

A large, classical building with a red-tiled roof and many columns, viewed through a large tree with white blossoms in the foreground. The building is the U.S. Capitol building in Washington, D.C. The scene is set in a park-like area with green grass and other trees. The sky is blue with some clouds.

**Do you need a a Licence from the  
Department of Commerce  
Bureau of Industry and Security ?**

# Agency Jurisdiction

- Commerce - Bureau of Industry and Security (BIS)
  - Controls commercial items including “[dual-use](#)” items (items that may have both commercial and military applications)
  - Export Administration Regulations - EAR
- State - Directorate of Defense Trade Controls (DDTC)
  - Controls items specifically designed, developed, configured, modified or adapted for a military application
  - International Traffic in Arms Regulations (ITAR)
- Other regulatory agencies – such as Dept. of Treasury, Dept. of Energy, Nuclear Regulatory Commission

Go to [www.bis.doc.gov](http://www.bis.doc.gov) and click “Resource Links”

Do you need a DDTC Licence to Export these Guns From the U.S.?



- ANSWER: IT DEPENDS
- Over 18 Inches (>45.72 cm) – No, Need Export Licence From U.S. Department of Commerce Bureau of Industry and Security
- Under 18 Inches (<45.72 cm) - Yes

# The Big Picture

- Determine jurisdiction for your item
- Determine if your item is “subject to EAR”
- Classify your item
- Identify the Reasons for Control
- Cross-reference the controls against the Country Chart
- Determine License Requirement or License Exception Eligibility
- Screen all parties to the transaction
- Ensure no prohibited end-uses or activities
- Export using appropriate ECCN and authorization

# SCOPE OF THE EAR

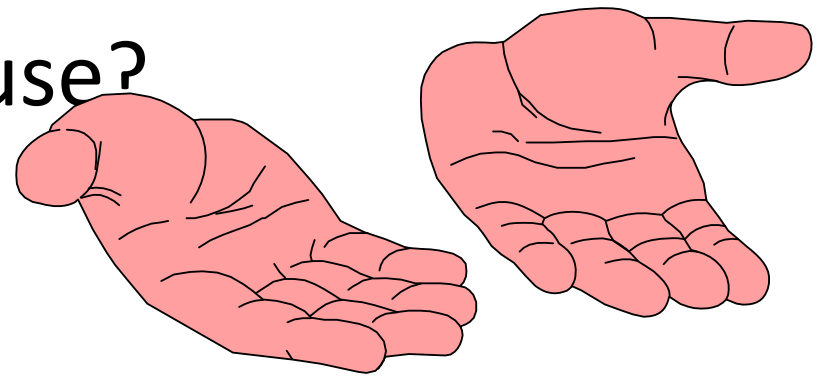
- Exports
- Reexports
- Deemed Exports and Reexports
- Certain Activities



Broad jurisdiction, but narrow license requirements

# What you Need to Know to Determine Your Export License Requirements

- What is my item?
- Where is it going?
- Who will receive it?
- What will be the end-use?



## Purpose of Export Controls

- To serve the national security, foreign policy, nonproliferation, and short supply interests of the U.S.
- Carry out international obligations.

# Export Administration Regulations

- Apply to “dual use” items
  - Civil as well as military or strategic use
  - Commodities, software, technology
- Broad jurisdiction - Narrow controls
  - Most exports do not require prior written authorization

# Scope of Controls

- Items in the U.S.
- Certain items located outside the U.S.
- Activities of U.S. persons
- Deemed exports

# “Item”

Commodities



Software



Technology



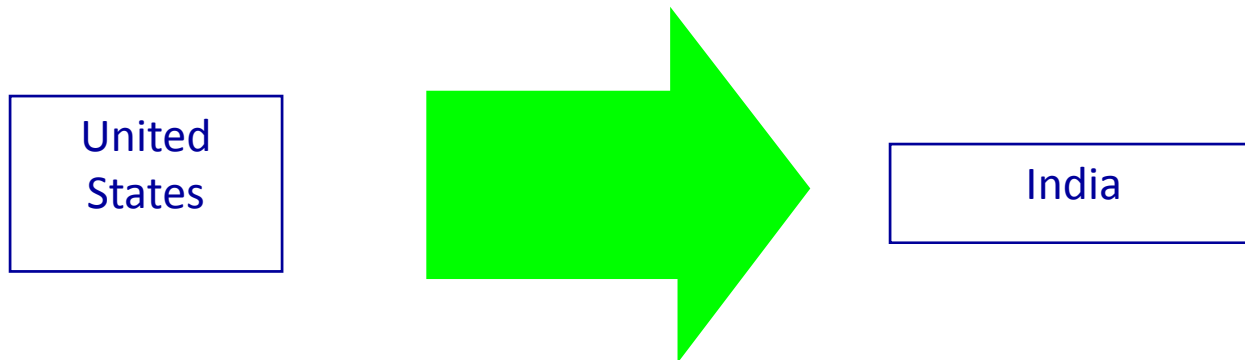
# What is Subject to the EAR?

