

INTRODUCTION
TO THE
COMMERCE
DEPARTMENT'S

EXPORT CONTROLS



**U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
OFFICE OF EXPORTERS SERVICES**

February 2006

O VERVIEW

The Bureau of Industry and Security (BIS) is responsible for implementing and enforcing the Export Administration Regulations (EAR), 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.

The EAR do not control all goods, services, and technologies. Other U.S. government agencies regulate more specialized exports. For example, the U.S. Department of State has authority over defense articles and defense services. A list of other agencies involved in export controls can be found at **www.bis.doc.gov** or in Supplement No. 3 to Part 730 of the EAR which is available on the Government Printing Office Web site.

This overview is designed to give people who are new to exporting, and, in particular, new to export controls, a general understanding of our regulations and how to use them. However, nothing provided here can substitute for consulting the EAR. The EAR include answers to frequently asked questions, detailed step-by-step instructions for determining if a transaction is subject to the regulations, how to request a commodity classification or advisory opinion, and how to apply for a license. In using the EAR, you may want to first look at Part 732 for the steps you follow to determine your obligations.

If you would like to review a specific part of the EAR referenced in this document, go to the on-line EAR database on the Government Printing Office Web site **www.gpo.gov/bis**.

NOTE: *The EAR contain provisions relating to matters not discussed in this short overview. Two examples of important concepts not discussed here are controls on the activities of U.S. persons in support of proliferation programs (see EAR §744.6) and the antiboycott provisions contained in EAR Part 760.*

WHAT IS AN EXPORT?

Any item that is sent from the United States to a foreign destination is an export. “Items” include commodities, software or technology, such as clothing, building materials, circuit boards, automotive parts, blueprints, design plans, retail software packages and technical information.

How an item is transported 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 via facsimile 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 telephone conversation. Regardless of the method used for the transfer, the transaction is considered an export for export control purposes. An item is also considered an export even if it is leaving the United States temporarily, if it is leaving the United States but is not for sale (e.g., a gift), or if it is going to a wholly-owned U.S. subsidiary in a foreign country. Even a foreign-origin item exported from the United States, transmitted or transhipped through the United States, or being returned from the United States to its foreign country of origin is considered an export. Finally, release of technology or source code subject to the EAR to a foreign national in the United States is “deemed” to be an export to the home country of the foreign national under the EAR.

HOW TO DETERMINE IF YOU NEED A COMMERCE EXPORT LICENSE

A small percentage of total U.S. exports and reexports require a license from BIS. License requirements are dependent upon an item’s technical characteristics, the destination, the end-user, and the end-use. You as the exporter must determine whether your export requires a license. When making that determination consider:

1. **What** are you exporting?
2. **Where** are you exporting?
3. **Who** will receive your item?
4. **What** will your item be used for?

1. What are you exporting?

The Export Control Classification Number and the Commerce Control List

A key in determining whether an export license is needed from the Department of Commerce is knowing whether the item you are intending to export has a specific ***Export Control Classification Number (ECCN)***. The ECCN is an alpha-numeric code, e.g., 3A001, that describes a particular item or type of item, and shows the controls placed on that item. All ECCNs are listed in the ***Commerce Control List (CCL)*** (Supplement No. 1 to Part 774 of the EAR) which is available on the Government Printing Office Web site.

The CCL is divided into ten broad categories, and each category is further subdivided into five product groups.

Commerce Control List Categories

- 0 = Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items)
- 1 = Materials, Chemicals, Microorganisms and Toxins
- 2 = Materials Processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecommunications and Information Security
- 6 = Sensors and Lasers
- 7 = Navigation and Avionics
- 8 = Marine
- 9 = Propulsion Systems, Space Vehicles, and Related Equipment

Five Product Groups

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Material
- D. Software
- E. Technology

Classifying Your Item

The proper classification of your item is essential to determining any licensing requirements under the Export Administration Regulations (EAR). You may classify the item on your own, check with the manufacturer, or submit a classification request to have BIS determine the ECCN for you.

