NATO-member country are forwarded to the U.S. Department of Commerce.

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<sup>5</sup> See <http://www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/NATOprograms/>

Classified documents are forwarded to the Department of Commerce to be transmitted to interested U.S. firms via the Department of Defense, Defense Investigative Service.

- (iii) NATO projects that the U.S. Department of Commerce advertises are conducted under a NATO program, the **International Competitive Bidding** program. The U.S. Department of Commerce advertises ICB opportunities on **the Federal Business Opportunities** (FedBizOpps) website at <http://vsearch1.fbo.gov/servlet/SearchServlet>. Some NATO projects require security clearance and it is up to the company to make sure that they have the necessary clearance.
- (iv) The U.S. Department of Commerce also issues Declarations of Eligibility on behalf of U.S. firms that qualify to bid on **International Competitive Bidding** program procurements. To apply for eligibility, please complete an application<sup>6</sup> and send it by email or fax to **Lee Ann Carpenter** (Phone 202-482-2583) or **David Newsom** (Phone 202-482-7417) (Office Fax: 202-482-5650).

Copies of NATO project announcements from Dept. of Commerce can be obtained by calling the NATO Projects Officer at 202-482-1512.

### 3. FOREIGN MILITARY SALES

#### How to get a purchase order of letter of intent? Foreign Military Sales

The Foreign Military Sales program manages government-to-government purchases of weapons and other defense articles, defense services, and military training. A foreign military - buying weapons through the Foreign Military Sales program - does not deal directly with the company that makes them. The Defense Department serves as an intermediary, handling procurement, logistics, and delivery and often providing product support and training. Foreign Military Sales are distinguished from the **Direct Commercial Sales** program, which oversees sales between foreign governments and private U.S. companies.<sup>7</sup>

When defense articles or services are required by a foreign country, the requesting country's representative in the defense establishment of the country provides a Letter of Request to the representative's U.S. counterpart. The U.S. counterpart forwards a copy of the request to the Department of State Bureau of Politico-Military Affairs and the Defense Security Cooperation Agency. The original is given to the U.S. DoD Military Department i.e. Army, Navy, or Air Force or Defense Agency, which will prepare the response and request for a bid. More information is available at [http://www.disam.dsca.mil/Research/Presentations/dl\\_presentations.htm](http://www.disam.dsca.mil/Research/Presentations/dl_presentations.htm)

<sup>6</sup> Application may be downloaded at <http://www.bis.doc.gov/defenseindustrialbaseprograms/OSIES/NATOprograms/index.htm>

<sup>7</sup> See guidelines at [http://www.dsca.osd.mil/DSCA\\_memoranda/fmf\\_dcc\\_2001/](http://www.dsca.osd.mil/DSCA_memoranda/fmf_dcc_2001/)

The document, "*A Comparison of Direct Commercial Sales & Foreign Military Sales*,"<sup>8</sup> indicates that manufacturer and exporters may provide marketing information abroad to promote their products and disclose only information that is unclassified i.e. in public domain. They are however, "restricted from making specific proposals sufficient to form the basis of a purchasing decision involving the licensed production of significant military equipment." The document also add that approval from DTC is required before any military sales can be made to a foreign country, However, this is not required for NATO countries, Australia, New Zealand and Japan.

For the Foreign Military Sales Program, an export license is not required if the foreign diplomatic mission has filed advanced documentation with the Directorate of Defense controls.

### **How to get a purchase order of letter of intent? Selling to Japan**

The Defense export market guide to Japan available at the following site notes that, "There are few shortcuts to selling to Japan." The document points that representation in the country as well as the strength of the company's personal relationships with its Japanese partners is key to success in the Japanese defense sector. The document recommends that a company establish a branch, partner, a Japanese representative or joint ventures.

<http://www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/ExportMarketGuides/Default.htm>

Office of Defense Trade Controls Policy  
Director  
Ann Ganzer  
Phone: 202-663-2792

## **4. GENERAL EXPORT LICENSES**

### **Step 1: How to Determine If You Need a Commerce Export License**

A small number of U.S. exports require a license from **Bureau of Industry and Security**. **Bureau of Industry and Security** is the primary licensing agency for dual-use exports, while the **Directorate of Defense Trade Controls** licenses defense articles and services License requirements are dependent upon an item's technical characteristics, the destination, the end-user, and the end-use. To determine whether the intended item for export requires a license consider the following,

- What are you exporting?
- Where are you exporting?

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<sup>8</sup> See <http://www.dsc.osd.mil/publications.htm>

- Who will receive your item?
- What will your item be used for?

To determine whether an export license is needed from the Department of Commerce, one needs to determine if the item intended for export has a specific Export Control Classification Number (ECCN).<sup>9</sup> The ECCN is a code, e.g., 3A001, that describes a particular item or type of item, and shows the controls placed on that item. Start by looking on the Commerce Control List (see list A) and product group which covers equipment (see list B).

