

Introduction to the US Export Administration Regulations (EAR)

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US export controls

Constantly challenging US export controls compliance

14 – 16 July 2026

Agenda

- I. Beginning Concepts**
- II. Scope of the EAR
- III. The 10 General Prohibitions
- IV. Export Control Classification
- V. Technology Controls
- VI. EAR Licensing and License Exceptions
- VII. Enforcement, Violations, and Penalties

Laws, Regulations and Government Agencies

Defense Articles / Defense Services

Government Agency:
US Department of State,
Directorate of Defense Trade
Controls (DDTC)

Legal Authority:
Arms Export Control Act (AECA)

Implementing Regulations:
International Traffic in Arms
Regulations (ITAR)

Control List:
US Munitions List (USML)

Website (guidance):
pmdtdtc.state.gov

Dual-Use, Military & Other Items

Government Agency:
US Department of Commerce,
Bureau of Industry and Security
(BIS)

Legal Authority:
Export Control Reform Act
(ECRA)

Implementing Regulations:
Export Administration
Regulations (EAR)

Control List:
Commerce Control List (CCL)

Website (guidance):
bis.gov

Dealings - Sanctioned Countries/ Persons

Government agency:
US Department of the
Treasury, Office of Foreign
Assets Control (OFAC)

Legal authority:
International Emergency
Economic Powers Act (IEEPA);
Trading with the Enemy Act
(TWEA)

Selected Programs:
Cuba, Syria, Iran, N. Korea,
Crimea Region
SDN/SSI-driven programs

Website (guidance):
ofac.treasury.gov

Other US Agencies Involved in Export Controls



Department of Justice:
Bureau of Alcohol Tobacco,
Firearms and Explosives
(ATF)



Department of Homeland
Security (DHS): Customs
and Border Protection
(CBP)



DHS: Immigration Customs
Enforcement (ICE)



Department of Energy
(DOE)



DoD: Defense Technology
Security Administration
(DTSA)



DoD: Defense Security
Cooperation Agency
(DSCA)

- See EAR Part 730, Supp 3

Application of Export Controls

- The application of export controls depends on:
 - **WHERE:** Place of export?
 - Example: Every person or article in U.S., including non-U.S. nationals and foreign-origin products, are subject to U.S. export controls
 - **WHO:** Nationality of the exporter?
 - Example: A U.S. national or a U.S. company is subject to U.S. export controls, even when all export activities occur outside of U.S.
 - Can also be subject to the local country's export controls
 - **WHAT:** Origin of the goods and/or technology being exported?
 - Example: U.S.-origin items remain subject to U.S. controls even after they leave the U.S.
 - May also be subject to the local country's export controls
 - Key Concept: An “item” is any commodity, software, or technology

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What Are Exports, Re-exports, Transfers in the EAR?

- **“Export”** means:
 - (1) an actual shipment or transmission of items out of the United States;
 - (2) a release of technology or source code (but not object code) to a foreign national in the United States (a “deemed” export); or
 - (3) a transfer by a person in the United States of registration, control, or ownership of a spacecraft subject to the EAR, in certain circumstances.
- A **“re-export”** is an export (as above) that occurs outside of the United States.
- A **“transfer (in-country)”** is a change in end use or end user of an item subject to the EAR within the same foreign country.
- NOT sending items to the United States

What Items Are “Subject To The EAR”?

- All U.S.-origin items wherever located.
- All items in the U.S., including in a U.S. Foreign Trade Zone or moving in transit through the U.S. from one foreign country to another.
- Certain foreign items when controlled U.S. content is above de minimis levels.
 - Foreign-made commodities that incorporate controlled U.S.-origin parts, components, materials or other commodities
 - Foreign-made commodities that are “bundled” with controlled U.S.-origin software
 - Foreign-made software that is commingled with controlled U.S.-origin software
 - Foreign-made technology commingled with controlled U.S.-origin technology
- Certain foreign-made direct products of U.S.-origin technology or software.
- Certain commodities produced by any plant or major component of a plant located outside the U.S. that is a direct product of U.S.-origin technology or software.