When reviewing the CCL to determine if your item is specified by an ECCN, you will first need to determine which of the ten broad categories of the Commerce Control List includes your item and then consider the applicable product group.

Example

Assume that you have polygraph equipment that is used to help law enforcement agencies. What would be your ECCN?

Start by looking in the Commerce Control List under the category of electronics (Category 3) and product group which covers equipment (Product Group A). Then read through the list to find whether your item is included in the list. In this example the item is 3A981 as shown below.

3A981 Polygraphs (*except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses*); *fingerpint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.*

License Requirements

Reason for Control: CC

Control(s): CC applies to entire entry

Country Chart: CC Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Equipment in number

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

If Your Item is Not on the Commerce Control List - EAR99

If your item falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as EAR99. EAR99 items generally consist of low-technology consumer goods and do not require a license in many situations. 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.

EAR99 - Items subject to the EAR that are not elsewhere controlled by this CCL Category or in any other category in the CCL are designated by the number EAR99.

2. Where are you exporting?

Restrictions vary from country to country. The most restricted destinations are the embargoed countries and those countries designated as supporting terrorist activities, including Cuba, Iran, Libya, North Korea, Sudan, and Syria. There are restrictions on some products, however, that are worldwide.

How to cross-reference the ECCN with the Commerce Country Chart

Once you have classified the item, the next step is to determine whether you need an export license based on the “reasons for control” of the item and the country of ultimate destination. You begin this process by comparing the ECCN with the Commerce Country Chart (Supplement No. 1 to Part 738). The ECCNs and the Commerce Country Chart, taken together, define the items subject to export controls based solely on the technical parameters of the item and the country of ultimate destination.

Below the main heading for each ECCN entry, you will find **“Reason for Control”** (e.g., NS for National Security, AT for Anti-Terrorism, CC for Crime Control, etc.). Below this, you will find the **“Country Chart”** designator, which shows the specific export control code(s) applied to your item (e.g., NS Column 2, AT Column 1, CC Column 1, etc.). These specific control codes for your ECCN need to be cross-referenced against the Commerce Country Chart.

Commerce Control List Overview and the Country Chart																
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
Guyana	X	X		X		X	X	X	X	X	X	X		X		
Haiti	X	X		X		X	X	X	X	X	X	X		X		X
Honduras	X	X		X		X	X	X	X	X	X	X		X		X
Hong Kong	X	X		X		X		X	X	X				X		X
●Hungary	X					X		X	X							
●Iceland	X			X		X		X	X							

If there is an “X” in the box based on the reason(s) for control of your item and the country of destination, a license is required, unless a License Exception is available. Part 742 of the EAR sets forth the license requirements and licensing policy for most reasons for control.

Example

Question: You have polygraph equipment classified as 3A981 for export to Honduras. Would you be required to obtain an export license from the Department of Commerce before selling and shipping it to your purchaser?

Answer: Yes. 3A981 is controlled for Crime Control (CC) reasons under CC Column 1 and the Country Chart shows that such items require a license for Honduras unless a License Exception is available.

If there is no “X” in the control code column(s) specified under your ECCN and country of destination, you will not need an export license unless you are exporting to an end-user or end-use of concern.

Example

Question: You have polygraph equipment classified as 3A981 for export to Iceland. Would you be required to obtain an export license from the Department of Commerce before selling and shipping it to your purchaser?

Answer: No. 3A981 is controlled for Crime Control (CC) reasons under CC Column 1 and the Country Chart shows that such items do not require a license for Iceland unless you are exporting to an end-user or end-use of concern.

Although a relatively small percentage of all U.S. exports and reexports require a BIS 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, Libya, 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.

3. Who will receive your item?

Certain individuals and organizations are prohibited from receiving U.S. exports and others may only receive goods if they have been licensed, even items that do not normally require a license based on the ECCN and Commerce Country Chart or based on an EAR99 designation. You must be aware of the following lists. They can be accessed from the BIS Web site at **www.bis.doc.gov**.

