BIS Training Module 1

Slide 1:

Thank you for joining the Bureau of Industry and Security's Slide Presentation Series on Commerce Export License Requirements.

This series is designed to give people who are new to exporting, and, in particular, new to export controls, a general understanding of our Export Administration Regulations and how to use them. However, nothing provided here can substitute for consulting the Export Administration Regulations.

Slide 2:

This series offers six slide presentation modules that will take you through the process of determining your export control requirements under the Export Administration Regulations. In this series, we will refer to the Export Administration Regulations as the "EAR" or "the regulations".

The first module will focus on the big picture, providing you with an overview of the regulations and the steps involved in determining whether your transaction is subject to the EAR and if it requires an export license. It will also provide an overview of export clearance requirements.

The second module will delve further into the process for classifying your item to determine if you need an export license.

The third module will focus on end-user and end-use export restrictions and other prohibited activities.

The fourth module will explain License Exceptions.

The fifth module will describe the license application and support documentation process.

The sixth and final module will cover export clearance and recordkeeping requirements under the EAR.

Slide 3:
Before you can begin to determine what your export control requirements are for your transaction, you first need to have four pieces of information on hand – what is the item, where is it going, who will receive it and what will be the end-use.

While a relatively small percentage of total U.S. exports and reexports require a license from the BIS, this information must be considered in reviewing your export control obligations in every export transaction.

Slide 4:
Let's take a moment to cover some important terms.

Generally, any item subject to the EAR that is shipped or transmitted from the United States to a foreign destination is an export. The method of sending the item outside of the United States does not matter in determining export license requirements. For example, an item can be sent by regular mail or hand-carried on an airplane. A set of schematics can be sent by email to a foreign destination, software can be uploaded to or downloaded from an Internet site, or technology can be transmitted via e-mail or during a conversation. Regardless of the method used for the transfer, the transaction is considered an export for export control purposes.

An export may also include the release of source code or technology subject to the EAR to foreign nationals in the United States.

A reexport is when an item subject to the EAR is shipped or transmitted from one foreign destination to another.

A reexport may also occur when source code or technology subject to the EAR are released to foreign nationals outside of the U.S.

An "item" may be a commodity, software or technology, such as clothing, building materials, circuit boards, automotive parts, blue prints, off the shelf software, and technical information.

Slide 5:

In Module 1 we will provide an overview of the steps that you should take to determine your export license requirements under the EAR. These determinations include which federal agency has jurisdiction over your item; if your item is subject to the EAR; the item's classification; the reason for control, and using the country chart to obtain the license requirement. It also includes determining if a license exception is available, screening the parties to the transaction, and ensuring there are no prohibited end-uses or activities. Finally, it includes using the information to export under the proper authorization.

Slide 6:

The Export Administration Regulations do not control all goods, services, and technologies. BIS is responsible for implementing and enforcing the Export Administration Regulations, which regulate the export and reexport of most commercial items. We often refer to the items that BIS regulates as "dual-use" - items that have both commercial and military or proliferation applications - but purely commercial items without an obvious military use are also subject to the EAR.

Other U.S. government agencies regulate exports of other types of items as well as services in some instances. For example, the U.S. Department of State has authority over defense articles and defense services.

Besides the Department of State, other Federal Agencies which regulate exports or reexports include the Department of Treasury, Nuclear Regulatory Commission and Department of Energy.

BIS provides a link on its homepage to other agencies involved in exports. Look for "Resource Links" on the homepage.

Slide 7:

This chart summarizes the steps to determine your export license requirements. The first step in the flow chart ,which is highlighted in the yellow diamond, is determining if an item is "Subject the Export Administration Regulations". Note that if an item or activity is not subject to the EAR, you have no obligations under the EAR. Let's take a closer look at what is subject to the EAR

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Items and activities that are subject to the EAR include:

All U.S. origin items, wherever located;

Certain foreign made items containing U.S. origin items;

Certain foreign made direct products of U.S. origin technology or software;

Certain activities of U.S. persons including those in support of proliferation related activities; and

Releases of source code and technology subject to the EAR to foreign nationals in the U.S. or abroad – also know as Deemed exports and reexports.

Slide 9:

An export or reexport is "deemed" to take place when technology or source code is released to a foreign national within the United States or abroad. This release is considered to be an export or reexport to that person's home country. Note that this does not apply to U.S. citizens or certain other individuals such as those who hold green cards. You can release source code or technology to foreign nationals when you make the source code or technology available for visual inspection such as reading technical

specifications, plans, or blueprints; when you have a verbal exchange; or when you provide guidance to a foreign national through practice or application.

