

STEPS FOR DETERMINING EXPORT JURISDICTION AND CLASSIFICATION

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The following are a number of steps to consider for determining the export jurisdiction and classifications for products (including end-products, systems, parts, components and accessories), technical data, software and defense services:

- Start by determining if the item is listed on the US Munitions List and subject to ITAR or provides the equivalent performance capabilities as set forth in 22 CFR §120.3. Review the provisions of the USML carefully to see if your item is identified on the list. In addition, review the ITAR “Order of Review” set forth at 22 CFR § 121.1(b) and the recently revised legal standard set forth at 22 CFR §§ 120.3 and 120.4.
- For parts, components and accessories you may be required to review whether the item fits within the ITAR version of the definition of “Specially Designed” set forth at 22 CFR § 120.41¹. When reviewing this definition follow the procedure set forth in 22 CFR § 121.1(d) and also review the “Notes” that accompany the definition as they provide further details regarding the application of the definition, including records to be reviewed. If necessary, review the “Decision Tree” guidance provided by DDTC for both (i) the Order of Review; and (ii) Specially Designed.²
- To obtain a written confirmation of whether the item is on the USML and subject to ITAR, apply for a commodity jurisdiction determination from DDTC.
- If the item is not subject to ITAR, assess if it is subject to the EAR or the jurisdiction of other federal agencies (See EAR § 734.3). To assess classification under the EAR, begin by reviewing EAR § 734.3(a) and related provisions, the Commerce Control List and the CCL Order of Review set out at EAR Part 774 Supplement No. 4. Under the EAR Order of Review, 600 Series items and the 9x515 ECCN items are given a higher priority in the classification process than other items on the CCL – review the 600 series and 9x515 ECCN items first, then review the rest of the CCL. Follow the BIS Order of Review to determine the item’s export control classification number (“ECCN”) or if it is EAR99.

¹ 22 CFR §121.1(d)(2) provides in pertinent part: “If your commodity or software is not enumerated on the U.S. Munitions, it may be controlled because of a specially designed control parameter. If so, begin any analysis with §120.41(a) and proceed through each subsequent paragraph.... ”

² Available on the DDTC website.

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- As part of this process you may be required to review the EAR definition of “Specially Designed” set out at EAR Part 772.³ You should also review the “Notes” included in this definition of Specially Designed as they provide important details in the application of this term. You may also want to review the BIS Decision Tree for Specially Designed.⁴
- If you wish to obtain written confirmation of the classification of the item under the EAR from the Bureau of Industry and Security (“BIS”), you can submit a request to BIS for a Commodity Classification Automated Tracking System (“CCATS”) determination. It should be noted, however, that BIS classification guidance is not binding on determining whether an item is subject to ITAR – only the State Department can provide guidance on whether an item is subject to ITAR.
- To assess if the item is subject to the jurisdiction of other federal agencies (for example, the U.S. Nuclear Regulatory Commission or the Department of Energy), refer to EAR §734.3(b) and such other agencies’ regulations as might apply to the specific item in question.
- For all export classifications (including under ITAR, EAR and other regulations), maintain written records of your determination to comply with the export recordkeeping requirements and as a defense if your classifications are ever challenged in the future.

Please note: This memorandum is intended as a tool in assessing compliance under ITAR but does not attempt to address every requirement under ITAR. This article contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel. For more information, please visit our website at www.williamsmullen.com or contact [Thomas B. McVey](mailto:Thomas.B.McVey), 202.293.8118 or tmcvey@williamsmullen.com.

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³ As part of this process you may be required to review “Specially Designed” for the 600 Series items first and then again for the remainder of the CCL.

⁴ Available on the BIS website.