



Bureau of Industry and Security

U.S. Department of Commerce

Where Industry and Security Intersect

OFFICE OF EXPORT ENFORCEMENT

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An Export Control Overview

❖ Determining whether you need an export license:

1. What are you exporting?

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)**, which 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 §774 of the EAR). The CCL is divided into ten broad categories, represented by the first digit of the ECCN. Each category is further subdivided into five product groups, represented by the second digit of the ECCN.

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

Many commercial goods are not on the Commerce Control List and do not have an ECCN. These goods are designated as EAR99. EAR99 items generally consist of low level technology, consumer goods, etc. and do not require a license in most 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 an export license.

• **Determining Your ECCN**

There are three approaches to determining an ECCN:

Go to the Source: Contact the manufacturer, producer or developer to see if they have a current ECCN for the item. Keep in mind that ECCNs may change over time, so you still need to review the ECCN to be sure you are in agreement.

Self-Classify: In order to self-classify your item, you need a technical understanding of the item. Additionally, you need to be familiar with the structure and format of the CCL. To classify your item against the CCL, begin with a review of the general characteristics of your item. The CCL is divided into ten categories. The first digit of the ECCN represents the category. Each of the ten categories is divided into five product groups, represented by the second digit of the ECCN.

Official Request to BIS: You may request an official classification from BIS using the electronic licensing system, SNAP-R. You must obtain a Personal Identification Number (PIN) and Company Identification Number (CIN) to access the online system. For further information regarding SNAP-R and PINs, visit our website at <http://www.bis.doc.gov/snap/pinsnapr.htm>



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, North Korea, Sudan, and Syria** (§742 and §746 of the Export Administration Regulations (EAR)). 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 "reason 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 §738). Reason for Control include: Chemical & Biological Weapons, Nuclear Nonproliferation, National Security, Missile Tech, Regional Stability, Firearms Convention, Crime Control, Anti-Terrorism reasons.

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: Denied Persons List; Unverified List; Entity List; Specially Designated Nationals List; Debarred List; Nonproliferation Sanctions and General Orders.

To access the consolidated list go to http://export.gov/ecr/eg_main_023148.asp

4. How will your item(s) be used?

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, 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 §744 of the EAR. Exporters should research customers, identify any red flags in the transaction, and should not self-blind.

❖ **Export Administration Regulations (EAR)**

While exporters should fully familiarize themselves with the EAR, below are key sections that may serve as a solid foundation as well as a quick reference guide:

- **§772: Definition of Terms as used in the EAR**

Refer to §772.1 for a comprehensive list of terms used throughout the EAR.

- **§736: General Prohibitions**

There are ten General Prohibitions, listed below. Refer to §736.2 for a complete description of the General Prohibitions and determination of their applicability.

(1) Export and reexport of controlled items to listed countries; (2) Reexport and export from abroad of foreign-made items incorporating more than de minimis amount of controlled U.S. content; (3) Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software; (4) Engaging in actions prohibited by a denial order; (5) Export and reexport to prohibited end-uses or end-users; (6) Export and reexport to embargoed destinations; (7) Support of Proliferation Activities; (8) In transit shipments and items to be unladen from vessels or aircraft; (9) Violation of any order, terms and conditions; (10) Proceeding with a transaction with knowledge that a violation has occurred or is about to occur.

- **§758: Export Clearance Requirements**

All information filed through the Automated Export System (AES) must be true, accurate, and complete. An AES record is required for items subject to the EAR, including exports by U.S. mail:

(1) For all exports of items subject to the EAR that are destined to a country in Country Group E:1 of Supplement No. 1 to §740 of the EAR; (2) For all exports subject to the EAR that require submission of a license application, regardless of value, or destination; (3) For all exports of commodities and mass market software subject to the EAR when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over \$2,500, except as exempted by the Foreign Trade Statistics Regulations; (4) For all exports of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require an SED or AES record or license if shipped directly to the final destination from the U.S. or (5) For all items exported under authorization Validated End-User.

