



# EXPORT COMPLIANCE FUNDAMENTALS

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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 U.S. exports. 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. Release of technology or source code subject to the EAR, to a foreign national in the U.S., is "deemed" to be an export to the home country of the foreign national. Finally, if your foreign customer intends on exporting your product to a subsequent country, that is considered a "re-export" and are subject to U.S. Export regulations.

The Bureau of Industry and Security (BIS) is responsible for implementing and enforcing the Export Administration Regulations (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?

**Classifying Your Item (Schedule B and/or Harmonized System):** The Schedule B or Harmonized Number (HTS) is based on the international Harmonized System, which is the global system of nomenclature applied to most world trade in goods. This classification describes the goods in terms that are recognized globally and is required for export filing. You can self-classify, or consult with a trade compliance specialist such as a Licensed Customs Broker (LCB).

**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 (DOC) is determining 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.

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.

**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, 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 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.



## SUMMARY OF STEPS TO TAKE TO PROCESS YOUR EXPORT

1. Classify your item by reviewing the Commerce Control List (CCL).
2. If your item is classified by an ECCN, identify the Reasons for Control on the CCL.
3. 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.
4. 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.
5. 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).
6. Expiration date to use on your export documents. A BIS-issued license is usually valid for two years.

## WHERE TO GET ASSISTANCE?

[M.E.Dey & Co Inc.](#)

[Bureau of Industry and Security \(BIS\)](#)

[BIS Exporter Portal](#)

[Export Regulations \(EAR\)](#)

[Commerce Control List \(CCL\)](#)

[BIS Consolidated Screening List](#)