



# Bureau of Industry and Security



US Department of Commerce

## Federal Laboratory Consortium 2011 Meeting: Dual-Use Export Controls

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Office of Exporter Services- BIS  
March 15, 2011



**POLICY INITIATIVES**



**EXPORTER RESOURCES**

**NEW! [Online Licensing Status Tracking System Now Available!](#)**

**NEW! [Commodity Classifications](#)**

**[Export Administration Regulations](#)**

**[Commerce Control List](#)**

**[Lists To Check](#)**

**[BIS Online Training Room](#)**

Monday - January 31, 2011



**2011 EXPORT CONTROL FORUM**

Featuring Keynote Address on Export Control Reform

By [Eric L. Hirschhorn](#), Under Secretary for Industry & Security

February 28-March 1, 2011, Irvine, California

[Find out more and register.](#)

**IN THE NEWS**

**January 28, 2011**

Massachusetts Resident Sentenced to 36 months imprisonment for Illegally Exporting Electronics Components

[DOJ Press Release](#)

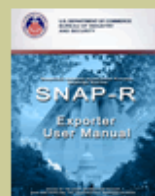
**January 26, 2011**

Chinese National Sentenced to 97 Months Imprisonment For Illegally Exporting Electronics Components

**BIS PUBLICATIONS**



**[BIS Annual Report 2010](#)**



**[Exporter User Manual](#)**

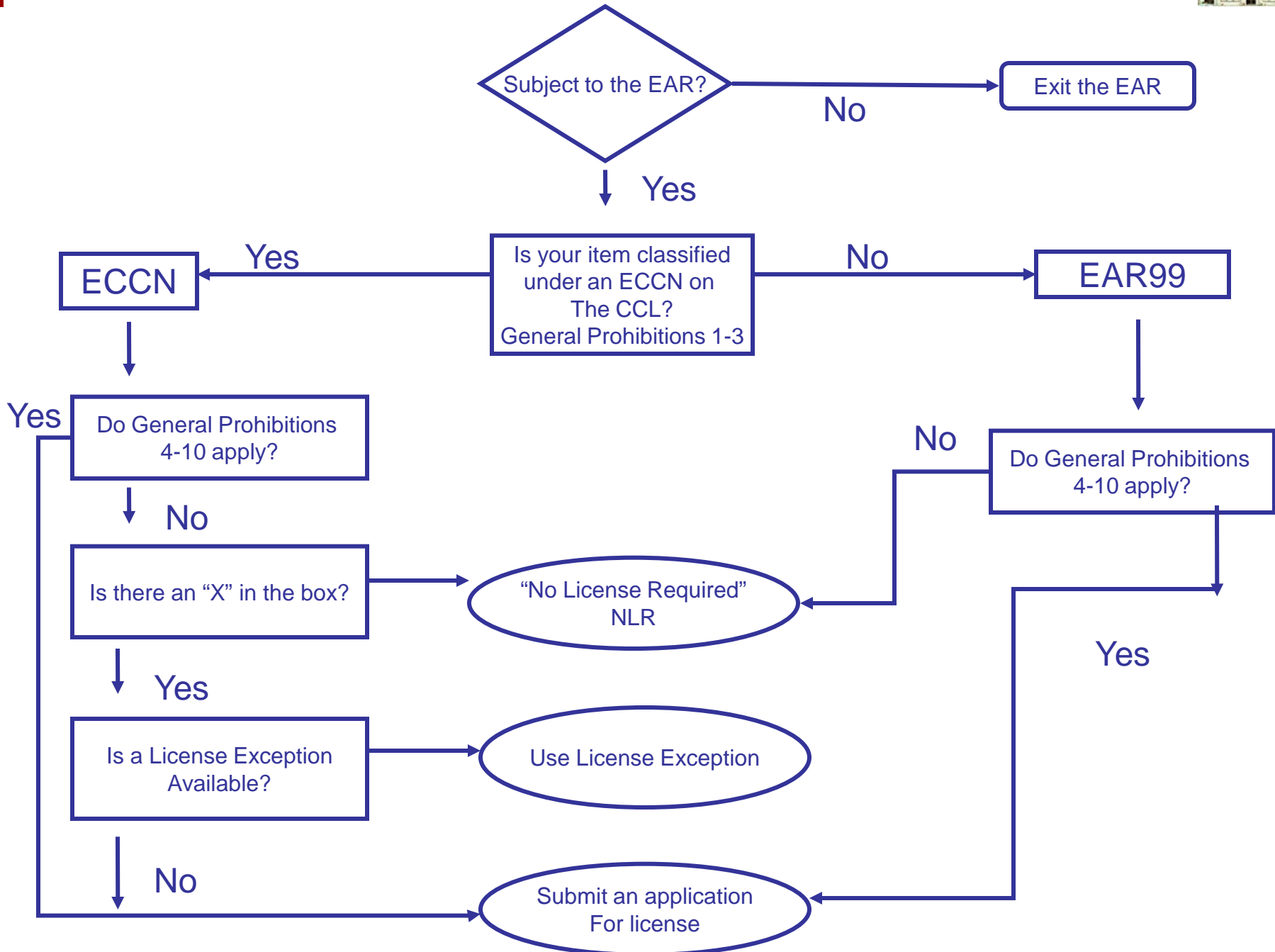


**[Don't Let This Happen to You!](#)**



# Jurisdiction

- Technology and Software normally follow the jurisdiction of the related hardware
- Some technology is controlled by State even when hardware is with Commerce
- Application of dual-use technology to military situation may be Defense Service





