



# COMMODITY JURISDICTION

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# AGENDA



- Overview
- Order of Review
  - Specially Designed
- Commodity Jurisdiction (CJ) Process
  - Interagency Review
  - Challenges
  - The Ideal Request
- The Last Word



# OVERVIEW



Determining the jurisdiction and classification of a product, data, or service is the process of understanding how it is controlled under the ITAR or the EAR

- ITAR §120.4 the foundation

*An incorrect assessment of an item's jurisdiction or classification may result in the wrong*

- *Controlling agency*
- *License requirements*
- *Available license exemptions/exceptions*



# OVERVIEW



- Because all jurisdiction and classification reviews must start with a review of the ITAR, two fundamental questions must be asked:
  - Is my item controlled under the ITAR? (Jurisdiction)  
If yes, which USML Category? (Classification)
  - If no, where is it controlled within the EAR and what is the ECCN? (Classification)
- These questions are addressed via the Order of Review §121.1(b)(1)



# OVERVIEW: CJS VS. GCS



- Commodity Jurisdiction process is used for jurisdiction and classification requests of commodities and services – specific cases and items
- General Correspondence Advisory Opinions should be used for general interpretations and conceptual types of requests

## **Doesn't this conflict with "classification" statements on the DS-4076?**

In the post-October 2013 world, it has become increasingly challenging to address one and to not speak of the other in the same context. Consequently, DDTC has determined that until the transition to ECR is complete, it will address both concepts via a single process (i.e., Commodity Jurisdiction)



# ORDER OF REVIEW: ITAR §121.1(b)(1)



- Defines the steps for reviewing the ITAR and then the EAR to assess jurisdiction and classification
- EAR's order of review may be found in Supplement No. 4 to Part 774 of the EAR

Two USG tools available to the public:

- ITAR Online Decision Tool:  
[http://pmdddtc.state.gov/licensing/dt\\_OrderofReview.htm](http://pmdddtc.state.gov/licensing/dt_OrderofReview.htm)
- EAR Online Decision Tool:  
<http://www.bis.doc.gov/index.php/export-control-classification-interactive-tool>



# ORDER OF REVIEW: BEFORE YOU BEGIN



- Jurisdiction may be determined in two ways:
  - Self-determination based on a review of the ITAR
  - CJ determination request via the State Department
- Only a CJ determination is legally binding
- CCATS not a jurisdictional determination
- Use CJ request only when self-determination cannot be accomplished



# ORDER OF REVIEW: BEFORE YOU BEGIN



- You must have a complete understanding of the item:
  - Product description
  - Source of product
  - Understanding of product capabilities
  - Understanding of product end-uses
  - Product specifications and drawings
  - Real and anticipated customers for the product
  - Any past jurisdiction or export history
  - Comparable products, including foreign availability

*Submissions are only as good as the quality, clarity, and the accuracy of the information provided in the request.*



# ORDER OF REVIEW: BEFORE YOU BEGIN



- Similar information is required for data or services to be reviewed
  - What is the source of the data or service?
  - Who receives the service?
  - In what context has the service been provided in the past?
- A checklist or questionnaire is often useful for gathering this information



# ORDER OF REVIEW: THE PROCEDURE



- Is your item specifically enumerated within the United States Munitions List (USML)?
  - Review each category to determine whether your item is listed
  - If **yes**, your analysis is complete and the item is ITAR-controlled
  - If **maybe**, continue with analysis