## Scope of Commerce Controls

- Items in the U.S.
- Certain items located outside the U.S.
- Activities of U.S. persons
- Releases of source code or technology to foreign nationals in the United States or abroad (“Deemed” exports and reexports)

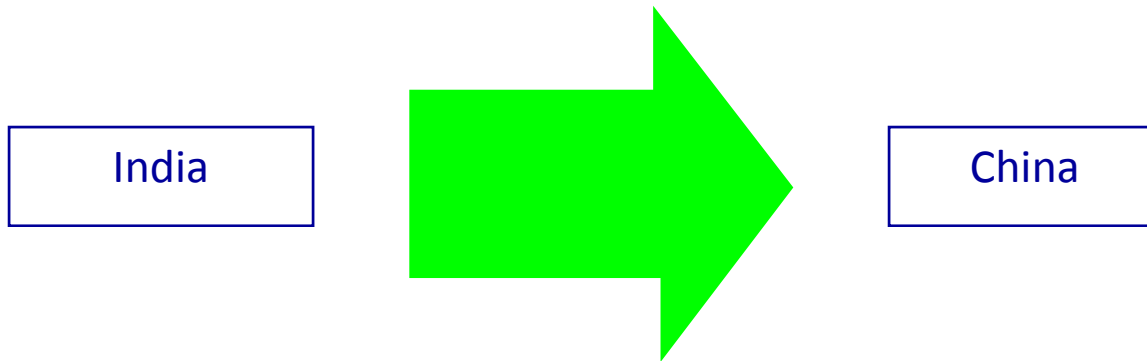
# Export

- Export means an actual shipment or transmission of items out of the United States, for example:



# Reexport

- Reexport means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country, for example:



# Deemed Export/Reexport

- Release of technology or source code to foreign national in the U.S. or abroad
  - Considered to be an export to that person's home country
  - Does not apply to U.S. Citizens, individuals granted permanent resident status, or protected individuals