# What is “Subject to the EAR”?

## *Items in the United States*

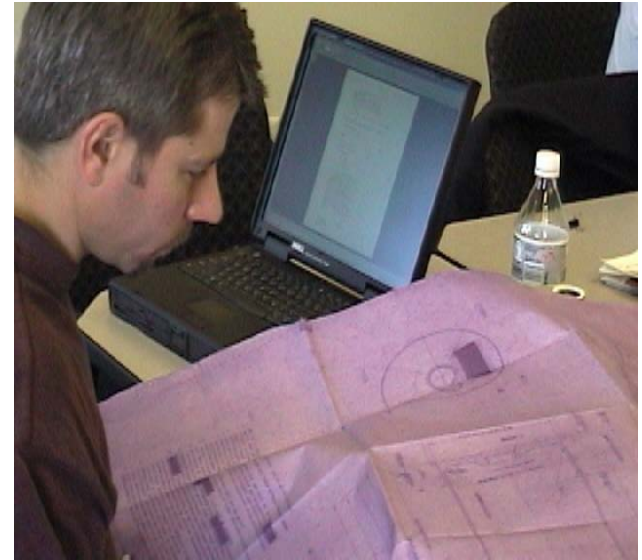
§734.3(a)(1)

- **ALL** Items in the United States, except:
  - Publicly available technology & software (excluding encryption)
  - Items subject to the exclusive jurisdiction of another federal department or agency
  - Literary publications, such as newspapers or literary works (non-technical in nature)



# Technology and Software Definitions

- Technology: Specific information for “development”, “production”, or “use” of a product
- Software: A collection of one or more “programs” fixed in any tangible medium of expression





# Technology and Software Decision Tree

- Subject to the EAR?
- Classification?
- Is license required?
- Are license exceptions available?
- Do general prohibitions apply?
- License submission



# Technology and Software – Part 734

- Subject to the EAR?

Consider:

- Jurisdiction
- Publicly Available
- De minimis





# Publicly Available Software

- Not subject to the EAR, except encryption 5D002
- General distribution
  - No restrictions to anybody
  - No time restraints, e.g., time bombs
  - Accessible
- Free or just cost of reproduction/distribution



# Publicly Available Information

- Technologies which are "publicly available" do not require a license. These include:
  - Technology and software (other than software and technology controlled as encryption items) that are already published or will be published;
  - Technology which arises during or as a result of fundamental research; or
  - Technology which is educational;
  - Technology included in certain patent applications.



