



Study Guide 

2024
Update

ITAR / EAR

FOR

DUMMIES

***INCLUDING
SECRETS TO
MAKE YOU
COMPLIANT !***

**Know as much
as or more than
Martha!**



PSI Exports Study Guide – 2024 Update

There have been major changes to American export-control rules. Update training on the ITAR and EAR is not only a good idea in rules-compliant firms like PSI – it is also a matter of law and best-practice for affected employees to undergo at least annual training. For PSI this has a major impact on our procedures. **For example, before 2013, most of our exports used to proceed under the rules in the State Department's International Traffic in Arms Regulations ("ITAR"), but now most of our exports are under the Export Administration Regulations ("EAR"), administered by the Commerce Department.**

Just as when joining PSI, all employees will be provided an online set of study materials, kept up-to-date by PSI's Export Compliance Officer, and then will be required to take and pass a test demonstrating they are remaining current in their knowledge of essential rules and procedures. Wholesale changes began to take effect October 15, 2013, and are now essentially finished. Of course, the ITAR and EAR are both continually subject to updating. We'll keep you posted. Apart from the export-classification of the item considered for export, **some of what can prohibit an item from being exported are the destination of the export, the recipient of the item, and the purpose of the item.**

Repairs under warranty. For PSI to repair a previously-exported ITAR item under warranty, no license is required. We just have to perform a documented use of the ITAR exemption at §123.4(a)(1). **You should know there is an equivalent license exception in the EAR at §740.10, called "RPL."** Of course, all license exemptions or exceptions must be documented.

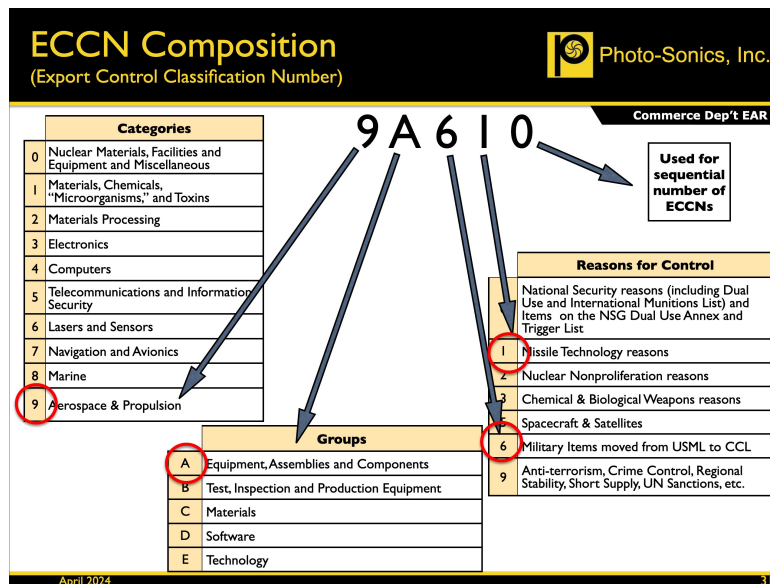
Foreign customer visits. Export-controlled data can only be presented or discussed during such visits if any required license is already approved. *Pending* license applications are irrelevant. Sometimes controlled data can be discussed without a license under an ITAR exemption or an EAR exception – but this must always be cleared first (and documented) by PSI's empowered official.

Travel laptops. We used to require travel laptops and other devices to be scrubbed of any controlled data, unless a specific export license applied. This remains true for any PSI employees who are foreign persons. **However, both the ITAR and EAR now feature fairly flexible license exemptions/exceptions which permit U.S.-person employees of PSI to carry controlled data, provided (i) employee must be a U.S. person, (ii) the device or files are encrypted, and (iii) the controlled-data files can be used by the employee during travel, but not disclosed to any foreign person, except via applicable export license(s).**

There is a new and important definition at ITAR §120.54: "Activities that are not exports, reexports, retransfers, or temporary imports." This is a regulatory approach called "exclusion", in that it removes whole categories of stored or transmitted data from the definition of "export." It is a little tricky, and is about a page long, but well worth understanding, since it clarifies when and how you can transfer ITAR-controlled information as an email attachment or via VPN without risking a violation. **For PSI, the main criteria are that (i) the data is unclassified, (ii) it is secured by end-to-end encryption, and (iii) it is not sent to or from one of the proscribed countries listed in ITAR §126.1 or the Russian Federation.**