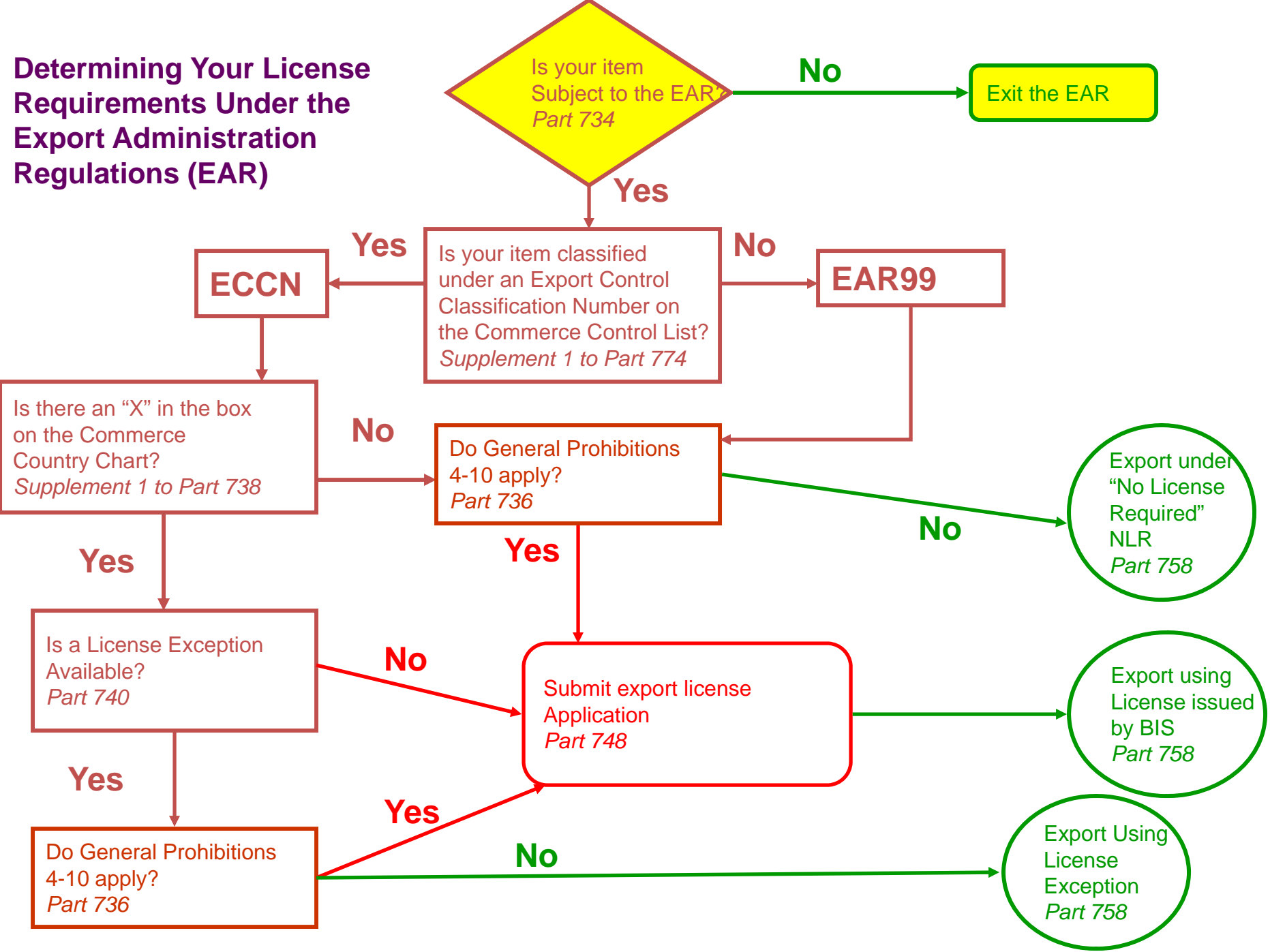
# What is Not Subject to the EAR

- Items under the exclusive jurisdiction of another Federal Agency
- Literary publications, such as newspapers or literary works (non-technical in nature)
- Publicly available technology and software (excluding encryption)
- Foreign made items with less than *de minimis* percentage of controlled U.S. content

# Important Terms

- **Export** - an actual shipment or transmission of items out of the United States or certain releases
- **Reexport** - an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country or certain releases
- **Item** – Commodities, software or technology

# Determining Your License Requirements Under the Export Administration Regulations (EAR)



# Facts used to Determine Export License Requirements

What is my item?  
Where is it going?



ECCN and  
Destination

Who will receive it?  
What are they  
doing with it?



End-user and  
End-use

# Commerce Control List (CCL)

## Supplement No. 1 to Part 774

- Structured same as European Union (EU) list (Annex I “List of Dual Use Items and Technology”)
- Includes all multilateral control regimes, as well as unilateral controls

# Commerce Control List (continued)

- Wassenaar Arrangement
- Missile Technology Control Regime (MTCR)
- Nuclear Suppliers Group (NSG)
- Australia Group (AG)
- Foreign policy and short supply

# Commerce Control List (CCL)

[http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

- Contains certain items subject to licensing authority of BIS
- Lists items by **Export Control Classification Number (ECCN)**
  - (e.g. 3A001, 3A994)
- Identifies technical parameters
- If not on CCL, **EAR99**

# Commerce Control List

- With the Commerce Country Chart, used to determine whether a license is required for items to any country in the world.
- Found in Part 774, Supplement 1 of the EAR
- [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)
- [www.bis.doc.gov](http://www.bis.doc.gov) (below Exporter Resources)

# Structure of the Commerce Control List

## Part 774, Supplement 1

- 10 Categories (0-9)
- 5 Product Groups (A-E)
- Entries (ECCN)
- Alphabetical Index
- Numerical Index

# CATEGORIES 0-4

Category 0 - Miscellaneous / Nuclear

Category 1 - Materials

Category 2 - Materials Processing

Category 3 - Electronics

Category 4 - Computers

# Product Groups A-E

- A – Equipment, Assemblies and Components
- B – Test, Inspection and Production Equipment
- C – Materials
- D – Software
- E - Technology