*Consider DDTC CJ Final Determinations Database:*

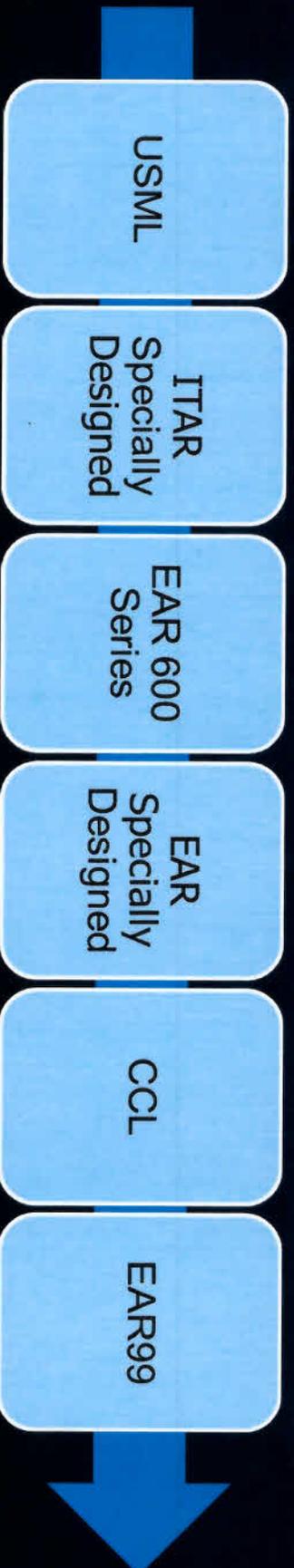
[http://www.pmddtc.state.gov/commodity\\_jurisdiction/determination.html](http://www.pmddtc.state.gov/commodity_jurisdiction/determination.html)



# ORDER OF REVIEW: THE PROCEDURE



- Is your non-enumerated item identified in a paragraph that uses the phrase “specially designed”?
  - If yes, you must review the definition of “specially designed” in ITAR §120.41
  - If no, your item is not ITAR-controlled and the review moves to the EAR

