Strengthening U.S. Economic and National Security

**Office of Export Enforcement
Bureau of Industry and Security**

An Export Control Overview

❖ <u>**Determining whether you need an export license:**</u>

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.

<u>**Commerce Control List Categories**</u>

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

<u>**Five Product Groups**</u>

A. Equipment, Assemblies and Components
B. Test, Inspection and Production Equipment
C. Materials
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, and similar items 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 need to review the ECCN to ensure the one provided to you is still correct.

Self-Classify: 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. Further guidance can be found in Supplement No. 4 to §774 of the EAR, Commerce Control List Order of Review.

Official Request to BIS: You may request an official classification from BIS using the electronic licensing system, SNAP-R. For further information on classifications and SNAP-R, visit https://snapr.bis.doc.gov/snapr/

2. Where are you exporting?

Restrictions vary from country to country. The most restricted destinations are the sanctioned/embargoed countries and those countries designated as supporting terrorist activities, such as Belarus, Cuba, Iran, North Korea, Russia 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). Reasons for Control include: Chemical & Biological Weapons, Nuclear Nonproliferation, National Security, Missile Tech, Regional Stability, Firearms Convention, Crime Control, and 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. This could include 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 a variety of different U.S. government lists, to include: Denied Persons List; Unverified List; Entity List; Specially Designated Nationals List; Debarred List; Nonproliferation Sanctions and General Orders.

To access the consolidated screening list go to https://www.trade.gov/consolidated-screening-list

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)

Exporters should fully familiarize themselves with the EAR. Below are key sections that may serve as a solid foundation on the EAR 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, as described below.

(1) For all exports of items subject to the EAR that are destined to a country in Country Group E:1 or E:2 of Supplement No. 1 to §740 of the EAR regardless of value; (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 9x515 or "600 series" items enumerated or otherwise described in paragraphs .a through .x of a 9x515 or "600 series" ECCN regardless of value or destination; (4) For all exports under license exception Strategic Trade Authorization (STA); (5) 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;
(6) For all exports of items subject to the EAR that will be transshipped through Australia, Canada, or the United Kingdom to a third destination, where the export would require EEI or license if shipped directly to the final destination from the U.S; (7) For all items exported under authorization Validated End-User (VEU); (8) For all exports of tangible items subject to the EAR where parties to the transaction are listed on the Unverified List (supplement no. 6 to part 744 of the EAR), regardless of value or destination; (9) For all exports, except for exports authorized under License Exception BAG, as set forth in Section 740.14 of the EAR, to include, but not limited to, certain shotguns or ammunition, including exports to Australia, Canada, and the United Kingdom; (10) For all exports of items on the CCL to the PRC, Russia, or Venezuela, regardless of

value, unless the export may be made under the exemption listed under paragraph (c)(4) of this section.

- **§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) The serial number, make, model, and caliber for any firearm controlled in ECCNs 0A501.a, 0A506, or 0A507 and for shotguns with barrel length less than 18 inches controlled in 0A502 and 0A508 that have been exported. The "exporter" or any other party to the transaction that creates or receives such records is a person responsible for retaining this record; and (12) 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 a mitigated 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 person within the United States. See §734.13(a)(2) 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 persons 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 information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing of an item. The General Technology Note states that the export of "technology" that is "required" for the "development", "production", or "use" of items on the CCL 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 CCL.

- 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 persons in the United States; and (2) transfer of the same technology to the foreign person's home country would require an export license.

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

This is just the beginning! Sign up on the BIS website here for regulation changes, enforcement matters, and other updates.

Need Further Assistance?	OExS Western Regional Offices:
Office of Exporter Services (OExS) Outreach and Educational Services Division: Washington, DC Phone: (202) 482-4811	Irvine, CA Phone: (949) 660-0144 orSan Jose, CA Phone: (408) 998-880

U.S. Census Bureau Automated Export System (ES) Call Center 1-800-549-0595
https://www.census.gov/foreign-trade/contact.html

Report Export Violations
1-800-424-2980 or EELead@bis.doc.gov