- **§762: Recordkeeping**

Keep required records for five-years. Required records include: (1) Export control documents as defined in §772 of the EAR, except parties submitting documents electronically to BIS via the SNAP-R system are not required to retain copies of documents so submitted; (2) Memoranda; (3) Notes; (4) Correspondence; (5) Contracts; (6) Invitations to bid; (7) Books of account; (8) Financial records; (9) Restrictive trade practice or boycott documents and reports; (10) Notification from BIS or an application being returned without action; notification by BIS of an application being denied; notification by BIS of the results of a commodity classification or encryption review request conducted by BIS; and, (11) Other records pertaining to the types of transactions described in §762.1(a) of this part, which are made or obtained by a person described in §762.1(b) of this part.

- **§764: Enforcement and Protective Measures**

If you discover a possible violation, you and/or your company can file a Voluntary Self-Disclosure (VSD). Refer to §764.5 for specifics on filing a VSD, which may result in up to a 50% reduction in penalty.

- **§734: Deemed Exports**

An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States. See §734.2(b)(2)(ii) of the EAR. For brevity, these questions and answers refer only to "technology" but apply equally to source code.

- What is a "release" of technology?

Technology is "released" for export when it is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology.

- What is "technology"?

Per §772 of the EAR, "technology" is specific information necessary for the "development," "production," or "use" of a product. The General Technology Note states that the "export of technology is controlled according to the provisions of each Category." It further states that "technology required for the development, production, or use of a controlled product remains controlled even when applicable to a product controlled at a lower level." Please note that the terms "required," "development," "production," "use," and "technology" are all defined in §772 of the EAR. Controlled technology is that which is listed on the Commerce Control List.

- When do I need to apply for an export license for technology under the "deemed export" rule?

Assuming that a license is required because the technology does not qualify for treatment under EAR99 and no license exception is available, U.S. entities must apply for an export license under the "deemed export" rule when both of the following conditions are met: (1) they intend to transfer controlled technologies to foreign nationals in the United States; and (2) transfer of the same technology to the foreign national's home country would require an export license

*Federal Register – Check daily for the latest changes in BIS policy/regulations.
Example: China rule (§744.21 and Supplement 2)*

❖ **Principles of An Effective Compliance Program**

- Whether the company has performed a meaningful **risk analysis**
- Existence of a formal **written compliance** program
- Appropriate **senior officials** responsible for compliance program
- Adequate **training** provided to employees
- Company effectively **screens** customers and transactions
- Company meets **recordkeeping** requirements
- Existence of internal system for **reporting export violations**
- Conducts and maintains results of export compliance **audits**
- Appropriate **remedial activity** taken in response to violations

*This is just the beginning! **Check the BIS website www.bis.doc.gov, contact Exporter Services, and attend training...***

Need Further Assistance?

Office of Exporter Services (OExS) Outreach and Educational Services Division:
Room 1099D
14th St & Pennsylvania Ave, NW
Washington, DC 20230
Phone: (202) 482-4811
Fax: (202) 482-2927

OExS Western Regional Offices:
302 Martin Street, Suite 330
Irvine, CA 92612
Phone: (949) 660-0144
Fax: (949) 660-9347

160 W. Santa Clara St, Suite 725
San Jose, CA 95113
Phone: (408) 998-8806
Fax: (408) 998-8677

U.S. Census Bureau Automated Export System (AES) Call Center

Option 1 – AES Support
M-F, 7:30am to 6:30pm, EST
askaes@census.gov

Option 2 – Commodity Support
M-F, 8:00-5:30pm, EST
ftd.scheduleb@census.gov

Option 3 – Regulations Inquiries
M-F, 7:30am to 6:30pm, EST
ftdregs@census.gov



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Consolidated Screening Lists

The following lists are individuals or companies that are limited or prohibited from receiving U.S.-origin products or items. For your convenience, the agencies responsible for these lists have consolidated that these lists into one downloadable file; note that these lists can be updated frequently and change. BIS lists changes can be accessed by subscribing to free email alerts. Check www.bis.doc.gov to subscribe.

