

**Middle East  
Business  
Information  
Center**



## **EXPORT CONTROLS**

Fortunately for U.S. exporters, information regarding trade laws and regulations are now readily available. There are also regular seminars, and telephone hotlines for exporters to raise their compliance questions. As always, the success of these regulations in furthering U.S. foreign policy and national security objectives ultimately depends on U.S. companies' active participation and support.

### **WHAT IS AN EXPORT LICENSE AND DO ALL U.S. EXPORTS REQUIRE ONE?**

An export license grants permission to conduct a certain type of export transaction. It is issued by the appropriate licensing agency after a careful review of the facts surrounding the given export transaction.

Not all exports require a license. In fact, a relatively small percentage of all U.S. export transactions require licenses from the U.S. government.

### **HOW DO I KNOW IF MY PRODUCT REQUIRES A LICENSE?**

Think of your transaction as the element that may or may not require a license. However, the characteristics of your product are key elements of any transaction.

The Bureau of Industry and Security (BIS) of the U.S. Department of Commerce is responsible for licensing products that are "dual-use," or have both commercial and military or proliferation applications. The first step to establishing whether a dual-use product requires a license is to find the product's Export Control Classification Number (ECCN) on the Commerce Control List (CCL). BIS's Office of Exporter Services in Washington, DC, (202-482-4811) or in Newport Beach, CA, (949-660-0144), can guide you through this process. You may also find guidance on this process in a previously published *Export America* article entitled "Export Control Classification Numbers-ECCN," which is on the Trade Information Center's Web site <http://www.export.gov/tic> under "Answers to Your Export Questions."

Once the ECCN number is determined, the specialists at BIS can also help you navigate the Export Administration Regulations (EAR) to find out whether you must apply for a license and how to submit the requisite application. An excellent explanation of how to understand the Export Administration Regulations is available on the BIS Web site at <http://www.bis.doc.gov/licensing/ExportingBasics.htm>.

If you discover that your product does not fall into one of the specific categories listed in the EAR, EAR99 is a designation for dual-use goods that are covered by the EAR but are not specifically listed on the Commerce Control List. EAR99 items can be shipped without a license to most destinations under most circumstances. In fact, the majority of commercial exports from the United States fall into this category. Exporters of most consumer goods, for instance, may find their product listed under EAR 99.

Other U.S. Government agencies regulate certain specialized articles. For instance, the export of defense articles falls under the purview of the Directorate of Defense Trade Controls at the U.S. Department of State. Licensing of the export of nuclear materials and equipment is the responsibility of the Nuclear Regulatory Commission. The Office of Imports and Exports, under the Office of Fossil Energy, in the Department of Energy, regulates the export of natural gas and electric power. The Department of Energy's Office of Export Control Policy and Cooperation authorizes the use of nuclear technology and technical data for nuclear power, as well as special nuclear materials. The U.S. Drug Enforcement Administration regulates the export of controlled substances and precursor chemicals. For the relevant contact information regarding export controls issues at any of these agencies, call the Trade Information Center at (800) USA-TRADE.

### **WHAT IF MY PRODUCT DOES NOT FALL INTO ANY OF THE CATEGORIES MENTIONED ABOVE OR IS EAR 99?**

Two other elements of your transaction still must be considered, the item's destination and the recipient's intended end-use of the item.

The Office of Foreign Assets Control (OFAC) at the U.S. Department of Treasury enforces economic sanctions based on U.S. foreign policy and national security goals, which are set forth by Congress. In the case of a few countries, like Iran, Libya, Cuba and Sudan, the United States maintains comprehensive trade sanctions, which means that the export of most goods to these countries is prohibited. However, licensing programs for the exportation of agricultural goods, medicine, and medical products are in place for Iran, Libya, Cuba, and Sudan. OFAC licenses exports of allowable products to Iran, Libya, and Sudan, while BIS licenses exports of products to Cuba. Limited sanctions programs are in place against other countries, or groups within those countries. Detailed information on these sanctions is available on the OFAC Web site at <http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html>. U.S. sanctions programs change frequently. Exporters are encouraged to monitor U.S. sanctions programs on the OFAC Web site on a daily basis. For questions regarding U.S. sanctions programs, contact OFAC at (800) 540-6322.

