

Fundamental Export Compliance

This summary of Export compliance frames the responsibilities that all exporters have. Exporters do not have an inherent right to export their goods. Our government has an interest in restricting export trade with various persons, entities and countries that do not share our concerns and beliefs. While the majority of exports are NOT restricted, care must be taken to adhere to the various control lists that our government maintains.

Any good that is sent from the United States to a foreign destination is an export. Goods include all commodities, software or technology, such as clothing, building materials, circuit boards, blue prints, design plans, retail software packages and technical information. Our government expects that all exporters understand the complex rules governing exports U.S. Importantly, an exporter must know when an export license is required for their shipment. Failure to comply has dire consequences.

How a good is transported outside of the U.S. does not matter in determining export license requirements. For example, a good can be sent by mail or hand-carried on a plane; documents, software or technology faxed, downloaded, uploaded, emailed or even in normal telephone conversation to a foreign destination. All of these examples are considered an export. An item is also considered an export even if it is leaving the U.S. temporarily, leaving the U.S. but is not for sale (e.g. a gift) or going to a U.S. subsidiary in a foreign country. A good of foreign origin exported from the U.S. is considered an export EVEN if the good is being returned to its foreign country of origin. Finally, release of technology or source code subject to the Export Administration Regulations (EAR) to a foreign national in the U.S. is "deemed" to be an export to the home country of the foreign national. Does your foreign customer intend on exporting your product to his customer? U.S. Export regulations cover these transactions.

The Bureau of Industry and Security (BIS) is responsible for implementing and enforcing (EAR), which regulate the export and re-export of most commercial items.

How to Determine If You Need a Commerce Export License

A relatively small percentage of exports require a license from BIS. You, as the exporter, must determine whether your export requires a license. When making that determination consider:

- What are you exporting?
- Where are you exporting?
- Who will receive your item?
- What will your item be used for?

• 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). All ECCNs are listed in the Commerce Control List (CCL). When reviewing the CCL to determine if your item is specified by an ECCN, you will first need to determine in which of the ten broad categories of the Commerce Control List your item is included and then consider the applicable product group.

Classifying Your Item (Schedule B and/or Harmonized System)

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. M.E.Dey & Co offers a research service for our customers

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 most situations (refer to the export control lists below – licenses may be required!).

• 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. You may need a license based on the **“reasons for control”** and the country of ultimate destination.

• Who will receive your item?

Even if an item does not need a license, these export control lists of ‘denied’ or ‘red flag’ parties must be reviewed. Compliance is expected.

Entity List A list of organizations identified 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 A list maintained by the Treasury’s Office of Foreign Assets Control comprising individuals and entities deemed to represent restricted countries or known to be involved in terrorism / narcotics trafficking.

The Unverified List This list is composed of firms for which BIS was unable to complete an end-use check. Exporters have a duty to inquire about firms on this list before making an export to them.

Denied Persons You may not participate in an export transaction with a person whose export privileges have been denied. Note that some denied persons are located within the United States.

Debarred List This is a State Department list of parties who are barred 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.

Nonproliferation Sanctions These State Department lists contain the names of parties that have been sanctioned under various statutes.

General Order 3 to Part 736 Focused on Mayrow General Trading or entities related located in Dubai, United Arab Emirates.

• **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.

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:

1. The item to be shipped is not on the CCL (i.e. it’s EAR99); or
2. The item is on the CCL but is is exempted

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.

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**

GOTO M.E.Dey & Co Inc info@medey.com
GOTO http://www.access.gpo.gov/bis/ear/ear_data.html
GOTO <http://www.bis.doc.gov/licensing/exportingbasics.htm>
GOTO <http://www.bis.doc.gov/licensing/facts3.htm>

For counseling assistance, export counselors at 202-482-4811 (DC) or 949-660-0144 (California) or email via <https://www.bis.doc.gov/Forms/AskaCounselor.html>

Summary of Steps to Take to Process Your Export

- Classify your item by reviewing the Commerce Control List.
- If your item is classified by an ECCN, identify the Reasons for Control on the CCL.
- 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 restricted end-users or end-uses are involved with your export transaction. If restricted 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).

SHIPPING HAZARDOUS MATERIALS

Across this nation, on the high seas and in the air, shipping hazardous material is done thousands of times each day. You may not be in the business of making or producing hazardous material but **you may nevertheless be moving hazardous materials every day!**

What is a hazardous material? A hazardous material is any item or agent (biological, chemical, physical) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

A single can of paint, a tube of lubricant, a bottle of thinner, extra batteries, even magnets may transform your shipment into a hazardous shipment. The law compels shippers to meet their training and awareness responsibilities even if you have moved only one hazardous shipment during an entire year.

Each person who offers hazardous materials (sometimes called dangerous goods) for transportation must properly classify, package, mark, label, placard and document that shipment. All persons coming in contact with and directly affecting the safe transportation of the shipment must also be trained. The level of their training depends on their involvement in the shipment. *Even the secretary who types up the documents must be hazardous material awareness trained!*

Hazardous words. Any of the following words used in casual conversation, of documents, or their physical presence is a tip-off of a possible hazardous shipment. The touch up paint or the extra tube of lubricant may transform a machinery shipment into hazardous cargo. Computers usually have batteries and sometimes un-interruptible power supplies, ordinary laundry supplies might contain bleaches, a tool chest may contain explosive cartridges for power nailers or partially used aerosol cans, perhaps even solvents or thinners. Frozen articles may contain dry ice. Gas cylinders attached to machinery may present a hazardous condition. A casual request for a Material Safety Data Sheet is a clear warning that you have a potential hazardous shipment. The table below is a list of other words and phrases that prevent you from shipping a dangerous hazardous shipment not properly prepared and documented.

Household Goods	Vaccines	Passenger Baggage	Oxygen
Toxic	Power Supplies	Batteries	Pressurized
Fuel Tanks	Gas Lines	Gas cylinders	Liquefied gas
LP	Thinners	Gas tank	Cylinders
Acid Resins	Solvents	Lubricants	Mercury
Fertilizer	Adhesives	Corrosive	Radioactive
Aerosols	Poison	Paint	Inflators
Lighters	MSDS	Spray paint	Infectious

Why should you comply? Aside from the obvious, keeping your fellow workers, your partners and your customers safe, it is also very, very illegal. In brief, the fines can reach \$27,500 for violations of **any** hazardous materials regulations **including training**. In serious cases, a criminal penalty of up to \$500,000 and/or imprisonment of up to 5 years. Fines as large as these could pay for a lot of touch-up paint. U.S. has an excellent web site at <http://hazmat.dot.gov/>