What Items Are **NOT** “Subject To The EAR”?

- Items that are exclusively controlled by another US Government agency (e.g., DDTC, OFAC, DOE, NRC, PTO)
- Foreign-made items that have less than the *de minimis* percentage of controlled US content based on principles described in EAR Section 734.4
- Most pre-recorded and printed media in the public domain
- Publicly available information and software
 - Includes publicly available encryption source code that is printed (subject to reporting requirements), but not in electronic form
 - Information is “published” when it becomes generally accessible to the interested public in any form
- Information and software that:
 - Arises during, or results from, fundamental research
 - Appears in patents or open (published) patent applications
 - Are non-proprietary system descriptions
 - Are certain telemetry data

The EAR *De Minimis* Provisions

- 0%, 10%, and 25%
- For a short list of items, the *de minimis* level is zero: certain high performing processors and encryption technology.
- Products/re-exports to certain countries, including terrorist-supporting countries listed in Part 740, Supplement 1, Country Groups E:1 or E:2, are not subject to the EAR when the following *de minimis* levels exist:
 - Re-exports of a foreign-made commodity incorporating controlled U.S.- origin commodities valued at **10% or less** of the total value of the foreign-made commodity;
 - Re-exports of foreign-made software incorporating controlled U.S.-origin software valued at **10% or less** of the total value of the foreign-made software; or
 - Re-exports of foreign technology commingled with or drawn from controlled U.S.- origin technology valued at **10% or less** of the total value of the foreign technology.

The EAR *De Minimis* Provisions (Cont'd)

- Most products/re-exports to all countries NOT listed in Country Group E:1 and E:2 are not subject to the EAR when the following *de minimis* levels exist:
 - Re-exports of a foreign-made commodity incorporating controlled U.S.-origin commodities valued at **25% or less** of the total value of the foreign-made commodity;
 - Re-exports of foreign-made software incorporating controlled U.S.-origin software valued at **25% or less** of the total value of the foreign-made software; or
 - Re-exports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at **25% or less** of the total value of the foreign technology.

The EAR *De Minimis* Rule for 9x515 and 600-Series Items

- Certain military and space grade items
- For most countries, the *de minimis* rule is 25% or less of U.S.-origin 9x515 or 600-series content
- For Country Group D:5 (i.e., U.S. arms embargo countries, including China), E:1, E:2 countries, *de minimis* threshold is 0%
 - Note, Country Group D:5 contains the countries subject to U.S. arms embargos and is equivalent to the countries listed in ITAR 126.1.

Foreign Direct Product Rules

- Non-U.S.-made items that are the direct product of certain U.S. controlled technology or software, or a plant or major component of a plant that is a direct product of that technology or software are subject to the EAR when exported from abroad, reexported, or transferred (in-country) to certain countries, end uses, or end users. (§ 736.2(b)(3))
- Comprised of 11 discrete FDP rules (§ 734.9)
- The scope of each FDP rule is based on:
 - The controls of the relevant item (*i.e.*, “600 series” items, 9x515 items, or other specified ECCNs); and
 - The destination, end user, or end use

Note: Certain FDP rules have “knowledge” requirement regarding destination/end use/end user

Note: When a non-U.S.-made item contains an ITAR item, the ITAR item remains subject to ITAR controls.

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The 10 General Prohibitions

- **General Prohibition 1**
Export and re-export of controlled items to listed countries.
- **General Prohibition 2**
Re-export and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled US content.
- **General Prohibition 3**
Re-export and export from abroad of the foreign-produced direct product of U.S. technology and software.
- **General Prohibition 4**
Engaging in actions prohibited by a denial order
- **General Prohibition 5**
Export or re-export to prohibited end-uses or end-users.

The 10 General Prohibitions

- **General Prohibition 6**
Export or re-export to embargoed country.
- **General Prohibition 7**
Support of proliferation activities and certain military intelligence end uses and end users
- **General Prohibition 8**
In transit shipments and items to be unladen from vessels or aircraft.
- **General Prohibition 9**
Violation of any order, terms, and conditions.
- **General Prohibition 10**
Proceeding with transactions with knowledge that a violation has occurred or is about to occur.