# Product Groups A-E

example: 4B994

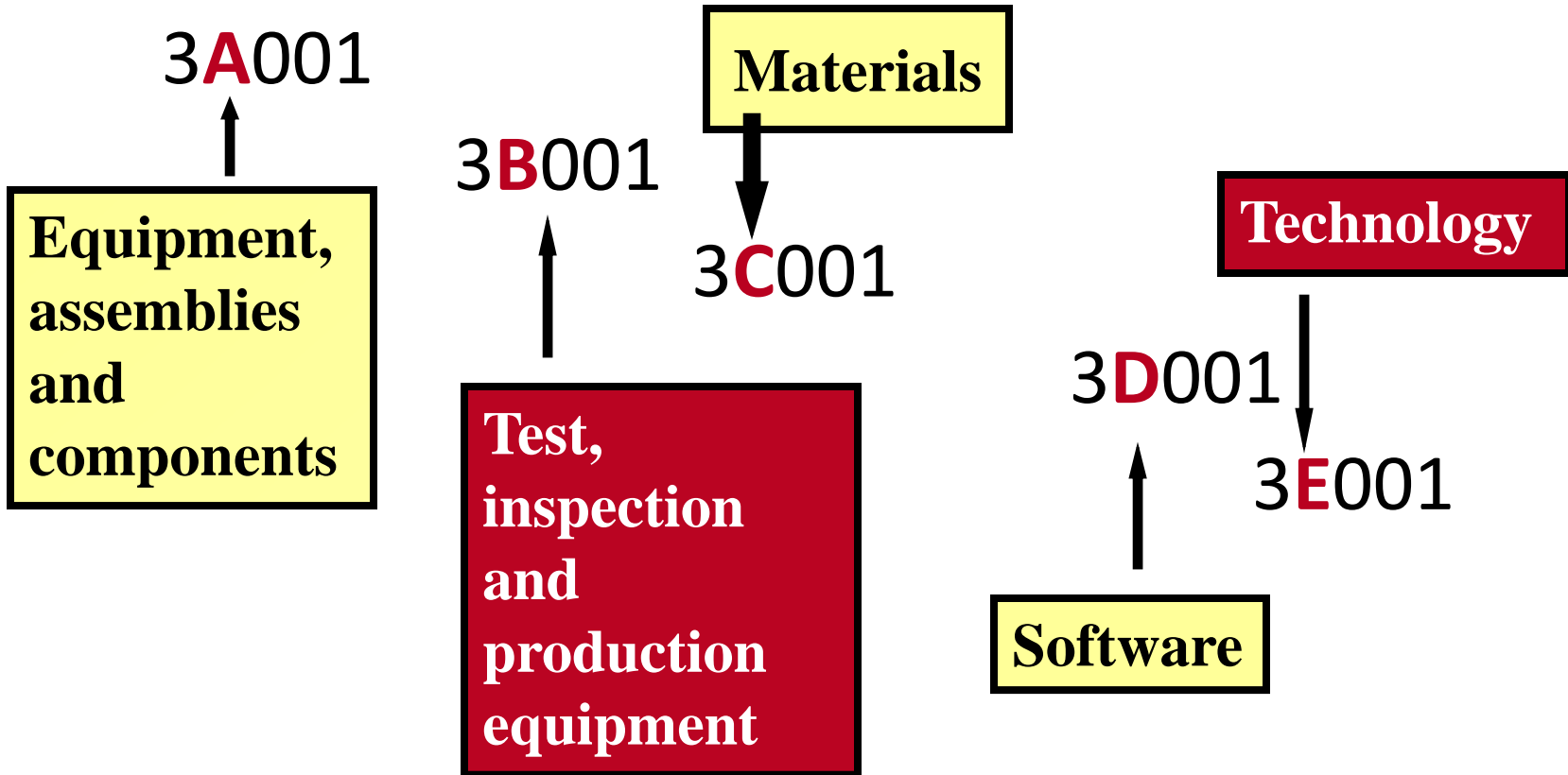
- A – Equipment, Assemblies and Components
- B – Test, Inspection and Production Equipment
- C – Materials
- D – Software
- E - Technology

# Product Groups A-E

example: 6C992

- A – Equipment, Assemblies and Components
- B – Test, Inspection and Production Equipment
- C – Materials
- D – Software
- E - Technology

# Product Groups



# Second Number in ECCN

“Reasons for Control”

**3A001**

- 0: National Security (NS) reasons**
- 1: Missile Technology (MT) reasons
- 2: Nuclear Nonproliferation (NP) reasons
- 3: Chemical & Biological (CB) reasons
- 9: Anti-terrorism (AT), Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.