To access the consolidated list, go to http://export.gov/ecr/eg_main_023148.asp

 Denied Persons List	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.	 Nonproliferation Sanctions	Several lists compiled by the State Department of parties that have been sanctioned under various nonproliferation statutes. Some of these parties are subject to BIS's license application denial policy described in §744.19 of the EAR (15 CFR §744.19).
 Unverified List	A list of parties where BIS has been unable to verify the end-user in prior transactions. The presence of a party on this list in a transaction is a "Red Flag" that should be resolved before proceeding with the transaction.	 Specially Designated Nationals List	A list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC). OFAC's regulations may prohibit a transaction if a party on this list is involved. In addition, the EAR require a license for exports or reexports to any party in any entry on this list that contains any of the suffixes "SDGT" (Specially Designated Global Terrorist), "SDT" (Specially Designated Terrorist) "FTO" (Foreign Terrorist Organizations) "IRAQ2" (Former Iraq Regime members) or "NPWMD" (Nonproliferation of Weapons of Mass Destruction). See 15 §CFR 744.12, <i>et seq.</i>
 Entity List	A list identifying foreign parties that are prohibited from receiving some or all items subject to the EAR unless the exporter secures a license. Those parties present a greater risk of diversion to weapons of mass destruction (WMD) programs, terrorism, or other activities contrary to U.S. national security or foreign policy interests.	HOTLINE NUMBERS: <ul style="list-style-type: none">• BIS Office of Exporter Services: (202-482-4811)• BIS Office of Export Enforcement: (202-482-2980)• DOS DDTC: (202-663-1282)• OFAC Licensing: (202-622-2840)• OFAC Compliance Hotline: (1-800-540-6322)	
 Debarred List	A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.		





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Recognizing & Reporting Export Violations

U.S. manufacturers, exporters, and shippers are in an excellent position to identify potential illegal export activity. You may be the first U.S. person contacted by WMD proliferators, terrorist support organizations, and illicit procurement networks/ front companies seeking to acquire U.S.-origin dual-use items from the U.S.

Here's how to avoid becoming entangled in an illicit export scheme:

- Learn the "Red Flags" and other suspicious indicators of illegal export activities
- Follow the "Know Your Customer" guidance and dig deeper when you become suspicious
- Follow compliance guidance in the Export Administration Regulations (EAR) and on the BIS website.

OEE Special Agents are very interested in working with you if you encounter suspicious inquiries or transactions that violate the EAR. Contact OEE by calling one of the field offices or the OEE Hotline (1-800-424-2980) or send a tip through the BIS website (www.bis.doc.gov).

The information you provide may help OEE identify and build cases against export violators involved in proliferation, terrorism or other illicit activity.

Voluntary Self-Disclosures

BIS encourages the submission of Voluntary Self-Disclosures (VSDs) by individuals or companies who believe they may have violated the EAR. Most VSDs are resolved by means other than administrative fine or penalty. BIS affords the submission of a VSD "great weight" in assessing and mitigating the penalty. In appropriate cases, fines and other administrative penalties may be significantly reduced. Review the format and information required for a VSD submission in §764.5 of the EAR and submit the VSD to:

Director, Office of Export Enforcement
1401 Constitution Avenue, NW, Room H4514
Washington, DC 20230
Telephone: 202-482-1208



Office of Export Enforcement Field Offices

Office	Telephone & Fax Numbers	Office	Telephone & Fax Numbers
OEE Headquarters 1401 Constitution Ave, NW Washington, DC 20230	Hotline: 1-800-424-2980	Los Angeles Field Office 2601 Main Street Suite 310 Irvine, CA 92614	Phone: 949-251-9001 Fax: 949-251-9103 <i>States Covered:</i> AZ, CA (south of San Luis Obispo), HI, NM, NV (Las Vegas and south), Guam, Commonwealth of Northern Mariana Islands
Boston Field Office 10 Causeway Street Room 253 Boston, MA 02222	Phone: 617-565-6030 Fax: 617-565-6039 <i>States Covered:</i> CT, MA, ME, NH, RI, VT	Miami Field Office 200 East Las Olas Blvd Suite 1800 Ft. Lauderdale, FL 33301	Phone: 954-356-7540 Fax: 954-356-7549 <i>States Covered:</i> AL, FL, GA, Puerto Rico, U.S. Virgin Islands
Chicago Field Office One Oakbrook Terrace Suite 804 Oakbrook Terrace, IL 60181	Phone: 630-705-7010 Fax: 630-424-0118 <i>States Covered:</i> IL, IN, IA, KS, MI, MN, MO, NE, ND, SD, WI	New York Field Office 1200 South Avenue Suite 104 Staten Island, NY 10314	Phone: 718-370-0700 Fax: 718-370-0826 <i>States Covered:</i> NJ, NY, PA
Dallas Field Office 225 E. John Carpenter Freeway Suite 820 Irving, TX 75062 Houston Resident Office 15109 Heathrow Forest Pkwy Suite 170 Houston, TX 77032	Phone: 214-296-1060 Fax: 214-496-0647 <i>States Covered:</i> AR, CO, LA, OK, MS, TX Phone: 281-372-7130 Fax: 281-590-3931	San Jose Field Office 160 West Santa Clara St. Suite 725 San Jose, CA 95113 Washington Field Office 381 Elden Street Suite 1125 Herndon, VA 20710	Phone: 408-291-4204 Fax: 408-291-4320 <i>States Covered:</i> AK, CA (north of San Luis Obispo), ID, MT, OR, NV (north of Las Vegas), UT, WA, WY Phone: 703-487-9300 Fax: 703-487-9463 <i>States Covered:</i> DC, DE, KY, MD, NC, OH, SC, TN, VA, WV

