BIS Training Module 2

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Thank you for joining Module 2 of the Bureau of Industry and Security's Slide Presentation Series on Commerce Export License Requirements. In Module 2 of this Series, we will go into more detail on how to classify your item and how to determine your export license requirements.

Slide 2:

We will take a closer look at the Commerce Control List, including its format and structure. We will also review the elements of an Export Control Classification Number, including the reasons for control of an item. We also will review how to use the Country Chart to make a license determination for your transaction. Finally, we will cover approaches to classifying an item.

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In Module 1, we discussed how to determine if your item is Subject to the EAR. Once you have determined that your item is subject to the EAR, the next step is to determine if your item is classified under an Export Control Classification Number on the Commerce Control List, or if it is designated as EAR99.

Throughout this module, we will refer to the Export Control Classification Number as ECCN and we will refer to the Commerce Control List as the CCL.

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The Commerce Control List contains items that are subject to the licensing authority of BIS.

Used with the Commerce Country Chart, you can determine if your item requires a license to any destination.

The Commerce Control List is found in Supplement No. 1 to Part 774 of the Export Administration Regulations.

The Export Administration Regulations are available on-line at the Government Printing Office website.

We also have a link from the BIS homepage to the Export Administration Regulations and to the Commerce Control List section of the EAR.

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When we talk about items on the CCL, we are referring to commodities, software and technology.

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Let's take a look at the structure of the CCL.

The CCL is made of up ten categories, identified by Categories 0 through 9.

Within each category, items are arranged by product group. Each category contains the same five product groups identified by the letters A through E.

The entries that make up the categories of the CCL are the ECCNs.

BIS also offers an alphabetical index and numerical index to the CCL which may be useful when determining your item's classification.

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Category 0 of the CCL includes miscellaneous items such as shotguns, shotgun shells, and optical sighting devices as well as some nuclear related material and equipment. Many of these nuclear entries refer the reader to the Nuclear Regulatory Commission which has jurisdiction.

Category 1 relates to materials, chemicals, microorganisms and toxins.

Category 2 relates to Materials Processing such as machine tools.

Category 3 relates to Electronics.

Category 4 relates to Computers.

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Category Five is made up of two parts. Part one relates to Telecommunications and Part two relates to Information Security – otherwise known as encryption.

Category Six relates to Sensors and Lasers.

Category Seven relates to Navigation and Avionics.

Category Eight relates to Marine items.

And Category Nine relates to Propulsion items.

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The first number of an ECCN identifies the Category it is in. In the example of ECCN 3A001, the "3" identifies that it is an ECCN found in Category 3 – the electronics category.

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In the example of ECCN 6C992, the "6" identifies that it is an ECCN found in Category 6 – the category containing Sensors and Lasers

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Within each of the ten categories, items are arranged by five product groups.

Product Group A relates to equipment, assemblies and components

Product Group B relates to Test, Inspection and Production Equipment

Product Group C relates to materials specific to that category

Product Group D relates to software specific to that category

And Product Group E relates to Technology specific to that category.

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In this example of ECCN 4B994, the B relates to test, inspection and production equipment in Category 4, the computer category.

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In the example of ECCN 6C992, the C relates to materials in Category 6 – the category containing Sensors and Lasers.

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Let's take a look an example of ECCN entries from each product group in Category 3. As we have previously discussed, an "item" is defined as a commodity, software or technology.

In the CCL, the first three product groups relate to Commodities:

-Product Group A is systems, equipment & components specific the category;

-Product Group B is test, Inspection & Production Equipment - equipment used to test or produce these types of products specific to the category

and

-Product Group C is materials, pertinent to this categories' products

Product Group D relates to Software specific to the category

And

Product Group E relates to Technology specific to the category

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Now, let's look at how ECCNs entries within the different product groups relate to each other within a Category of items.   We will use some Category 3 entries as our example. 3A001 includes electronic **components.**

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3B001 includes equipment for **manufacturing** certain semiconductor devices or materials

Slide 17:

3C001 includes hetero-epitaxial **materials** used in semiconductor manufacturing

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3D001 – includes **software** designed for the development or production of certain electronic components

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And 3E001 includes **technology** for development or production of certain Category 3 equipment or materials

As you can see, all of these entries relate to electronic commodities, software or technology

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The second number in an ECCN differentiates individual ECCN entries. The number identifies the Reason, or Reasons for Control associated with items contained in the entry.

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In the example of 3A001, it indicates that the ECCN entry is controlled for national security reasons among other reasons which we will discuss.

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Here you will find all of the Reasons for Control which may apply to an item on the CCL. Keep in mind that Reasons for Control are not mutually exclusive (meaning more than one can apply to an ECCN). The majority of ECCNs are controlled for more than one reason. This is the case for our previous example of ECCN 3A001. Let's take a look.

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3A001 includes electronic components and is controlled for National Security, Missile Technology, Nuclear Non Proliferation and Anti-terrorism reasons. Since reasons for control are not mutually exclusive, numbers are assigned in order of precedence.

