

O VERVIEW

The Department of Commerce's Bureau of Industry and Security (BIS) is responsible for implementing and enforcing the Export Administration Regulations (EAR), which regulate the export and reexport of most commercial items. We often refer to the items that BIS regulates as "dual-use" – items that have both commercial and military or proliferation applications – but purely commercial items without an obvious military use are also subject to the EAR.

The EAR do not control all goods, services, and technologies. Other U.S. government agencies regulate more specialized exports. For example, the U.S. Department of State has authority over defense articles and defense services. A list of other agencies involved in export controls can be found at www.bis.doc.gov or in Supplement No. 3 to Part 730 of the EAR which is available on the Government Printing Office website at www.gpo.gov/bis.

This publication is designed to give people who are new to exporting, and, in particular, new to export controls, a general understanding of our regulations and how to use them. However, nothing provided here can substitute for consulting the EAR. The EAR include answers to frequently asked questions, detailed step-by-step instructions for determining if a transaction is subject to the regulations, how to request a commodity classification or advisory opinion, and how to apply for a license. In using the EAR, you may want to first look at Part 732 for the steps you follow to determine your obligations.



Note! The EAR contain provisions relating to matters not discussed in this short overview. Two examples of important concepts not discussed here are controls on the activities of U.S. persons in support of proliferation programs (see EAR §744.6) and the antiboycott provisions contained in EAR §760.

WHAT IS AN EXPORT?

Any item that is sent from the United States to a foreign destination is an export. “Items” include commodities, software or technology, such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information.

How an item is transported outside of the United States does not matter in determining export license requirements. For example, an item can be sent by regular mail or hand-carried on an airplane. A set of schematics can be sent via facsimile to a foreign destination, software can be uploaded to or downloaded from an Internet site, or technology can be transmitted via e-mail or during a telephone conversation. Regardless of the method used for the transfer, the transaction is considered an export. An item is also considered an export even if it is leaving the United States temporarily, if it is leaving the United States but is not for sale (e.g., a gift), or if it is going to a wholly-owned U.S. subsidiary in a foreign country. Even a foreign-origin item exported from the United States, transmitted or transshipped through the United States, or being returned from the United States to its foreign country of origin is considered an export. Finally, release of technology or source code subject to the EAR to a foreign national in the United States is “deemed” to be an export to the home country of the foreign national under the EAR.

HOW TO DETERMINE IF YOU NEED A COMMERCE EXPORT LICENSE

A relatively small percentage of total U.S. exports and reexports require a license from BIS. License requirements are dependent upon an item’s technical characteristics, the destination, the end-user, and the end-use. You, as the exporter, must determine whether your export requires a license. When making that determination consider:

1. **What** are you exporting?
2. **Where** are you exporting?
3. **Who** will receive your item?
4. **What** will your item be used for?

What are You Exporting?

The Export Control Classification Number and the Commerce Control List

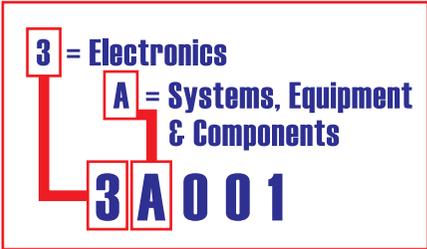
A key in determining whether an export license is needed from the Department of Commerce is knowing whether the item you intend to export has a specific Export Control Classification Number (ECCN). The ECCN is an alpha-numeric code, e.g., 3A001, that describes the item and indicates licensing requirements. All ECCNs are listed in the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) which is available on the Government Printing Office website *www.gpo.doc/bis*. The CCL is divided into ten broad categories, and each category is further subdivided into five product groups.

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 = Aerospace and Propulsion

Five Product Groups

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Material
- D. Software
- E. Technology



Classifying Your Item

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.

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.

Example

Assume that you have polygraph equipment that is used to help law enforcement agencies. What would be your ECCN? Start by looking in the Commerce Control List under the category of electronics (Category 3) and product group which covers equipment (Product Group A). Then read through the list to find whether your item is included in the list. In this example the item is 3A981 as shown below.