Antiboycott Regulations

BIS also works to ensure that parties to U.S. transactions do not participate in the Arab boycott of Israel. If you are asked to participate in the Arab boycott of Israel or if you are asked questions like:

- “What are the nationalities of the members of your Board of Directors?”
- “Is your firm related to the ABCXYZ company?”
- “Will you send us a list of your proposed suppliers?”

then you may be being asked to engage in the Arab boycott. Any response to these types of questions, regardless of whether the answer is “yes” or “no,” may be a violation of the U.S. Department of Commerce’s antiboycott regulations. You may be required to report the boycott requests that you receive.

Before you respond to such questions, call BIS’s Antiboycott Compliance Office Advice Line. The advice line duty officer will assist you in determining your reporting requirements. Callers to the Antiboycott Compliance Advice Line may remain anonymous if they wish.

Antiboycott Compliance Advice Line: 202-482-2381



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Red Flags of Export Violations

Suspicious Practices to Look for!

Possible indicators that an unlawful diversion might be planned by your customer include the following:

- The customer or purchasing agent is reluctant to offer information about the end-use of a product
- The product's capabilities do not fit the buyer's line of business; for example, a small bakery places an order for several sophisticated lasers
- The product ordered is incompatible with the technical level of the country to which the product is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry
- The customer has little or no business background
- The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing
- The customer is unfamiliar with the product's performance characteristics but still wants the product
- Routine installation, training or maintenance services are declined by the customer
- Delivery dates are vague, or deliveries are planned for out-of-the-way destinations
- A freight forwarding firm is listed as the product's final destination
- The shipping route is abnormal for the product and destination
- Packaging is inconsistent with the stated method of shipment or destination
- When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export or reexport

(Source 15 CFR §732, Supplement No. 3)



More Indicators of Violations

- The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] "Lists to Check"
- An Internet search of a customer reveals lines of business that may require an export license (e.g., WMD, cruise missiles) or are entirely different than the claimed end-use
- Shipping instructions change at the last minute
- Buyer or end user is in a known transshipment country of concern
- Payment comes from a third country or a business not listed on the End-User Statement
- The customer is unfamiliar with the product's performance characteristics but still wants the product
- The customer is conducting a transaction via the Internet and does not provide adequate information on the physical location(s) or the operation of the business.

If you have reason to believe a violation is taking place or has occurred, you may report it to the Department of Commerce by calling its 24-hour hotline: 1-800-424-2980

<i>REPORT EXPORT VIOLATIONS</i>
1-800-424-2980

www.bis.doc.gov



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Know Your Customer!

Before you export, do you really know who your customer is? Here are some tips to help you vet a potential buyer:

What is a Red Flag?

Red Flags are any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination.

- Orders for items which are inconsistent with the needs of the purchaser
- Customer declines installation and testing when they are included with the sales price, or when normally requested
- Requests for equipment configurations which are incompatible with the stated destination.

Check the BIS Red Flags list (15 CFR §732, Supplement 3) for more examples of Red Flags, and review U.S. Government Lists to identify parties prohibited or restricted from participating in U.S. export transactions.

What if I find one or more Red Flags?

