

Export Compliance Overview

**Presented at: Supporting the Federal Defense Supply
Chain**

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Disclaimer

This presentation is intended to provide a general overview of U.S. export control laws and regulations. The presentation does not provide the full body of information a person may need to make a responsible export decision.

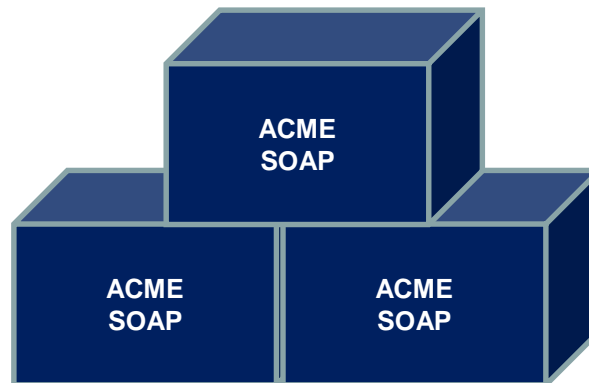


Why is this Important?

Export control laws help to protect the national security interests of the United States and its allies:

- They help to protect our military advantage
- They help to prevent the spread of advanced military technology
- ***Every item manufactured in, or imported into, the U.S. is governed by an export control law or regulation***

Strict compliance with export regulations is required to prevent unlawful exports, protect company proprietary information, and to demonstrate a commitment to ethical behavior.



What are Export Controls?

PROHIBITIONS

RESTRICTIONS

LIMITATIONS

Foreign
Policy

Nuclear
Non-
Prolifera
tion

Crime
Control

National
Security

Short
Supply

Relevant U.S. Government Agencies

Several U.S. Government agencies are involved in defining what is controlled and how those items or technology are controlled:

DEPARTMENT
OF
COMMERCE

DEPARTMENT
OF
STATE

DEPARTMENT
OF
DEFENSE

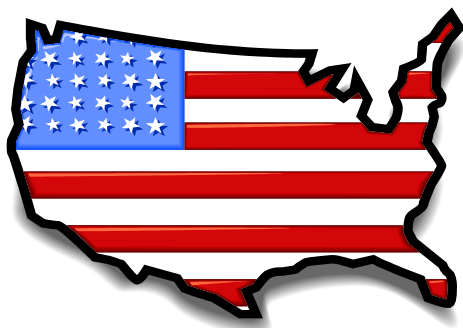
DEPARTMENT
OF
TREASURY

NUCLEAR
REGULATORY
COMMISSION

DEPARTMENT
OF
ENERGY

What is an Export?

- Export – the actual shipment of items out of the United States



- Export – the transfer of technology to a foreign person



Who is a US Person?

U.S. Person

- Any individual who is a citizen of the United States, a permanent resident alien, or a protected individual (i.e., a refugee or asylee)
- Any organization or business entity organized under the laws of the United States (U.S. government agencies included)



Who is a Foreign Person?

Foreign Person

- Any individual who is not a citizen, permanent resident alien, or protected individual
- Any organization or business entity not organized under the laws of the United States (foreign government agencies included)



U.S. Export Control Laws

There are two primary bodies of law that define export controls within the United States:

- **International Traffic in Arms Regulations (ITAR) [22 CFR 120-130]**

- Administered by the U.S. Department of State
- Governs defense articles and technology
 - In other words, items made or adapted for the military



- **Export Administration Regulations (EAR) [15 CFR 730-744]**

- Administered by the U.S. Department of Commerce
- Governs “dual use” items and technology
 - These items are primarily for commercial use

International Traffic in Arms Regulations

The ITAR accomplished a couple of goals:

1. Created a list of definitions to clearly communicate what and who is governed by the regulations
2. Created a list of items that are controlled under the ITAR
 1. **United States Munitions List (USML)**
 2. **Defines broad categories but does not provide a very detailed listing of specific items covered under the ITAR**
3. Outlined procedures and guidelines for people to follow
4. ***Requires registration with the State Department for manufacturers, exporters, and/or brokers - \$2,250 for initial registration; at least \$2,750 for renewal if export license applications are processed.***