3A981 Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

License Requirements

Reason for Control: CC

Control(s)

CC applies to entire entry

Country Chart

CC Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Equipment in number

Related Controls: N/A

Related Definitions: N/A

The list of items controlled is contained in the ECCN heading.

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 many situations. However, if you plan to export an EAR99 item to an embargoed country, to an end-user of concern or in support of a prohibited end-use, you may be required to obtain a license.

EAR99 Items subject to the EAR that are not elsewhere controlled by this CCL Category or in any other category in the CCL are designated by the number EAR99.

Where are You Exporting?

Exports to embargoed countries and those designated as supporting terrorist activities such as Cuba, Iran, North Korea, Northern Sudan, and Syria are more restricted. However, restrictions vary from country to country.

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 “reasons for control” and the country of ultimate destination. You begin this process by comparing the ECCN with the Commerce Country Chart (Supplement No. 1 to Part 738).

Below the main heading for each ECCN entry, you will find “Reason for Control” (e.g., NS for National Security, AT for Anti-Terrorism, CC for Crime Control, etc.). Below this, you will find the “Country Chart” designator which shows the specific export control code(s) for your item (e.g., NS Column 2, AT Column 1, CC Column 1, etc.). These control codes for your ECCN must be cross-referenced against the Commerce Country Chart.

Countries	Commerce Country Chart															
	Reason for Control															
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Guyana	X	X		X		X	X	X	X	X	X	X		X		
Haiti	X	X		X		X	X	X	X	X	X	X		X		
Honduras	X	X		X		X	X	X	X	X	X	X		X		
Hong Kong	X	X		X		X		X	X	X				X		X
Hungary	X					X		X	X							
Iceland	X			X		X		X	X							
India	X	X	X	X	X	X	X	X	X	X		X		X		
Indonesia	X	X		X		X	X	X	X	X		X		X		

If there is an “X” in the box based on the reason(s) for control of your item and the country of destination, a license is required, unless a License Exception is available. Part 742 of the EAR sets forth the license requirements and licensing policy for most reasons for control.

Example

Question: You have polygraph equipment classified as 3A981 for export to Honduras. Would you be required to obtain an export license from the Department of Commerce before selling and shipping it to your purchaser?

Answer: Yes. 3A981 is controlled for Crime Control (CC) reasons under CC Column 1 and the Country Chart shows that such items require a license for Honduras.

If there is no “X” in the control code column(s) specified under your ECCN and country of destination, you will not need an export license unless you are exporting to an end-user or end-use of concern.

Example

Question: You have polygraph equipment classified as 3A981 for export to Iceland. Would you be required to obtain an export license from the Department of Commerce before selling and shipping it to your purchaser?

Answer: No. 3A981 is controlled for Crime Control (CC) reasons under CC Column 1 and the Country Chart shows that such items do not require a license for Iceland unless you are exporting to an end-user or end-use of concern.

Although a relatively small percentage of all U.S. exports and reexports require a BIS license, virtually all exports and many reexports to embargoed destinations and countries designated as supporting terrorist activities require a license. Part 746 of the EAR describes embargoed destinations and refers to certain additional controls imposed by the Office of Foreign Assets Control of the Treasury Department.

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:

Entity List – EAR Part 744, Supplement 4 – A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations. The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the Export Administration Regulations.

Treasury Department Specially Designated Nationals and Blocked Persons List – A list maintained by the Department of Treasury’s Office of Foreign Assets Control which administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers.

The Unverified List is composed of firms for which BIS was unable to complete an end-use check. Firms on the unverified list present a “red flag” that exporters have a duty to inquire about before making an export to them.

Denied Persons – A list of those firms and individuals whose export privileges have been denied is available on this website. You may not participate in an export or reexport transaction subject to the EAR with a person whose export privileges have been denied by the BIS. Note that some denied persons are located within the United States. If you believe a person whose export privileges have been denied wants to buy your product, you must not make the sale and report the situation to BIS’s Office of Export Enforcement. If you have questions about Denied Persons, you may contact BIS’s Office of Enforcement Analysis at (202) 482-4255.

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 parties 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. For more information on prohibited end-uses, please refer to Part 744 of the EAR.

WAYS TO EXPORT

Authorization to export is determined by the transaction: what the item is, where it is going, who will receive it, and what it will be used for. The majority of U.S. commercial exports do not require a license.