Slide 10:

Now that we have looked at what is Subject to the EAR, let's take a look at what is not Subject to the EAR.

Besides items that are under the jurisdiction of another agency, certain other items are not Subject to the EAR

These include literary publications which are artistic and non-technical in nature such as printed books and newspapers.

It also includes publicly available technology and software such as information that is published or will be published, information arising during or as the result of fundamental research, educational information provided in a catalog course and certain patent applications.

In addition, foreign made items with less the *de minimis* percentage of controlled U.S. content is not subject to the EAR.

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As you can see, most items in the United States are subject to the EAR.
Keep in mind that while the scope of items subject to the EAR is broad, the export licensing requirements for these items is very narrow. Consequently, a relatively small percentage of total U.S. exports and reexports require an export license from BIS.

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Once you have determined that your item is subject to the EAR, the next step is to determine if an export license is required for your transaction.
An export license requirement can be triggered two different ways.

The first way a license may be required is based on the item and the country of ultimate destination – in other words, what the item is and where it is being exported. You must know the Export Control Classification Number (ECCN) of the item to make this license determination.

The second way a license may be required is based on the end-user and end-use of the item – in other words, who is involved in the transaction and what the item will be used for.

We will now go into more detail in determining license requirements based on the first two questions "What is my item and where is it going?"

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A key in determining whether an export license is needed from the BIS is knowing whether the item you are intending to export has a specific Export Control Classification Number, also known as ECCN.

The ECCN is an alpha-numeric code, such as 3A001, which describes a particular commodity, software or technology and the related technical parameters. The ECCN also indicates the types of controls placed on that item.

ECCN entries make up the Commerce Control List, also referred to as the CCL.
If your item falls under Commerce jurisdiction and is not specifically described on the CCL by an ECCN, it is designated as EAR99.

EAR99 items generally consist of low-technology commercial goods and do not require a license in many situations. We will further discuss EAR99 in a few minutes.

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Above is a portion of an ECCN for polygraph and other equipment under ECCN 3A981. This entry shows the reason for control of the ECCN and the corresponding control column on the Commerce Country Chart.

Slide 15:

In this example, Crime Control, identified by CC, applies to all the items that may be listed under 3A981 and "CC Column 1" is the corresponding control column on the Country Chart.

Note that while this example shows only one reason for control, other ECCNs may have more than one reason for control.

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Once you know your item's 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. In combination with the reason for control of an item, the Country Chart allows you to determine whether a license is required for an item on the Commerce Control List to most countries in the world.

Slide 17:

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

Slide 18:

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

Slide 19:

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 is 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 3A981, if an item were controlled for CC Column 1 Reason for Control, a license would be required to Albania as there is an X in the box.

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However, if the export were to Australia, a license would not be required based on the Reason for Control, as there is no X in the box.

Slide 21:

If you find an "X" in the box for any reason for control 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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A License Exception is an authorization which allows you to export or reexport under stated conditions, items that would otherwise require a license based on the Reason for Control and country of destination.

When using a License Exception, you are certifying that the terms, provisions and conditions for use of the License Exception have been met. In most cases, nothing is required from BIS prior to using a license exception.

There are many License Exceptions contained in part 740 of the EAR which we will cover further in Module 4.

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If your item falls under Commerce jurisdiction and is not listed by an ECCN on the CCL, it is designated as EAR99. EAR99 is a designation for items not specified under any CCL entry and it appears at the end of each Category on the CCL.

EAR99 items generally consist of low-technology commercial goods and do not require a license in many situations. However, if your proposed export of an EAR99 item is to an embargoed country, to an end-user of concern or in support of a prohibited end-use, you may be required to obtain a license.

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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.

Slide 25:

We have just covered determining your export license requirements based on what your item is and where it is going. We looked at the Commerce Control List, Export Control Classification Numbers, Reasons for Control and the Commerce Country Chart.

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Now, let's take a closer look at the second way a license may be required – specifically end-user and end-use controls.

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End-user and end-use controls may apply to any item under the jurisdiction of the regulations. These controls require an exporter to submit an export license application if the exporter "knows" or "is informed" that an export is for end-uses involving nuclear, chemical, and biological weapons, or related missile delivery systems including certain rocket systems and unmanned air vehicles, in destinations listed in Part 744 of the regulations.

It is important to understand that these export license requirements apply to both items on the CCL as well as items that are EAR99. Also, these export license requirements apply to transactions that otherwise meet the eligibility for export under a License Exception or No License Required designation.

We will further discuss these controls, including limited military end-use restrictions, in Module 3.