United States Munitions List

ITAR – U.S. Munitions List (USML)

- 21 Categories of items that are classified as defense articles
- Includes the physical items that are the actual defense article
- Includes the individual, unique parts needed to build the defense article
 - Specifically designed or modified components, parts, accessories, attachments, and associated equipment
- Includes the technical data and defense services directly related to the manufacture or production of the defense article



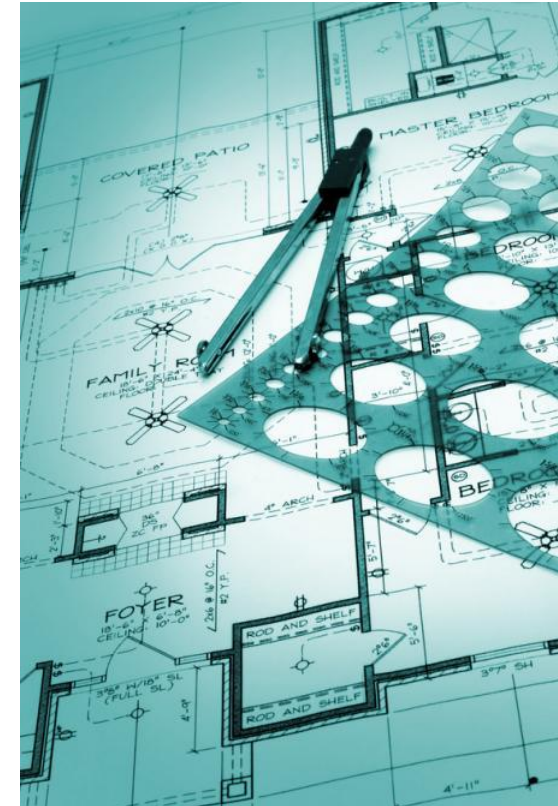
ITAR Definitions

Defense Service (ITAR)

- The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;
- The furnishing to foreign persons of any technical data controlled under the ITAR, whether in the United States or abroad

Technical Data (ITAR)

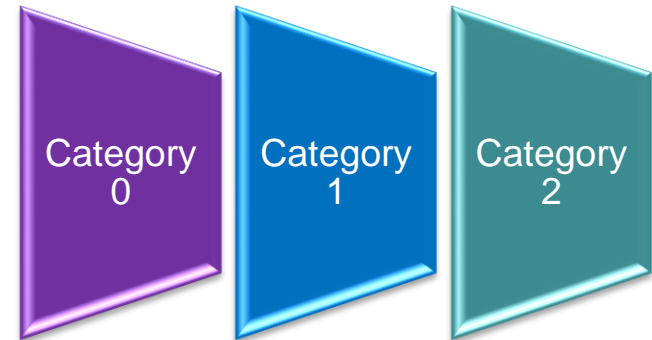
- Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes blueprints, drawings, photographs, plans, instructions or documentation.



Commerce Control List

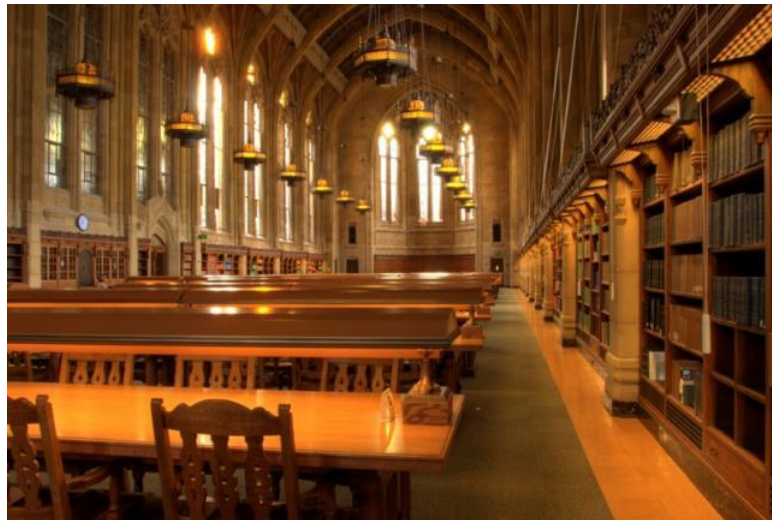
EAR – Commerce Control List (CCL)