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3A002 includes general purpose electronic equipment and is controlled for National Security and Anti-terrorism reasons.

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3A101 includes certain converters usable in "missiles" and is controlled for Missile Technology and Anti-terrorism reasons.

Slide 26:

3A201 includes certain flash x-ray generators and is controlled for Nuclear Non Proliferation and Anti-terrorism reasons

Slide 27:

3A980 includes voice print ID equipment and is controlled for Crime Control reasons.

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3A991 includes certain electronic devices and is controlled for Anti-Terrorism reasons

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Now that you are familiar with the structure of the CCL Categories and Product Groups, let's take a look at the information you will find in an ECCN entry.

First, each ECCN will have an Entry Heading with a brief description of the items covered under that ECCN.

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Next, you will see the License Requirements Heading. Within the License Requirements Heading is the Reasons for Control and the Country Chart reference.

The Reasons for Control header shows all applicable reasons for control in order of restrictiveness. Those controls that require licenses for a larger number of countries and/or items are listed first.

The Country Chart header identifies a column name and number for each Reason for Control, such as "NS Column 2" or "CB Column 1"

It's important to note that in some cases, the Reason for Control may only apply to part of an ECCN entry. If this is the case, the subparagraph reference is provided to identify which part of the ECCN is subject to which Reasons for Control.

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Next is the License Exceptions Header which lists certain License Exceptions that may be available for items classified under that ECCN entry.

We will cover License Exceptions in more detail in Module 4.

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The next heading is List of Items Controlled.

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This contains information on the units by which the item is licensed, generally in metric units.

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It also includes Related Controls which identifies if another Federal agency has export licensing authority over items related to those controlled in the entry. The Related Control section may also cross-reference other related ECCN entries, including technology and software related ECCNs.

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The List of Items Controlled header also includes definitions which may provide definitions or parameters that apply to all items controlled in the entry. Both the Related Controls and Related Definition sections may assist you in the classification process of your product.

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Finally, the all-important Items Header contains a positive list of all items controlled by that particular ECCN entry. As previously mentioned, in some cases, the list of items controlled in the ECCN is contained within the entry heading. If this is the case, a statement to that effect will be shown under the Items header.

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As previously discussed, the related controls and related definition section of an ECCN contains very useful information to aid in the classification of an item.

In your review of an ECCN entry, you may find additional technical or advisory notes within an ECCN that further assist in classification determinations.

You may also see the acronym N.E.S. in an ECCN entry heading or item listing. This stands for Not Elsewhere Specified indicates that the item in question does not meet the control requirement of any other ECCN.

Part 772 of the EAR contains the definition of words and terms that have a specific meaning within the context of the EAR.

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Let's take a look at a simple ECCN entry. In ECCN 3A980, you will find the term n.e.s. In this case, this entry covers voice print identification and analysis equipment and parts not elsewhere specified in any other ECCN entry.

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You will also see that the list of items controlled for this ECCN is in the entry heading.

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Let's take a look at another ECCN entry. 8C001 is an ECCN entry found in Category 8 – the Marine Category. This ECCN is the first entry in Product Group C – Materials.

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The Entry Heading for ECCN 8C001 is "Syntactic foam designed for underwater use having all of the following (see List of Items Controlled)"

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Under the License Requirements Heading, it indicates that this ECCN entry has two Reasons for Control: National Security and Anti-Terrorism

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The corresponding controls in the Country Chart are NS Column 2 and AT Column 1.

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Under the List of Items Controlled Heading…

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…there are two subparagraphs – a and b.

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Notice that in this entry, the syntactic foam must meet BOTH paragraphs to be controlled under this entry.

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Also notice that the Related Definitions heading provides the definition of what is meant by syntactic foam listed in this entry.

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In this ECCN example, the Reason for Control depends on the subparagraph. Nuclear nonproliferation controls (NP) only apply to 2B006 a. and certain subparagraphs of 2B006 while National Security and Antiterrorism Controls apply to the entire entry..

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When reviewing software and technology entries, keep in mind that they are controlled based on the associated product. If your item is "development", "production" or "use" data or software, it will be necessary for you to consider the technology or software as it relates to the end-item hardware. Definitions of "development", "production" or "use" are in the Definitions section in Part 772 of the EAR. You should also review the General Technology Note in Supplement 2 to part 774.

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Here is example of software in Category 1…

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Note that the software controlled in this entry relates to software for the production of chemicals controlled in a commodity ECCN entry.

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This ECCN also provides another example of the List of Items Controlled being contained in the ECCN heading

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Once you have classified your item and know its reason, or reasons for control, the next step is to review the Commerce Country Chart.

The Country Chart contains license requirements based on destination and reason for control and allows you to determine whether a license is required for an item on the Commerce Control List to any country in the world.

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If there is an "x" in the box when matching the Reason for Control and country of destination, then a license may be required. Let's take a look at the structure of the Commerce Country Chart.