# Where is It Going?

## Destination

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738—page 1

### Commerce Country Chart

#### Reason for Control

Countries	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	X	X		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	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	X					X		X	X							
Austria	X					X		X	X	X		X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X		X		X		



# Not on the Commerce Control List? EAR99

- Items not specified on the CCL are designated EAR99
- Most commercial items are designated EAR99
- EAR99 items can usually be shipped NLR (No License Required)
- *But, remember to check all parties to the transaction, the end-use of the item and restricted destinations!!*

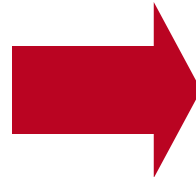
# General Prohibitions

- 10 General Prohibitions - Part 736
  - Describe certain prohibited exports, reexports, and other conduct
- General Prohibitions **1-3** generally apply to items having a specific ECCN
- General Prohibitions **4-10** apply to **all** items that are subject to the EAR (including EAR99)

# General Prohibitions 1-3

Is your item classified under an ECCN on  
the Commerce Control List?

What is my item?  
Where is it going?



ECCN &  
Destination

# General Prohibitions 4-10

- GP 4 – Denial Orders
- GP 5 – Exports or reexports to prohibited end-users and end-uses
- GP 6 – Exports or reexports to embargoed destinations
- GP 7 – U.S. Person Support of Proliferation Activities
- GP 8 – Intransit Shipments
- GP 9 – Violations of any order, terms or conditions
- GP10 – Proceeding with transactions with knowledge that a violation has occurred or is about to occur

# Red Flags

- Possible indicators that an unlawful diversion might be planned by customer
- Abnormal or suspicious circumstances
  - Product capabilities do not fit buyer's business
  - Buyer evasive about destination or use
  - Routine on-site service is declined
- Supplement 3 to Part 732

# Who is Involved?

## “Lists to Check”

- Denied Persons List
- Entity List
- Unverified List
- General Order No. 3 of Supp. No. 1 to part 736
- Specially Designated Nationals List - Treasury Department, Office of Foreign Assets Control
- Nonproliferation Sanctions List - State Department
- Debarred Parties List - State Department

These lists may be found on the BIS website ([www.bis.doc.gov](http://www.bis.doc.gov)). Click on “Lists to Check”

# Who is Involved?

## End-user/End-use

- Proliferation activities
- Lists to Check
  - Denied Persons List
  - Entity List
  - Unverified List
  - Specially Designated Nationals List - Treasury Department, Office of Foreign Assets Control
  - Nonproliferation Sanctions List - State Department
  - Debarred Parties List - State Department

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Click on  
“Lists to Check”

# **“Know Your Customer” Guidance** *Supplement 3 to* *Part 732*

- Look for “Red Flags”
  - abnormal or suspicious circumstances
  - Unverified List
- If found, inquire and reevaluate transaction
- Otherwise, no affirmative duty to “go behind” customer’s representations
- Do not “self-blind”

# “Know Your Customer” Guidance

- Decide whether there are “red flags”
- If there are “red flags” – inquire
- Do not “self blind”
- Reevaluate Transaction
- Absent “red flags” or special EAR provision, there is no affirmative duty to “go behind” customer’s representations

# Summary of “Lists to Check”

- Denied Persons List
- Entity List
- Unverified List
- General Order No. 3 of Supp. No. 1 to part 736
- Specially Designated Nationals List - Treasury Department, Office of Foreign Assets Control
- Nonproliferation Sanctions List - State Department
- Debarred Parties List - State Department

**These lists may be found on  
the BIS website  
[www.bis.doc.gov](http://www.bis.doc.gov).  
Click on  
“Lists to Check”**

# Unverified List

- Foreign parties to transactions, where BIS could not conduct a pre-license check or post-shipment verification
- Raises “Red Flag” - Supplement 3 to Part 732
- To be informed of changes, subscribe to:  
BIS Email Notification Service