Entity List - EAR Part 744, Supplement 4 -

A list of organizations identified by BIS as engaging in activities related to the proliferation of weapons of mass destruction. Depending on your item, you may be required to obtain a license to export to an organization on the Entity List even if one is not otherwise required.

Treasury Department Specially Designated Nationals and Blocked Persons List - EAR Part 764, Supplement 3 -

A list maintained by the Department of Treasury's Office of Foreign Assets Control comprising individuals and organizations deemed to represent restricted countries or known to be involved in terrorism and narcotics trafficking.

The Unverified List is composed of firms for which BIS was unable to complete an end-use check. Firms on the unverified list present a "red flag" that exporters have a duty to inquire about before making an export to them. The Unverified List is available on the BIS Web site: "Lists to Check".

Note: Denied Persons

You may not participate in an export or reexport transaction subject to the EAR with a person whose export privileges have been denied by the BIS.

A list of those firms and individuals whose export privileges have been denied is available on the BIS Web site: "Lists to Check". Note that some denied persons are located within the United States. If you believe a person whose export privileges have been denied wants to buy your product in order to export it, you must not make the sale and should report the situation to BIS's Office of Export Enforcement. If you have questions about Denied Persons, you may contact BIS's Office of Enforcement Analysis at (202) 482-4255.

4. What will your item be used for?

Some end-uses are prohibited while others may require a license. For example, you may not export to certain entities involved in the proliferation of weapons of mass destruction (e.g., nuclear, biological, chemical) and the missiles to deliver them, without specific authorization, no matter what your item is. For more information on prohibited end-uses, please refer to Part 744 of the EAR.

WAYS TO EXPORT

Authorization to export is determined by the transaction: what the item is, where it is going, who will receive it, and what it will be used for. The majority of U.S. commercial exports do not require a license.

1. NLR - (“No License Required”)

Most exports from the United States do not require a license, and are therefore exported under the designation “NLR.” Except in those relatively few transactions when a license requirement applies because the destination is subject to embargo or because of a proliferation end-use or end-user, no license is required when:

- a. The item to be shipped is not on the CCL (i.e., it’s EAR99); or
- b. The item is on the CCL but there is no “X” in the box(es) on the Country Chart under the appropriate reason(s) for control column on the row for the country of destination. (See the country chart example)

In each of these situations, you would enter “NLR” on your export documents.

2. License Exception

If a license is required for your transaction, a License Exception may be available. License Exceptions, and the conditions on their use, are set forth in Part 740 of the EAR. If your export is eligible for a License Exception, you would use the designation of that License Exception (e.g., LVS, GBS, TMP) on your export documents.

3. License

If your item requires a license to be exported, you must apply to BIS for an export license. If your application is approved, you will receive a license number and expiration date to use on your export documents. A BIS-issued license is usually valid for two years.

WHERE TO GET ASSISTANCE

A good starting point for information on export licensing requirements and the regulations is to attend one of our export control seminars. A list of upcoming seminars is posted on the BIS Web site at **www.bis.doc.gov**.

For counseling assistance, you may call one of our export counselors at 202-482-4811 (Washington, DC) or 949-660-0144 (California). You may also register to receive email notifications of upcoming seminars.

SUMMARY OF STEPS TO TAKE TO PROCESS YOUR EXPORT

- Ensure that your export is under U.S. Department of Commerce jurisdiction.
- Classify your item by reviewing the Commerce Control List.
- If your item is classified by an Export Control Classification Number (ECCN), identify the Reasons for Control on the Commerce Control List.
- Cross-reference the ECCN Controls against the Commerce Country Chart to see if a license is required. If yes, determine if a License Exception is available before applying for a license.
- Ensure that no proscribed end-users or end-uses are involved with your export transaction. If proscribed end-users or end-uses are involved, determine if you can proceed with the transaction or must apply for a license.
- Export your item using the correct ECCN and the appropriate symbol (e.g., NLR, License Exception, or license number and expiration date) on your export documentation (e.g., Shipper's Export Declaration).