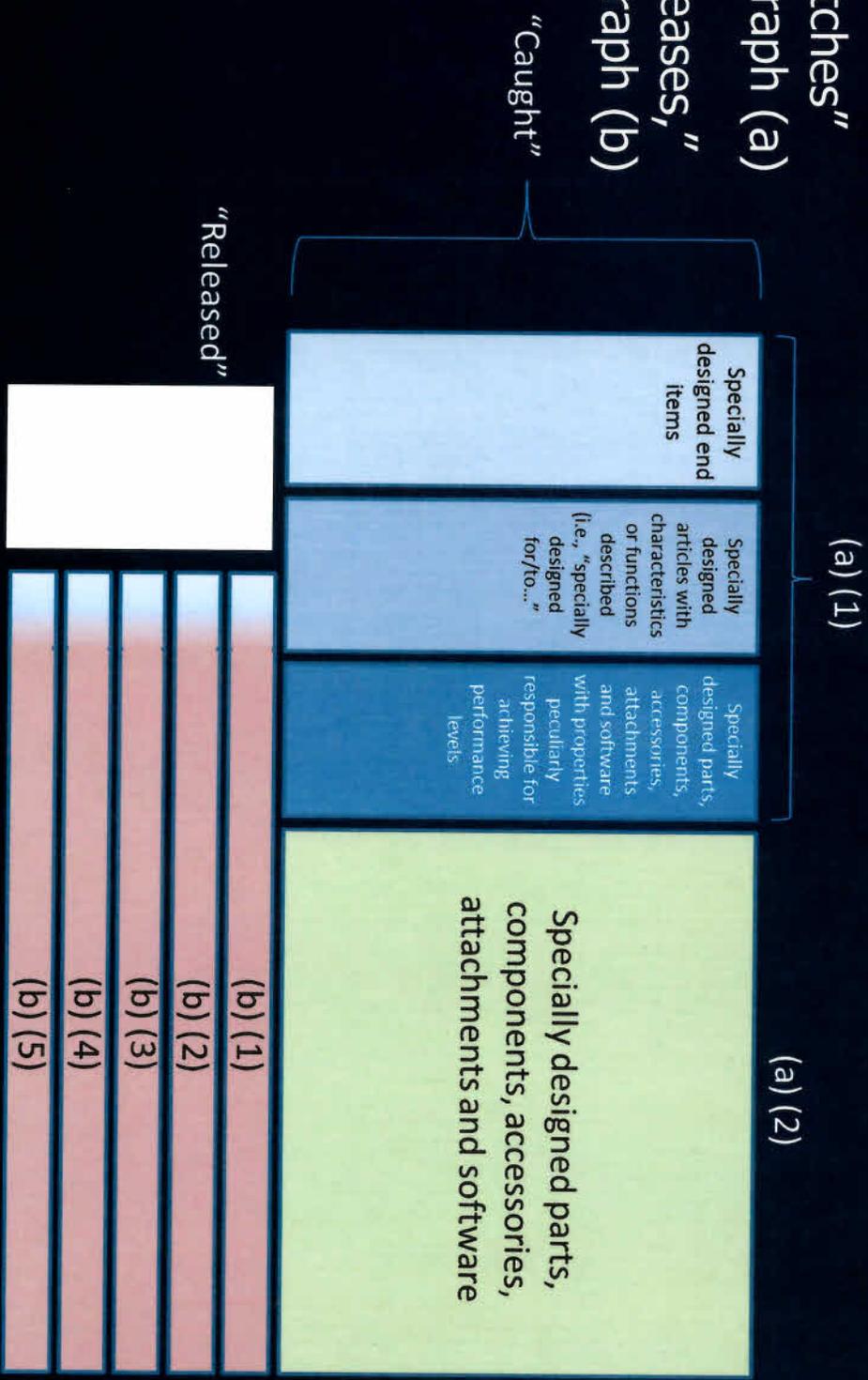




# SPECIALLY DESIGNED ITAR §120.41

- Uses a “catch and release” structure

- Two “catches”  
in paragraph (a)
- Five “releases,”  
in paragraph (b)





# SPECIALLY DESIGNED ITAR §120.41



**First release:** (b)(1) Is subject to the EAR pursuant to a CJ

**Second release:** (b)(2) Is, regardless of form or fit, a fastener, washer, spacer, insulator, grommet, bushing, spring, wire, or solder

**Third release:** (b)(3) Has the same function, performance capabilities, and the same or “equivalent” form and fit as a commodity or software used in or with a commodity that is or was in production and not enumerated on the USML

**Fourth release:** (b)(4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles and commodities not on the USML

**Fifth release:** (b)(5) Was or is being developed as a general purpose commodity or software, with no knowledge for use in or with a particular commodity or type of commodity



# COMMODITY JURISDICTION: THE PROCESS



- Use when doubt exists as to whether an article or service is covered by the U.S. Munitions List
- It may also be used for consideration of a re-designation of an article or service currently covered by the U.S. Munitions List

## *Help us to help you*

- CJ requests related to revised USML categories should include an explanation as to why the applicant was unable to determine the jurisdiction or classification of an item
- Regulations unclear or appear to be in conflict
  - Item does not appear to be accounted for in either the ITAR or EAR



# COMMODITY JURISDICTION: THE PROCESS



**CJ Determination Requests**  
(roughly 1,100 annually)

All are staffed to Commerce,  
Homeland Security, and  
Defense for review\*

Agencies agree on determination  
for approximately 85% of requests

Other 15% of cases are referred to a higher level  
for review and decision (“escalated CJs”)

Review coordinated by senior  
commodity jurisdiction  
analyst

\*Other reviewing  
agencies may include  
NASA and Energy



# CJ PROCESS: INTERAGENCY REVIEW



- Straightforward for the 85% of cases on which there is agreement after initial staffing
  - 30-day interagency review period; factoring in in-processing time and out-processing time, and a 60-day turnaround is an ideal outcome
- Escalated cases exceed 60 days because:
  - More information from applicant is usually required
  - Often involve additional policy considerations
  - Involve varying interpretations of regulations



# ELECTRONIC SUBMISSION



- DDTC processes CJ requests using the DS-4076 Form via an automated system
  - Website located at [www.pmddtc.state.gov](http://www.pmddtc.state.gov)
  - Click on “Commodity Jurisdiction” on the homepage menu
- All unclassified requests to be submitted electronically
- Registration is not required to submit a CJ request
- DDTC highly encourages the manufacturer or service provider submit the CJ request
  - If you are not the manufacturer or service provider, you should have a letter of authorization from the manufacturer or service provider, authorizing the applicant to submit a CJ on its behalf.