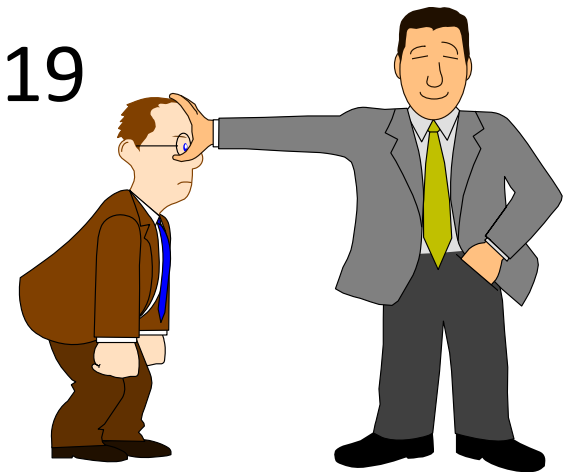
# General Prohibition 6

## Embargoes under the EAR

- Prohibits certain exports or reexports to embargoed destinations without a license or license exception
- Licensing requirements found in Part 746 of the EAR

# Selected Embargoes and Special Controls Under the EAR

- Cuba – section 746.2
- Iran – sections 746.7 & 742.8
- Sudan – section 742.10
- Syria – section 746.9 & Supp. No. 1 to Part 736
- N. Korea – sections 746.4 & 742.19
- Iraq – section 746.3
- Rwanda – section 746.8



# Summary of Licensing Jurisdiction

<b>Cuba</b>	
Exports and reexports to Cuba	BIS
Financial transactions and personal travel to Cuba	OFAC
<b>Iran</b>	
Exports of CCL and EAR99 items to Iran	OFAC
Reexports of CCL items to Iran	OFAC
Reexports of EAR99 items to Iran by U.S. Person	OFAC
Exports and reexports of EAR99 items to prohibited end-uses in Iran	BIS
<b>Sudan</b>	
Exports and reexports of CCL items to Sudan	OFAC & BIS
Exports and reexports of EAR99 items to Sudan	OFAC
Exports and reexports of EAR99 items to prohibited end-uses in Sudan	BIS
<b>Syria</b>	
Exports and reexports to Syria	BIS
<b>North Korea</b>	
Exports and reexports to North Korea	BIS

**OFAC Website: <http://www.treas.gov/ofac>**

# General Prohibition 8

## In Transit Shipments

- In transit shipment and items to be unladed from vessels or aircraft
- No export, reexport, transit through Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam

# General Prohibition 10

## Acting with Knowledge

- You may not proceed with transactions with knowledge that a violation has occurred or is about to occur.
- Relates to any item subject to the EAR – on the CCL or EAR99
- Exports, reexports, activities (e.g., financing, transferring, transporting, forwarding)

# General Prohibition 9

## Orders, Terms, and Conditions

- May not violate
  - Terms or conditions of a license or license exception
  - Any order under the EAR
  - Supplements No. 1 & 2 to Part 736 contain certain General and Administrative Orders (e.g. General Order 2 relating to Syria)