# Published Information and Software - Section 734.7

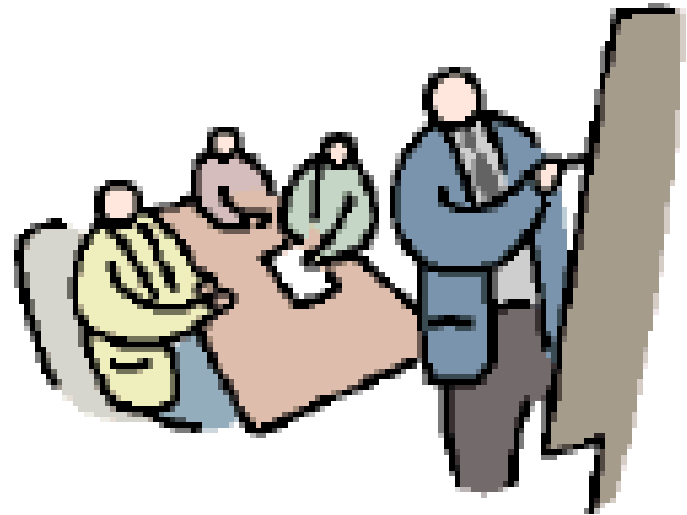
- Publication in periodicals, books, print, electronic or other media available for general distribution
- Readily available at libraries
- Patents and open (published) patent applications
- Release at open conference, meeting, seminar, trade show or other open gathering



## **Example: Conferences**

The release of information at an open conference is not subject to the EAR.

A conference is “open” if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes.



Technologies discussed in open seminars and conferences are considered to be publicly available and are outside the scope of the EAR.



# Fundamental Research – Section 734.8

## Remember:

Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.



# Fundamental Research - Prepublication Review?

- University based
- Federal agencies or Federally Funded Research and Development Center (FFRDC)
- Corporate research





# Educational Information - Section 734.9

- Released by instruction in catalog courses and associated teaching laboratories of academic institutions





# Technology and Software Classification

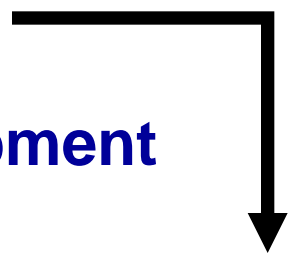
- Review Commerce Control List (CCL)
- Identify Export Control Classification Number (ECCN)
- In most cases tied directly to hardware “development”, “production” or “use”
- In small number of cases based on specific technical parameters
- The General Technology Note



# Technology and Software ECCNs

**5A101**

Telemetry Equipment



**5D101**

Telemetry

**Software**

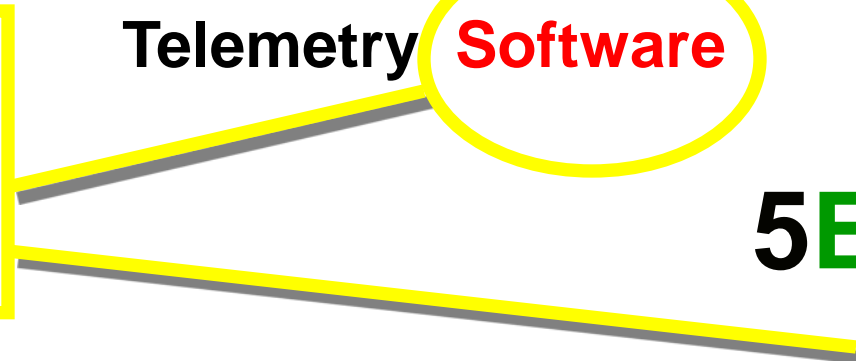


**5E101**

Telemetry

**Technology**

Product  
Groups D  
and E





# EAR99

Items subject to the EAR that are not specifically described on the Commerce Control List.