- You have an affirmative duty to make further inquiries
- Ensure appropriate end-use, end-user, or ultimate country of destination in the transactions you plan to engage in
- Conduct standard customer due diligence to resolve any discrepancies

Do not self-blind

- Do not cut off the flow of information that comes to your firm in the normal course of business
- Do not put on blinders that prevent learning of relevant information
- Do not instruct sales personnel to willfully disregard Red Flags



Reevaluate all information after the inquiry

- Determine whether the Red Flags encountered can be explained legitimately or justified based on your new information
- If the transaction shows the company, buyer, and end-user is legitimate, proceed with the transaction

What if I still have reason for concern?

If you continue to have reason for concern after your inquiry, you should do one or more of the following:

- Refrain from the transaction
- Apply to BIS for a validated license or other appropriate action
- Report the information to the OEE Hotline (1-800-424-2980)





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Freight Forwarder Guidance

The freight forwarding community has a unique obligation and a key role in securing the global supply chain, stemming the flow of illegal exports, and preventing Weapons of Mass Destruction (WMD) Proliferation and other sensitive goods from falling into the hands of proliferators and terrorists.

Responsibilities of the Forwarding Community

- Forwarding agents have compliance responsibilities under the Export Administration Regulations (EAR) *even when their actions are dependent upon instructions given by customers*
- Forwarding agents are responsible for the representations they make in filing export data
- No person, including a forwarding agent, may proceed with any transaction knowing that a violation of the EAR has occurred or is about to occur

Routed and Non-Routed Export Transactions

A **routed transaction** is where the foreign principal parties in interest (PPI) authorizes a U.S. agent to facilitate export of items from the U.S. on its behalf, and to prepare and file the Electronic Export Information.

- If **power of attorney** or other written authorization to act on behalf of the foreign PPI is obtained, the **U.S. forwarding agent is the “exporter”** under the EAR, and is responsible for determining licensing authority and obtaining appropriate license or other authorization for the export.
- If power of attorney or other written authorization to act on behalf of the foreign PPI is not obtained, the **U.S. PPI** is the “exporter” under the EAR and is responsible for determining licensing authority and obtaining appropriate license or other authorization for the export.

In a **non-routed transaction**, if the U.S. PPI authorizes an agent to prepare and file the export declaration on its behalf, the U.S. PPI is the “exporter” under the EAR and is required to:

- Provide the agent with the information necessary to complete the AES submission;
- Authorize the agent to complete the AES submission by power of attorney; and
- Maintain documentation to support the information provided to the agent for the AES submission

If authorized by either the U.S. or foreign PPI, the agent is responsible for:

- Preparing the AES submission based on information received from the U.S. PPI;
- Maintaining documentation to support the information reported on the AES submission; and
- Upon request, providing the U.S. PPI with a copy of the AES filed by the agent.



Export Administration Regulations (EAR)

While exporters should fully familiarize themselves with the EAR, below are key sections particularly relevant to freight forwarders:

- §§758.1 through 758.6, 748.4, and 750.7(d) note the difference in definitions between Census and BIS for the term “exporter.”
- §758.8 discusses the return or unloading by forwarders, or other entities, of shipments at the direction of U.S. government officials.
- §730, Supplement No. 3 notes that export control responsibilities for Ocean Freight Forwarders are with the Federal Maritime Commission’s Office of Freight Forwarders.

Mitigating Risk

Forwarders can take steps to mitigate their own and their clients’ risk of liability:

- Establish a strong **Export Compliance and Management Program**
- Be familiar with the **Know Your Customer Guidance**
- Recognize **Red Flag** indicators (EAR §732, Supplement No. 1)
- Check parties to transactions against BIS’s and other U.S. Government agencies’ various **Lists to Check** on the BIS website or the consolidated list at www.export.gov.
- Maintain relevant **documentation**
 - Required recordkeeping (EAR §762)
 - Form BIS-711, Destination Control Statement
 - Letter of Acceptance of License Conditions
- If you believe you may have committed a violation of the EAR, submit a Voluntary Self-Disclosure (VSD) to BIS.

If you have reason to believe a violation is taking place or has occurred, you may report it to the Department of Commerce by calling its 24-hour hotline: 1-800-424-2980