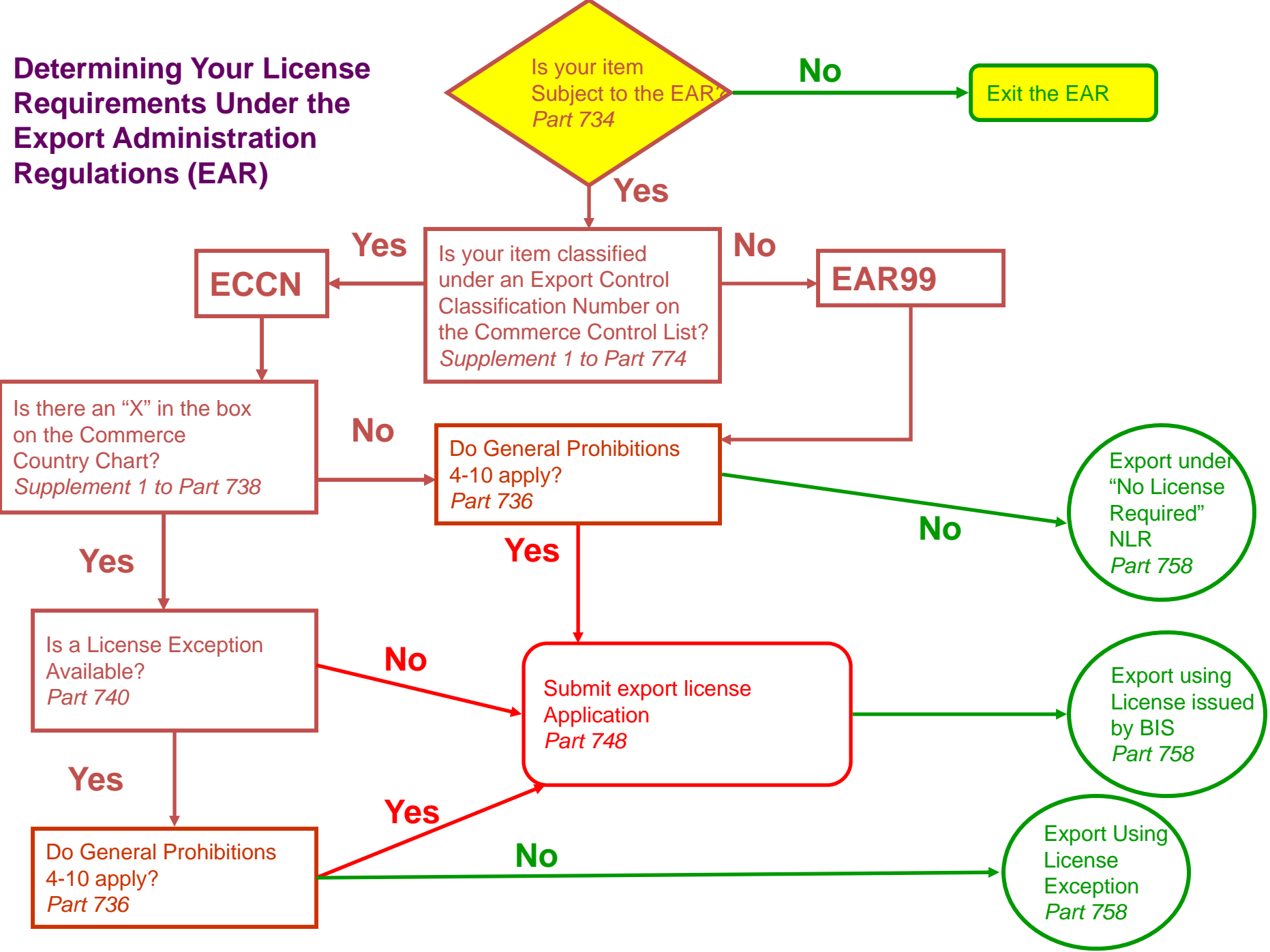
# End User Checks – PLCs

- After an export license application made but before approval or shipment:
- Pre-License Check (PLC)
- Confirm if a party listed on license application is indeed involved in transaction
- Verify whether proposed disposition of the items is indeed consistent with normal business transactions
- Help insure that the foreign party (ultimate consignee or end user) understands its responsibilities under U.S. law
- E.g.: of 373 PLCs in recent year, 40 applications were rejected or returned without action

# End User Checks – PSV

- After an export license has been granted and shipment made
- Post-Shipment Verification (PSV)
- Confirms whether or not goods exported from the United States were actually received by the appropriate ultimate consignee
- Determines if those goods are being used in accordance with the provisions of any supporting export license or applicable license exemption
- E.g. in recent year 516 PSVs were conducted and 156 required further enforcement action.

# Determining Your License Requirements Under the Export Administration Regulations (EAR)



# License Exceptions

- An authorization that takes the place of an export license
- In most instances exporter does not require anything in writing from BIS

# Ways to Export

- License issued by  
BIS
- License Exception
- No License  
Required – “NLR”

# Non-Compliance: What's at Stake

- Civil Sanctions

- ✓ Fines - \$250,000/violation
- ✓ Denial of Export Privileges

- Criminal Penalties

- ✓ Fines –\$1,000,000
- ✓ Imprisonment
- ✓ Denial of Export Privileges

# BIS Resources Available

- BIS Website - [www.bis.doc.gov](http://www.bis.doc.gov)
- One-on-one Call Counseling
- On-Line Export Administration Regulations
- Brochures & Publications
- Export Control Seminars
- Online Training Room
- Webinars
- E-mail Notification Service

# **BIS Staff is Available to Assist You in Determining your Obligations**

- **Exporter Services Offices:**
  - Washington, D.C. **(202) 482-4811**
  - Northern California **(408) 998-8806**
  - Southern California **(949) 660-0144**
- **Export Enforcement Offices**
  - Nationwide **(800) 424-2980**

# Plan Ahead

- Key Facts to Any Export Transaction
  - What is my item – ECCN or EAR99?
  - Where is it going?
  - Who will receive it?
  - What will be the end-use?
- Consult with BIS

# Thank you for your attention!

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