*In most cases, the export of an EAR99 item can be completed using the license authorization: NLR  
“No License Required”*



# Structure of the Commerce Control List

- EAR Part 774
- Indices (Alphabetic & Numeric)
- 10 Categories
- Entries (ECCN)
- General Technology and Software Notes



# The Structure of the ECCN

0 A 018

0 Category

A Product Group

980 Type of Control



# Categories of the CCL

0	Miscellaneous & Nuclear Materials
1	Materials, Chemicals, Microorganisms, and Toxins
2	Materials Processing
3	Electronics
4	Computers
5	Part 1-Telecommunication
5	Part 2-Information Security
6	Sensors & Lasers
7	Navigation & Avionics
8	Marine
9	Aerospace & Propulsion



# Product Groups of the CCL

<b>A</b>	Systems, Equipment & Components
<b>B</b>	Test, Inspection & Production Equipment
<b>C</b>	Materials
<b>D</b>	Software
<b>E</b>	Technology

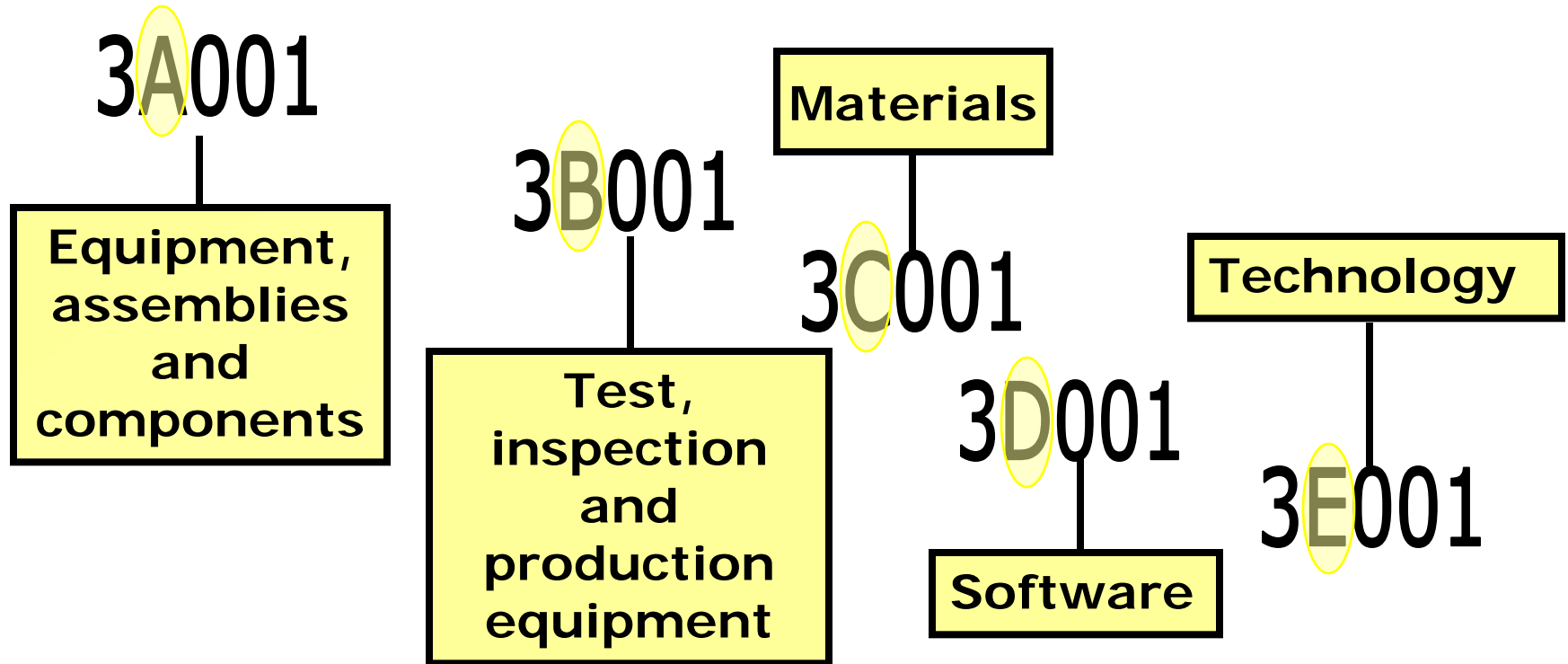


# Type of Controls Associated with Entry

0	National Security Reasons
1	Missile Technology Reasons
2	Nuclear Nonproliferation Reasons
3	Chemical & Biological Weapons Reasons
9	Anti-terrorism Crime Control Regional Stability Short Supply UN Sanctions Surreptitious Listening



# Most of the time related items are grouped in series





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## Questions??

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