NLR – (“No License Required”)

Most exports from the United States do not require a license, and may be exported under the designation “NLR.” Except in those relatively few transactions, when a license is required because the destination is under 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 there is no “X” in the box on the Country Chart under the appropriate reason for control column on the row for the country of destination. (See the country chart example above.)

In each of these situations, you would enter “NLR” on your export documents.

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. If your export is eligible for a license exception, you would use the designation of that license exception (e.g., LVS, GBS, TMP) on your export documents.

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 24 months.

WHERE TO GET ASSISTANCE

A good starting point for information on export licensing requirements and the regulations is to attend one of our export control seminars. A list of upcoming seminars is posted on the BIS website at www.bis.doc.gov.

For counseling assistance, you may call one of our export counselors at 202-482-4811 (Washington, DC), 949-660-0144 (Western Regional Office), or 408-998-8806 (Northern California). You may also register to receive email notifications of upcoming seminars.

SUMMARY OF STEPS TO TAKE TO PROCESS YOUR EXPORT

- Ensure that your export is under U.S. Department of Commerce jurisdiction.
- Classify your item by reviewing the Commerce Control List.
- If your item is classified by an Export Control Classification Number (ECCN), identify the Reasons for Control on the Commerce Control List.
- 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 prohibited end-users or end-uses are involved with your export transaction. If prohibited 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 EAR99 or the correct ECCN and the appropriate symbol (e.g., NLR, license exception, or license number and expiration date) on your export documentation (e.g., Automated Export System (AES) record).

A PPLYING FOR AN EXPORT LICENSE

If an export license is required, you may submit an export license application via the on-line *Simplified Network Application Process Redesign (SNAP-R)*. Visit the SNAP-R section of the BIS website for more information on signing up to be a SNAP-R user.

In the SNAP-R system, exporters may prepare a commodity classification request or application for export or reexport. Requirements for submitting a license application are detailed in Part 748 of the EAR. Exporters must be certain to follow the instructions on the applicaion carefully. In most cases, technical brochures and support documentation must also be included.

There are limited circumstances in which an exporter may submit an original paper form BIS-748P.

E XPORT LICENSE APPLICATION PROCESSING

Our agency conducts a complete analysis of the license application along with all documentation submitted in support of the application. We review the item, its destination, its end-use, and consider the reliability of each party to the transaction. In addition to our review, applications are often sent for interagency review by the Departments of State, Energy, and/or Defense. For information consult Parts 742 and 750 of the EAR.

You may check for the status of your pending export / re-export license applications, classification requests, and AGR notifications by visiting our System for Tracking Export License Applications (STELA) at <https://snapr.bis.doc.gov/stela> using your assigned application control number (ACN).

E XPORTER'S RESPONSIBILITY

Exporters should review BIS's "Know Your Customer Guidance and Red Flags" guidance which can be found in Supplement No. 3 to Part 732 of the EAR. These help you identify and avoid situations that might violate the EAR.

If you are issued an export license, or you rely on a license exception described in Part 740 of the EAR, you are responsible for the proper use of that license or license exception and for the performance of all of its terms and conditions.

If you export an item without either a license or a license exception, you are responsible for determining that the transaction is either outside the scope of the EAR or that the export is properly designated as "No License Required" (NLR).

Both the Foreign Trade Regulations of the Census Bureau (15 CFR Part 30) and the Export Administration Regulations require that exporters use the Automated Export System (AES) to file the Electronic Export Information (EEI) to be submitted to the U.S. Government for many export shipments. There are exceptions to this rule, but if you are required to submit an AES record, you must prepare it in accordance with the rules of the Foreign Trade Regulations (FTR). For more information about the FTR, AES, or the EEI, visit the Census Bureau website at www.census.gov. Also see Part 758 of the EAR for BIS export clearance requirements.

Remember, records on exports must be retained for five years from date of export, reexport or certain later activities. For additional information on record keeping see Part 762 of the EAR.

In addition, especially for transactions involving the Middle East, you may receive a request to comply with the boycott of Israel. If you comply with one of these requests, or do not report them to BIS, you will likely violate U.S. law. Contact the Office of Anticoycott Compliance at (202) 482-2381 for guidance.

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