Export Control Reform ("ECR"). The ECR has revised most categories on the USML and moves most items purchased by PSI to numerous new "600-series" of ECCNs in the EAR's Commerce Control List ("CCL"), and is incrementally being implemented. The primary intent of ECR is to move from the USML to the CCL those items that, in the view of the regulators at State and Commerce, no longer warrant the *extra* control of the ITAR. These items moving to a 600-series ECCN remain military items, and do not become

commercial items. Rather, the jurisdiction for export purposes shifts to the EAR, with its generally easier and more flexible licensing procedures. **The term "600-series" derives from the third character in the new ECCNs. There are 10 "Categories" and 5 "Groups", just like before, as you can see in the 9A610 graphic, below.** But under the ECR initiative there are a couple of new "Reasons for Control". One of these is N^o. 6, Military Items moved from the USML to the CCL. For example, the new 9A610 ECCN is for "Military aircraft and related commodities", and 9A619 is for "Military gas turbine engines and related commodities". The USML categories VIII and XIX still exist for military aircraft and gas turbine engines, but only the most sensitive items remain on the ITAR's USML.



As with most regulations, each category change is published in the Federal Register, usually in one or more successive drafts, with those affected having opportunity to comment. The effective dates are shown in the chart below, and the changes in effect are also color-coded green. Status of the ECR transition so far is also clear in the table, below – we are finally 100% of the way finished with the transition of export rules. Changes to the ITAR and EAR are always underway, but major ECR process begun in 2013 is now complete.

Don't Let This Happen To You. The title of that Department of Commerce booklet, posted on our Update Study Material page, means just what it says. It details real-life cases from Commerce's Bureau of Industry and Security ("BIS"), which handles their export licensing and enforcement. This booklet comes from Commerce's compliance group, but the types of carelessness enumerated in this booklet would also result in violations under the ITAR if the goods involved were defense articles. Both Commerce (under the EAR) and State (under the ITAR) have export compliance rules that apply to PSI. We include this booklet, in part, because State doesn't publish so handy a compendium of sample violations. But also, even though most of our licensing has been under the ITAR, we do have significant responsibilities under the EAR (for which, see the next reference, below). Ignorance of the EAR rules can also result in compliance violations, just as surely as with the ITAR.

Know that there are **factors that can negate an otherwise allowable export:** (i) Embargoed destinations like North Korea, (ii) "bad-guy" lists, such as the Denied Parties List, or (iii) forbidden purposes such as development of weapons of mass destruction.

Revised Export Categories per the ECR					
USML	CCL		Description	Effective Date	
I	0Y501		Firearms	Mar 9, 2020	
II	0Y602		Artillery	Mar 9, 2020	
III	0Y505		Ammunition	Mar 9, 2020	
IV	9Y604	0Y604	Launch Vehicles/Missiles	Jul 1, 2014	
V	1C608 - 1E608		Explosives/Propellants	Jul 1, 2014	
VI	8Y609	8Y620	Vessels of War	Jan 6, 2014	
VII	0Y606		Tanks/Military Vehicles	Jan 6, 2014	
VIII	9Y610 7Y610 (Avionics)		Aircraft and Associated Equipment	Oct 15, 2013	
IX	0Y614		Training Equipment	Jul 1, 2014	
X	1Y613		Personal Protective Equipment	Jul 1, 2014	
XI	3Y611	9Y620	Electronics ("Interim Final Rule")	Dec 30, 2014	
XII	6Y615 - 7Y611		Fire Control/NV	Dec 31, 2016	
XIII	0Y617		Miscellaneous	Jan 6, 2014	
XIV	1Y607		Toxicological Agents	Dec 31, 2016	
XV	9Y515	3Y611 - 9Y604	Spacecraft/Satellites	Jul 1, 2014 (Radiation-hardened)	Nov 10, 2014 (All others)
XVI	0B618 - 0A607		Nuclear Weapons	Jul 1, 2014	
XVII			Classified Articles, Data, Services	Oct 15, 2013	
XVIII	6Y619		Directed Energy Weapons	Dec 31, 2016	
XIX	9Y619		Gas Turbine Engines	Oct 15, 2013	
XX	8Y620		Submersible Vessels	Jan 6, 2014	
XXI			Items Not Otherwise Enumerated	Oct 15, 2013	
ITAR §120.41	EAR Part 772.1		"Specially Designed" Definition	Oct 15, 2013	