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The first column of the Country Chart lists all the countries in alphabetical order

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Stretching out to the right are horizontal headers identifying the various Reasons for Control.

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To use the Commerce Country Chart, you match the country of destination with the specific Reason for Control of the item. If there is an "X" in the box, a license required based on that Reason for Control. If there is no "X" in the box, a license is not required based on the Reason for Control.

In the example of 8C001, it is controlled for two reasons. The first reason is NS Column 2. If this syntactic foam were to be exported to Angola, a license would be required as there is an X in the box under NS Column 2 for Angola.

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8C001 is also controlled for Anti-Terrorism reasons under AT Column 1. A license would not be required to Angola based on the Antiterrorism Reason for Control.

However, since there is an X in the box for NS Column 1, a license is required. Only one X in the box is necessary to trigger a license requirement.

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In the case of an export of this syntactic foam to Australia, a license would not be required based on either of the Reasons for Control, as there is no x in either NS Column 2 or AT Column 1.

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In summary,

If you find an "X" in the box for any reason for control for your ECCN and the country of destination, a license is required for your transaction, unless the transaction is eligible for a license exception and no other restrictions apply, such as an export to an end-user or end-use of concern.

If there is no "X" in the box for any of the reasons for the country of destination, a license is not required, unless other restrictions apply, such as an export to an end-user or end-use of concern.

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The Commerce Control List is a positive list of items. If an item is not specifically described in any ECCN entry, it is designated as EAR99.

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It's important to note that most items Subject to the EAR are not on the Commerce Control List and are designated as EAR99.

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Now that you are familiar with the organization of the CCL and ECCN entries, let's take a look at ways to Classify Your Product. As you may already be aware, the ECCN of

your item is a key to determining your export license requirements based on the item and destination.

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BIS recommends three approaches to classifying your item.

First, you may want to check with the manufacturer, producer or developer of the item to see if they have its current classification number. If they have exported the item, they may be willing to share their classification determination with you. Keep in mind that you are still responsible for the correct classification, so the ECCN provided is a good starting point.

You should still review the current ECCN entry to be sure that you agree with the classification, as ECCN entries change over time.

Some companies even post their ECCN determinations on-line.

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If you are the manufacturer, producer or developer of the product, you may be in the best position to classify the product. Since classifying an item is a technical evaluation of the item in comparison to the technical parameters on the CCL, it may be necessary that the person reviewing the CCL have a technical understanding of your item, such as an engineer or software developer.

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The final way to determine your ECCN to submit an official classification request to BIS. We will now cover Self-Classifying and the Formal Submission procedure to BIS in more detail.

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To self classify your item, you should begin with a review of the general characteristics of your item. This will usually guide you to the appropriate Category and Product Group on the CCL. In some instances, more than one Category may seem applicable, in which case, a review of all relevant categories would be appropriate.

A review of the alphabetical index to the CCL may assist you in narrowing the focus of your review. Keep in mind that the index is for informational purposes and cannot be used as a substitute for reviewing the CCL and relevant ECCN entries.

When reviewing an CCL Category and Product Group, you should begin at the beginning of the section and work your way down, as ECCNs are listed from most controlled to least controlled. If you begin in the middle of a section, you may miss a more controlled entry which may control your item.

Match the particular characteristics, functions and applications of your item to a specific ECCN by reviewing the Items list to determine within which subparagraph or subparagraphs your item is identified.

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The third way to confirm an ECCN classification is to request a written classification from BIS. An official classification can be made through BIS's on-line application system known as SNAP-R. Instructions for signing up for SNAP-R are available on the BIS website.

When submitting a classification request, you should provide the ECCN where you think your item is described.

With respect to the item's technical details, you should provide the manufacturer, model number, product applications and technical specifications. It is important to include technical specifications that support the classification. Keep in mind that sales brochures may not contain needed information.

In the classification request, describe your item in the control parameters used in the ECCN entry in which you believe it falls. Before the BIS engineer can confirm the classification of your item, he or she will have to compare the parameters of your item with the CCL. If this information is not provided, they will have to request this information from you which will delay the review of your request.

Once the review is complete, the SNAP-R system will provide you will an electronic classification determination. You will also receive a copy in the mail.

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BIS provides many on-line resources related to the Commerce Control List and ECCN classifications. Part 738 of the EAR is a good place to start as it provides a thorough review of the CCL and Country chart.

BIS offers a brochure on how to request an ECCN from BIS as well as other on-line guidance.

The BIS website also provides information on signing up for the SNAP-R system.

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In Module Two, we took a closer look at the Commerce Control List, including its format and structure. We examined the elements of an Export Control Classification Number, including the reasons for control of an item. We reviewed how to use the Country Chart to make a license determination for a transaction. Finally, we covered approaches to classifying an item, including checking with the manufacturer or developer, self-classifying an item, and submitting an official classification request to BIS.

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In Module Three, we will go into more detail on the General Prohibitions including Prohibited End-users, End-uses and Activities.