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Certain individuals and organizations are prohibited from receiving U.S. exports. Others only may only receive goods if they have been licensed, even for items that do not normally require a license based on the ECCN and Commerce Country Chart or based on an EAR99 designation.

For example, the Denied Persons List is a list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order is prohibited.

The Entity List is a list of individuals and entities whose presence in a transaction can trigger a license requirement under the EAR. The list specifies the license requirements that apply to each listed individual or entity. This is primarily a compilation of end-users that have been determined to present an unacceptable risk of diversion to the development of Weapons of Mass Destruction or their means of delivery. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the regulations.

The above lists may be relevant to your export or reexport transaction ad will be discussed in more detail in Module 3.

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BIS's Know Your Customer and Red Flag guidance helps you identify and avoid situations that might violate the EAR.

Abnormal circumstances indicating that the export may be destined for an inappropriate end-use, end-user, or destination are referred to as "red flags." Examples of a red flag is an order for items which are inconsistent with the needs of the purchaser or a customer declining installation and testing when included in the sales price.

When red flags are raised, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination. However, absent red flags (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the customer's representations. It's important not to cut off the flow of information that comes to your firm in the normal course of business. This could be regarded as self blinding. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user and ultimate country of destination for the product your firm is seeking to sell.

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To counter the proliferation of weapons of mass destruction, the EAR restrict the involvement of U.S. persons anywhere in the world in exports of U.S. or foreign-origin items, or in providing services or support, such as financing or forwarding, if the person knows that the items or activity may contribute to such proliferation.

This means that even if you are involved in a transaction related to an item that is not subject to the EAR, your activity may be subject to the EAR and require an export license.

Note that the EAR also restrict technical assistance by U.S persons with respect to encryption commodities or software.

A U.S. person includes any person in the United States; U.S. citizens, permanent resident aliens, or protected individuals wherever located; and U.S. organized firms and their foreign branches

Slide 31:

Although a relatively small percentage of all U.S. exports and reexports require an export license, virtually all exports and many reexports to embargoed destinations and countries designated as supporting terrorist activities require a license. These countries are Cuba, Iran, North Korea, Sudan, and Syria.

Part 746 of the EAR describes embargoed destinations and refers to certain additional controls imposed by the Office of Foreign Assets Control of the Treasury Department.

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Once you have determined that you can export using an export license issued by BIS, a License Exception or under No License Required designation, and that no other restrictions, such as end-user or end-use prohibitions apply, you will include this export control authorization information on your shipping documents.

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Both the Foreign Trade Statistics Regulations of the Census Bureau and the EAR require that the Shipper's Export Declaration or Automated Export System record be submitted to the U.S. Government for many export shipments. The SED or AES record is used for export clearance purposes. The U.S. government uses it to collect and generate the trade data and as an export control document.

On the SED or AES record, there are blocks or fields that request the license authorization and ECCN. In these fields you enter either your license # and ECCN, the LE symbol and ECCN, or the designation NLR and the ECCN when it is required. Your shipper will need this information if they are to complete your shipping documentation. It is important to remember that the SED or AES record is a statement to the U.S. Government. If you make false statements, you may be violating the EAR.

We will discuss further export clearance requirements from the EAR perspective in Module 6.

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There are recordkeeping provisions under the EAR that you as an exporter should be aware of and you may be asked to produce such records.

Records required to be retained include export control documents and other documentation such as correspondence related to an export transaction.
All records required to be kept generally must be retained for five years from date of export, reexport or other activity such as financing or transporting by a U.S. person in violation of section 744.6 of the EAR.

Originals must be maintained unless you meet the conditions of reproduction of original records.

We will further discuss recordkeeping requirements in Module 6.

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A variety of information is available on the BIS website, including links to the Export Administration Regulations, the Commerce Control List and the "Lists to Check".
BIS also has exporter counseling staff available to assist you with your specific questions through one-on-one telephone counseling. Additionally, BIS has enforcement offices nationwide available to assist you.

In addition, Commerce's Bureau of Census maintains and AES support line and email inquiry address for questions related to AES filings.

Slide 36:

Thank you for taking the time to view Module 1.

This module has provided you with an overview of the steps used in determining your export license requirements. These include determining the jurisdiction of your item and

if it is subject to the EAR, classifying your item, identifying its reasons for control, using the Country Chart to determine your license requirements. It also covered the concept of License Exceptions, screening of parties to the transaction as well as prohibited end-uses and activities. Finally it provided an overview of using the proper authorization for export clearance and recordkeeping purposes.

Slide 37:

In Module Two, we will go into more detail on the structure and formatting of the Commerce Control List, ways to classify your item, and using the Commerce Country Chart.