### **List A: Commerce Control List Categories**

- 0 = Nuclear materials, facilities and equipment (and miscellaneous items)
- 1 = Materials, Chemicals, Micro-organisms 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

### **List B: Five Product Groups**

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

Here are the basic steps involved in getting an export license

- Be sure that the intended item for export is under U.S. Department of Commerce jurisdiction<sup>10</sup>
- Classify the item by reviewing the **Commerce Control List**.
- If the item has an Export Control Classification Number, identify the reasons the item is listed on the Control on the Commerce Control List.<sup>11</sup>
- Cross-reference the ECCN Controls against the Commerce Country Chart to see if a license is required.<sup>12</sup>
- Ensure that no embargoed end-users or end-uses are involved with the export transaction.

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<sup>9</sup> <http://www.bis.doc.gov/licensing/exportingbasics.htm>

<sup>10</sup> More information on the process is available at <http://www.bis.doc.gov/licensing/facts3.htm>

<sup>11</sup> See details at <http://www.bis.doc.gov/licensing/ExportingBasics.htm>

<sup>12</sup> See details at <http://www.bis.doc.gov/licensing/ExportingBasics.htm>

## Step 2: No License Required

If the item falls under **U.S. Department of Commerce** jurisdiction and is not listed on the **Commerce Control List Categories**, it is designated as EAR99, which consist of low-technology consumer goods and do not require a license.

If your item requires a license to be exported, you must apply to the Bureau of Industry and Security for an export license. A Bureau of Industry and Security -issued license is usually valid for two years. If an export license is required, exporters must prepare a Form BIS-748P, “**Multipurpose Application Form**,” and submit it for review and approval. For more information on export licenses, see

<http://www.bis.doc.gov/licensing/applying4lic.htm>.

## SUMMARY

### **Question: Does the module fall under the jurisdiction of the Department of Commerce or the Department of State? How can one find this out?**

Contact any of the licensing personnel to find out if the article (or product/service) is indeed governed by ITAR rules listed in this document. They will help you determine whether the article was specifically designed, developed, configured, adapted or modified for military application; whether it has predominately civil applications; whether it has performance equivalent to an item used for civil applications; or has significant military or intelligence applicability such that ITAR control is necessary.

If the article/prroduct was designed for military use *but the foreign customer only wants to use it for civilian applications*, “intended use” is not considered to be a relevant factor in determining whether the item should be regulated by the Department of Commerce or the Department of State. If there is a disagreement about whose jurisdiction the article falls under, the Department of State makes the final ruling.

In addition, since the article has commercial purposes, *it may fall under the Department of Commerce export control regulations*. Bureau of Industry and Security is the primary licensing agency for dual-use exports, while the Directorate of Defense Trade Controls licenses defense articles and services. The Bureau of Industry and Security (BIS) is responsible for implementing and enforcing the Export Administration Regulations (EAR, see [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)), which regulate the export and re-export of most commercial items. Items that BIS regulates as "dual-use" - items that have both commercial and military or proliferation applications - but purely commercial items without an obvious military use are also subject to the EAR. A key in determining whether an export license is needed from the Department of Commerce is knowing whether the item you are intending to export has a specific Export Control Classification Number (ECCN). The ECCN is an alpha-numeric code,

e.g., 3A001, that describes a particular item or type of item, and shows the controls placed on that item.

For more information, contact the BIS staff by filing out the form at <https://www.bis.doc.gov/Forms/biswestinquiry.html> or call the response team at (949) 660-0144.

You can also contact the **Office of Exporter Services**.

This office is responsible for counseling exporters, conducting export control seminars, and drafting and publishing changes to the Export Administration Regulations. It is also responsible for licensing and compliance actions relating to the special comprehensive license, and for administering the processing of license applications and commodity classifications.

**Eileen Albanese, Director**

Office of Exporter Services  
14th Street and Constitution Avenue, NW  
U.S. Department of Commerce  
Washington DC 20230  
Phone: 202-482-0436

Also you can attend any of the BIS export seminars by registering at <https://www.bis.doc.gov/Forms/BISWestSeminarInquiry.html>

If your item falls under BIS, you will apply for an export license. Information is available at <http://www.bis.doc.gov/licensing/applying4lic.htm>. If your application is approved, you will receive a license number and expiration date to use on your export documents. A BIS-issued license is usually valid for two years.

You can also contact the small business export assistance office that serves the state of Hawaii. Contact is provided below.

**NEWPORT BEACH**

Territory: Southern California, Nevada, Arizona, **Hawaii, Guam**

Martin Selander  
Regional Manager, International Trade Programs  
U.S. Export Assistance Center  
3300 Irvine Avenue, #305  
Newport Beach, California 92660-3198  
Phone: 949-660-1688 ext.115  
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Please consult the referenced government representatives for the most current information.