Key Issues Under the 10 General Prohibitions

- Classification of the item
- Destination of the export or re-export
- Ultimate end-user
- Ultimate end-use
- Conduct involved in the transaction (especially relevant when proliferation activities are involved – see G.P. 7, support of proliferation activities)

Export Compliance Requirements – Implementing the 10 GPs

- Controlled Products and Technology
 - Identify controlled products (procedure / form)
 - Lock-down controlled technology
 - Implement measures to prevent inadvertent releases of controlled technology
 - Obtain licenses for exports that require prior government authorization
- Export Screening
 - All customers (procedure / form)
 - Export transactions (procedure / form)

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Commerce Control List Structure (EAR § 738.2)

10 Categories of the CCL

0. Nuclear Materials, Facilities & Equipment and Miscellaneous
1. Materials, Chemicals, “Microorganisms” and Toxins
2. Materials Processing
3. Electronics (Design, Development and Production)
4. Computers
5. Telecommunications and Information Security
6. Sensors and Lasers
7. Navigation and Avionics
8. Marine
9. Aerospace and Propulsion

5 Product Groups

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

Reasons for Control

- 000-099 – National Security
- 100-199 – Missile Technology
- 200-299 – Nuclear Nonproliferation
- 300-399 – Chemical and Biological
- 500-599 – National Security or Foreign Policy
- 600-699 – Wassenaar Arrangement Munitions List (WAML) or former US Munitions List (USML)
- 900-999 – Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.

Reasons for Control

- **AT:** Anti-Terrorism
- **CB:** Chemical & Biological Weapons
- **CC:** Crime Control
- **FC:** Firearms Convention
- **MT:** Missile Technology
- **NP:** Nuclear Nonproliferation
- **NS:** National Security
- **RS:** Regional Stability
- **SL:** Surreptitious Listening
- **SS:** Short Supply
- **EI:** Encryption

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What is Technology under the EAR?

“Technology” is information necessary for the “development”, “production”, “use,” operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control “technology”) of an item.

Technology may be tangible or intangible

Includes: written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection

***Note**, the modification of the design of an existing item creates a new item and technology for the modified design is technology for the development or production of the new item