# THE IDEAL CJ DETERMINATION REQUEST



- Start with a top-level description of the item
  - Tip: think of the letter as telling a story about the item – what it is, where it came from, what it is for, what it does (at each step, providing both a layman’s and technical description). In addition, it might also be helpful to explain what the item is not, and what it cannot do
- Use clear, precise, grammatically correct prose
  - Tip: often, attaining a proper understanding of an item can be challenging without the added burden of wading through a grammatical thicket or tripping over typos – so be punctilious!

*Write with a broad audience in mind: generalists as well as engineers*



# THE IDEAL CJ DETERMINATION REQUEST



- Include enough technical description to satisfy the most technical expert, but not so much as to befuddle even him
  - Tip 1: do not flood us with duplicate or extraneous documentation. Clearly describe all documents submitted with the application
  - Tip 2: be very specific about the product you are seeking jurisdiction on – particularly if you make similar products with slightly different size, performance, etc...
  - Tip 3: supply information you would typically submit in a CCATS, so that, in case your item is not a defense article, your CJ letter can give you its classification in the EAR (a frequent practice)



# THE IDEAL CJ DETERMINATION REQUEST



- End with a regulatory analysis of the item
  - Tip: do not set out to prove why your item is subject to the EAR. Instead, be objective in the description of the item, and save your analysis for the conclusion – properly, the end of your story



# THE IDEAL CJ DETERMINATION REQUEST



- Supporting document examples:
  - Product Data Sheets/Brochures
  - Studies or other pertinent info
  - Letter of authorization from Manufacturer
  - Sales Data
- Tip: do not have us guessing why you included certain documentation, or which attachment is which. Label them, and explain why you are providing them



# THE IDEAL CJ DETERMINATION REQUEST



- Block 15 – If any information in Block 5 is proprietary and should not be published, provide rationale here
  - Reference which part of Block 5 should not be disclosed
  - Do not simply enter the term “proprietary.” There must be a legitimate detailed rationale
- Block 19 – Check to authorize email communication and submission of any additional supporting documents



# THE LAST WORD



- You do not have to be registered with DDTC to submit a CJ request
- There are no fees for CJ requests, and the number of submissions will not affect your registration fee
- You may submit an export license application while you have a CJ request under review. We will not factor in your license application into the final determination. We will consider it something done out of an abundance of caution on your part



# RECORDKEEPING

- Document this analysis and maintain the records!
  - Completed Jurisdiction and Classification Determination Questionnaire (in binder)
  - Dated memo to file
  - Complete copy of CJ request and determination
  - Identify team members involved in decision
  - Describe product/service with specificity, including part number, version, iteration
  - Describe analysis, step by step, including regulatory provisions reviewed
  - State conclusions
  - Attach all documents used in the analysis



# RESOURCES



- **DDTC CJ Page:**  
[http://pmddtc.state.gov/commodity\\_jurisdiction/index.html](http://pmddtc.state.gov/commodity_jurisdiction/index.html)
- **DDTC ECR:** <http://pmddtc.state.gov/ECR/index.html>
- **BIS ECR:** <http://www.bis.doc.gov/index.php/about-bis/newsroom/export-control-reform-news>
- **Export.gov:** <http://export.gov/ecr/>
- **DTSA Elisa:** <http://Elisa.dtsa.mil>



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