Temporary Imports. These are done for a variety of reasons. In PSI's case, most common would be to repair or replace something we previously exported to a customer or to one of our work teams. But like most everything in the world of the ITAR/EAR, there is a right way and a wrong way to do this. Our employees must have a general facility with these procedures – shipping and receiving personnel most deeply, but also managers and planners – in order to understand how much time to allow for doing things right. Let's say, for example, a defense article comes in from Taiwan to repair, when we return/export the repaired item we do not use the actual Schedule B number normally associated with that item. **Instead, we use a special Schedule B number that is reserved for repair/replace under warranty: 9801.10.0000.** The AES ("Automated Export System"), where we have our freight-forwarder KSK file the EEI ("Electronic Export Information"), is smart enough to know this is a duty-free export.

Note: Prior notifications of exports through the AES system are an electronic update of the old paper SED, or "Shippers Export Declaration".

Controlled Data. This refers to technical data that is under the jurisdiction of the *International Traffic in Arms Regulations*, or ITAR, which is administered by the U.S. State Department's Directorate of Defense Trade Controls. The term "controlled", used in this sense, is also applied to, e.g., "controlled hardware." **Tech data under the jurisdiction of the EAR can also be controlled for exports, but the EAR just uses the term "Technology" in which case we would need a "Group E" license or license exception. This is the Department of Commerce equivalent of the Department of State's TAA, or technical assistance agreement.**

The Export Administration Regulations. The EAR is the Commerce Department's counterpart to the [State Department's ITAR](#) you probably studied as a new employee. **The**

ITAR list is called the USML, or "U.S. Munitions List," which is composed of 21 categories. These are Commerce's export regulations under one cover. The entire list of ECCN classifications of goods under the EAR collectively make up the **Commerce Control List (or CCL)**, and an individual classification listing in the CCL is called an **ECCN (Export Control Commodity Number)**. We expect that most of our parts & components, if not under the ITAR, would be on the CCL in the new "600-series" ECCNs, which is a set of new ECCNs created especially to absorb the items that moved from the ITAR to the EAR for export purposes. And why did the State/Commerce regulators create new ECCNs? Because even though the USG decided that the formerly-ITAR items could safely export under the more flexible EAR rules, this does not make those items commercial. The goods remain military in nature, and warrant extra restrictions on that account.

"EAR99" is the lowest sensitivity classification under EAR jurisdiction. EAR99 actually has no definition, instead functioning as a basket to catch all EAR items that do not trigger "capture" by any of the 598 ECCNs. In any event, a copy of the EAR is on our Study Materials page. We made this EAR search-friendly, as explained below in "Classifications".

Searching the EAR. We've worked hard to make this edition of the EAR a search-friendly PDF. First, it is string-searchable. Second, we've placed a double-asterisk –[**]– in front of every ECCN -- all 598 of them -- and in front of many other key phrases. Suppose you want to search for "3A001" (an ECCN for very common but export-sensitive electronics) using Adobe Acrobat's "Edit-Search" method. This turns up 227 instances of "3A001", a search result that may sometimes be useful for certain purposes, but not if you're just trying to find the actual ECCN "3A001". So, by contrast, if you search for the string ****3A001**, you will find only one hit, which is the actual ECCN.

Similarly, looking for the "country charts" that must be paired with the "reasons for control" given in each ECCN to see if you need an export license – well, for this, just search for ****country** and it will take you right there.

Commercial Availability. Sometimes you might hear from a customer that a product functionally equivalent to a PSI product is commercially available overseas. While useful to know, **this does not affect whether an export from the United States requires a license.**

Employee Responsibilities. You will not have to fully classify any item - that formal task belongs to our Empowered Official. However, you may well be asked to provide technical input for that purpose, including especially reviewing some candidate ECCNs provided by the company Empowered Official. This is why you must gain at least some basic familiarity with the ECCN and its structure.

Classifications - EAR vs ITAR. The posted booklet "ECCN-How to Classify" explains the basics of EAR/CCL classification, by deciding on an ECCN. The lowest classification under the EAR/CCL is called **EAR99**, which for most destinations and most purposes can be exported with No License Required ("**NLR**"). The following table is intended to illustrate that classification analysis can sometimes tilt jurisdiction from the EAR to the ITAR, depending on details. Don't bother trying to memorize these particular classifications; they just illustrate this principle, which is very important: **to qualify as ITAR an item must be "specially designed" or modified for a military purpose.** "Specially designed" itself is more than just a definition in the ITAR (and nearly identically in the EAR); it is actually a logic flowchart that is crucial in classifications. Our empowered official is responsible for such analyses, but you need to be familiarized with it, since your technical input may be solicited as formal product classifications are generated or updated. Here are some examples of export classifications we will encounter.