E EXPORTER RESPONSIBILITY

Exporters should review BIS's "*Know Your Customer Guidance*" and "*Red Flags*" guidance which can be found in Supplement No. 3 to Part 732 of the EAR and on the BIS Web site. These resources can help you identify and avoid situations that might violate the EAR.

If you are issued an export license, or you rely on a License Exception described in Part 740 of the EAR, you are responsible for the proper use of that license or License Exception and for the performance of all of its terms and conditions.

If you export an item without either a license or a License Exception, you are responsible for determining that the transaction is either outside the scope of the EAR or that the export is properly designated as "No License Required."

Both the Foreign Trade Statistics Regulations of the Census Bureau (15 CFR Part 30) and the Export Administration Regulations require that the Shipper's Export Declaration (SED) be submitted to the U.S. Government for many export shipments. There are exceptions to this rule, but if you are required to submit a SED, you must prepare it in accordance with the rules of the Foreign Trade Statistics Regulations (FTSR) and present the number of copies specified in the FTSR at the port of export. For more information about the FTSR or the SED, visit the Census Bureau Web site at **www.census.gov** or call SED Regulations at (301) 763-2238. Also see Part 758 of the EAR for BIS export clearance requirements.

Records on exports must be retained for five years from date of export, reexport or many later activities. For additional information on record keeping see Part 762 of the EAR.

In addition, especially for transactions involving the Middle East, you may receive a request to comply with the boycott of Israel. If you comply with one of these requests, or do not report them to BIS, you will likely violate U.S. law. Contact the Office of Antiboycott Compliance Advice Line at (202) 482-2381 for guidance.

A PPLYING FOR EXPORT LICENSE

If an export license is required, the best and fastest way to submit export license applications is to use the one-line *Simplified Network Application Process (SNAP)*. Visit the BIS web site for more information on signing up to be a SNAP user.

Exporters may prepare an original Form BIS-748P, “Multipurpose Application Form,” and submit it for review and approval. The application form can be used for requesting authority to export or reexport, or to request BIS to classify your item for you. Requirements for submitting a license are detailed in Part 748 of the EAR. Exporters may request Form BIS-748P.

by fax at (202) 482-2927;
by phone on (202) 482-4811;
or by e-mail at **www.bis.doc.gov**

Exporters must be certain to follow the instructions on the BIS-748P form carefully. In most cases, technical brochures and support documentation must also be included.

E XPORT LICENSE APPLICATION PROCESSING

Our agency conducts a complete analysis of the license application along with all documentation submitted in support of the application. We review the item, its destination, its end-use, and consider the reliability of each party to the transaction. In addition to our review, applications are often sent for interagency review by the Departments of State, Energy, and/or Defense. For information concerning the review policy for various controls consult Parts 742 and 750 of the EAR.

You may contact us for the status of your pending export license application and commodity classification request by telephoning our *System for Tracking Export License Applications (STELA)* at 202-482-2752. *STELA* is an automated voice response system that will provide you with up-to-the-minute status on any license application or commodity classification pending with us. A touch-tone phone is required to use this service. You will need the Application Control Number (ACN) of your application in order to determine status.

HOW TO AVOID DELAYS

Submitting your application over the Internet through SNAP is the fastest way to get your application and support documentation submitted for review.

If submitting a hard copy application through the mail, exporters should take care to avoid common errors that often account for delays in processing:

1. Failing to sign the application.
2. Failure to submit a typewritten application.
3. Inadequately responding to section 21 of the application, where the specific end-use of the products or technical data is to be described. Exporters must be specific. Answering vaguely or entering “unknown” is likely to delay the application process or even cause a rejection of the application.
4. Inadequately responding to section 22(j) of the application, “Description of Commodity or Technical Data,” which calls for a description of the item or items to be exported. Exporters must be specific, and are encouraged to attach additional material to explain the product fully.
5. We strongly recommend using a commercial courier service to deliver applications to BIS as mail deliveries significantly delay receipt of correspondence.

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Revised February 2006