### **WHAT CAN I DO TO ENSURE THAT THE END USER OF MY EXPORT IS SOMEONE WITH WHOM I AM PERMITTED TO DO BUSINESS?**

Exporters should screen all parties involved in an international transaction against the four "Prohibited Parties Lists," of entities with which an exporter is prohibited from doing business under most circumstances:

- The Specially Designated Nationals List, or SDN List, is published by OFAC on the Internet (<http://www.treas.gov/ofac>) as well as in the Federal Register. SDNs are individuals or entities located throughout the world that are blocked pursuant to various sanctions programs. SDNs can be front companies, quasi-government organizations, or individuals determined by the U.S. government to be owned, controlled by, or acting on behalf of, targeted countries or groups. They may also be specifically identified individuals, such as terrorists, narcotics traffickers, or banks and other institutions owned or controlled by the government of Burma. U.S. persons are prohibited from engaging in any transactions with SDNs and must block any property under their control in which an SDN has an interest.
- The Denied Persons List contains the names of persons who are subject to a denial order by BIS. In general, U.S. exporters are prohibited from dealing with denied persons in export transactions involving U.S. items. The list is accessible via <http://www.bis.doc.gov>.
- The Entity List, also maintained by BIS, is composed of foreign end-users engaged in proliferation activities. Based on these proliferation concerns, exports to these entities may require a license when the export transaction is within the parameters found in Part 744, Supplement 4, of the Export Administration Regulations. This list can be accessed through the

BIS Web site at <http://www.bis.doc.gov>.

· The Debarred Parties List is maintained by the State Department. It lists the names of individuals denied export privileges under the International Traffic in Arms Regulations (ITAR). The information can be accessed at <http://www.pmdtc.org>.

Trade restrictions often change as a result of shifts in geopolitics and the need to adapt U.S. foreign policy. In the aftermath of the September 11 terrorist attacks, President Bush issued Executive Order 13224 for the purpose of “blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism.” This order created a new category of Specially Designated Nationals (SDNs), called Specially Designated Global Terrorists (SDGTs), expanding the list of parties with which U.S. companies are not permitted to do business. Due to the frequency of additions to the SDN list and changes to sanctions programs, U.S. persons are encouraged to check the OFAC Web site at <http://www.treas.gov/ofac> on a daily basis for updates. Exporters may also subscribe to OFAC’s “What’s New File” to receive e-mail notification whenever changes are made to the SDN list. Subscribe at <http://www.treas.gov/offices/enforcement/ofac/subscriberecent.html>.

### **WHAT ARE THE PENALTIES FOR VIOLATING EXPORT CONTROL LAWS?**

Millions of dollars in civil penalties are imposed each year by the federal government for violating export control laws. The BIS Web site contains examples of civil penalties that have been imposed in the past. Civil penalties assessed by OFAC are \$11,000 per prohibited transaction for violations of most sanctions programs, but they can exceed \$1 million if the transaction involves narcotics kingpins. In cases where criminal intent to violate export control laws is found, criminal penalties can be imposed, resulting in significant corporate or personal fines and/or imprisonment.

### **WHAT CAN MY COMPANY DO TO MAKE SURE WE IDENTIFY AND ADDRESS EXPORT CONTROLS ISSUES AS EARLY AS POSSIBLE?**

Educating yourself about the legal and regulatory issues that are most relevant to your company is the first step. You can do this by visiting the Web sites or calling the phone numbers provided above for the various responsible agencies. In addition, company personnel responsible for international trade transactions should consider attending one of the many seminars available. A list of these can be found at <http://www.bis.doc.gov/seminarsandtraining/elsem.htm>.

For any other questions about this article, or about exporting in general, please call the Trade Information Center (TIC) at (800) USA-TRADE and “Ask the TIC.”

These Monthly columns are featured in "Export America", a monthly Commerce Department publication that provides assistance for the exporter looking to expand into new markets. The Trade Information Center staff provides in-depth, technical answers to practical questions that exporters ask. For subscriptions to this publication, please visit the [Export America Website](#).

*This article originally appeared in **Export America**, April 2004 edition. It was authored by Susan Hupka of the Trade Information Center. It is up to date as of March 2005.*