- 10 Categories of items that are classified as “dual use”
- Each Category has 5 groups
 - A – Equipment, Assemblies and Components
 - B – Test, Inspection and Production Equipment
 - C – Materials
 - D – Software
 - E – Technology
- Each item identified on the CCL has its own Export Classification Control Number (ECCN)
 - Allows for easy and systematic identification of items and technology
 - Allows for very specific definitions and designation of controlled items
- The CCL has numerous reasons for controlling exports
 - The reason for control is based upon the ultimate destination of the export
 - The reason for control is based upon how the item can be used
 - An item can be controlled for more than one reason



Public Domain

- Information considered to be in the Public Domain is not controlled under the ITAR or the EAR
- Public domain – information which is published and which is generally accessible or available to the public:
 - Sold at newsstands, bookstores, or through unrestricted subscriptions
 - Can be obtained at a public library
 - Distributed through public conferences, meetings, trade shows
 - Approved by the U.S. Government for public release



Compliance

- Commodity Jurisdiction Request - the definitive answer on how an item or technology should be controlled
 - Binding, written, official determination provided by the Dept of State
 - When in doubt, go this route!
 - No true time limit on how long the government has to process the request
- Comply with the ITAR and the EAR and conduct your business with foreign parties by receiving export licenses – in other words, follow the rules and ask for permission!

Keep records !

- A record of all exports is required, regardless of the method of export
- Records must be kept for at least 5 years after the last date of export or the expiration of a license, whichever date is later



What to Expect with an ITAR License

ITAR Licensing is a process that can take several months to complete from start to finish:

- U.S. State Department has a goal to process license applications within 65 business days after receiving an acceptable application package
 - The total timeframe can easily surpass 4 months without proper planning, coordination, and a sense of urgency to keep the process moving
- Multiple U.S. government agencies review the license application
 - There is no “easy route” or “easier agency”
- ***Must demonstrate a valid reason and need to export military-grade items and technology***



Basic Prohibitions

A person cannot lawfully proceed with or facilitate an export knowing that a violation will occur

The U.S. Government maintains several lists of countries and persons restricted from or prohibited from receiving exports originated in the U.S.

- ITAR §126.1 – Prohibited exports, imports, and sales
- EAR §746 – Embargoes and other special controls
- U.S. Treasury Department – Specially Designated Nationals
- U.S. Department of State – Debarred Parties List
- U.S. Department of Commerce – Entity List / Denied Persons List



Effects of an Export Violation

The effect a violation has on a company or person is highly dependent upon the situation

There are some common factors to every violation

- **It could have been prevented!**
- There will be an investigation by a U.S. Government official
- Self-reporting a violation is always the best option
- An individual / company can face penalties
 - High Dollar Value Fines
 - Imprisonment
 - Loss of exporting privileges
 - Debarment from government contracting
 - Substantial negative publicity and loss to reputation



The time and money spent to internally investigate and address a violation will always be excessive when compared to the cost of following the correct procedures

Recommendation – consult legal counsel if you know, suspect, or believe a violation has occurred or may occur

Questions?

ITAR

U.S. State Department, Directorate of Defense Trade Controls

Website: www.pmdotc.state.gov

Response Team (Help Desk): (202) 663-1282

E-mail: DDTCResponseTeam@state.gov

EAR

U.S. Commerce Department, Bureau of Industry and Security

Website: www.bis.doc.gov

Export Counselor (Help Desk): (202) 482-4811