Export Classifications – EAR vs ITAR			
Commercial EAR / CCL - ECCN		Military ITAR/USML - Category	Item Description
Conventional	600-Series		
9A991	9A610.x	VIII(h)	Aircraft subsystems and components
9A001/2/3	9A619.x	XIX(f)	Gas turbine parts & components
8A001	8A609	VI	Surface Vessels
N/A	0A606	VII	Tanks / Military Vehicles
6A108	-	XII(a)	Radar Systems and tracking systems not controlled by 6A008
6E108	-	XII(f)	"Technology" associated with radar systems and tracking systems

Note: Under the new ECR rules, "Specially Designed" has new clarity and a procedure to follow. What is more, both the EAR and the ITAR now share that exact same logic flow model.

State Dept. In many ways the US Munitions List within the ITAR is much simpler than the Commerce Control List structure. If a system is on the USML, then engineering work involving that item generally requires an export license (a TAA in that case) or a written exemption from licensing listed the ITAR - period.

EAR/CCL/ECCN vs. ITAR/USML/Category. An individual item can be classified as a commercial article with an ECCN or as a defense article under a USML category. Don't worry, though. Generally, you will be advised by our Empowered Official as to whether an item is being considered for the CCL vs. the USML. Your input will be solicited in the proper context.

Technical Assistance Agreement. Along with DSP-5 (a fill-in-the-form type of license for the Department of State) used to license (i) permanent export of defense articles, (ii) tech data for marketing, (iii) export of software applications and (iv) foreign employees, giving PSI authority to disclose to them certain areas of technical data, the most common type of ITAR license or approval is the Technical Assistance Agreement, or TAA. This is a not a form license, but rather a very complex contract-like set of documents that is required whenever the proposed export is for technical data (except to our employees) or for "defense services", which is nonrecurring engineering performed for a customer's benefit and making use of controlled tech data. In our case, for example, most of our work historically has involved ITAR-controlled tech data and associated defense services – all of that makes performing such a contract count as a defense service. The conglomeration of such related activities involving controlled data or controlled hardware must be laid out in detail in a document that looks like (and in fact is) a contract that must be signed by all parties to a transaction. Before it's signed, all that documentation must be sent to DoS for approval. That is a TAA.

In short, the TAA approval covers: the scope of technology and/or products for export, the destinations countries, and all the parties to the transaction. Any controlled hardware thereunder requires an *additional* DSP-5 hardware license, but if the hardware is not first listed clearly in the TAA, such DSP-5 hardware licenses would be disapproved.

The TAA equivalent on the Commerce Department side is what is sometimes called a "Group E license."

TAA's under the EAR. Strictly speaking, a TAA is a State Department license for conveying ITAR-jurisdiction tech data and defense services. However, conveying technology under the control of the EAR's CCL may also require licensing, and the EAR does provide for a type of export license that is equivalent to the TAA. **This can be referred to as a "Group E license."**

Employee Export Licenses. All foreign national employees without green cards must be licensed before they can have free access to controlled data or hardware. These licenses start with the same DSP-5 form used in hardware licenses, but they are filled in differently, and require voluminous documentation, such as passports, visas, detailed job description with a scope of work that makes clear the tech data and software they will need to perform their job. Important to note: **The resulting employee license approves access only to the controlled data explicitly listed in the license application. Other ITAR work performed by the company is not included – unless specifically listed in the license. Furthermore, all such licenses are approved with a number of limiting conditions, called “provisos”. Therefore, managers of licensed employees must be cognizant of the details of what is approved by their licenses, and also of any limitations imposed by the license’s provisos. This is what gives rise to the need for the following point about monthly reviews.**

Note 1: Because of the ECR-rewrites of the ITAR and EAR, any foreign-person employee of PSI may also require an employee license from the Department of Commerce and/or the Department of State.

Note 2: A new ITAR § 120.55 clarifies that even giving a foreign person access to controlled data, e.g. with a password, is a violation, even if that person never actually access the information.

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