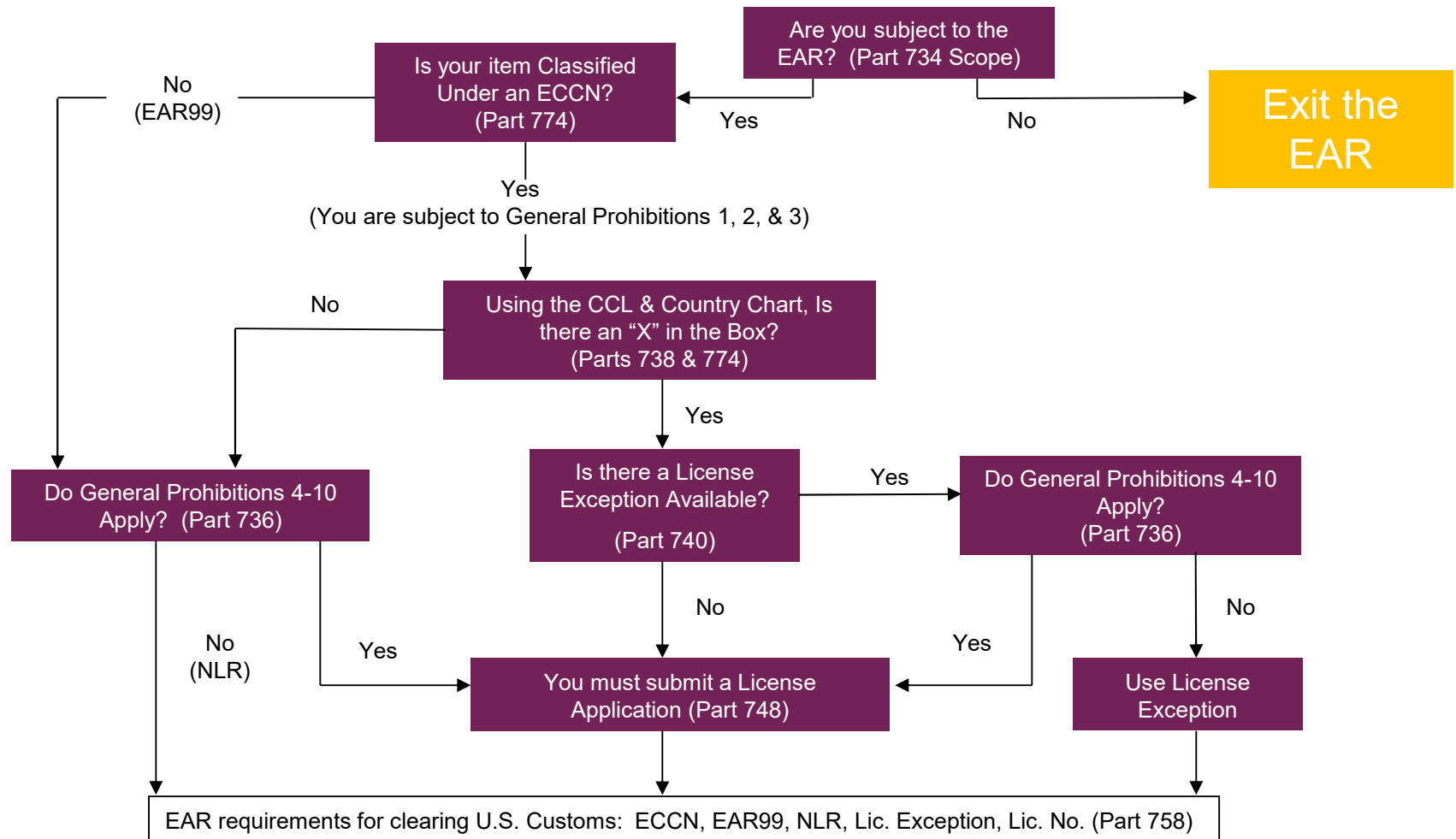
Ways That Technology Can be Released

- Generally, any release of technology or source code subject to the EAR to a foreign person is a **deemed export** to the foreign person's most recent country of citizenship or permanent residency.
- Technology may be released in numerous ways.
 - Physical or electronic access to technical data by foreign nationals in the United States
 - Oral exchanges of information with foreign nationals in the United States or abroad.
 - Visual inspection by foreign nationals of U.S.-origin equipment and facilities.
 - Observation by foreign persons of application to situations of personal knowledge or technical experience
- In practice
 - Employment of foreign person
 - Facility visit
 - Accessing data on a server

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EAR Licensing Requirements



No License Required (NLR)

- NLR may be used for:
 - EAR99 Items, or
 - ECCNs where there is no “X” in the relevant part of the Country Chart, and
 - When the transaction does not require an export license based on any other licensing requirement (e.g., end-use/user requirement)

Mandatory Electronic Filing via Simplified Network Application Process – Redesign (SNAP-R)

- Except in certain limited circumstances, common BIS filings must be made electronically via SNAP-R, including:
 - Export and Re-export License Applications
 - Deemed Export and Re-export License Applications
 - Classification Requests (CCATS)
 - Encryption Review Requests
 - License Exception AGR (agricultural commodities) Notifications

EAR License Exceptions

- A License Exception is an authorization specified under EAR Part 740 that permits the exportation of a product, software, or technology without a license subject to certain conditions.
- License Exceptions can be used even if General Prohibitions One, Two, Three, or Eight would normally apply.
- License Exceptions cannot be used to overcome General Prohibitions Four, Seven, Nine, or Ten.
- To determine whether a License Exception can be used to overcome General Prohibitions Five or Six, you must review EAR Parts 744 (prohibited end users and end user) and 746 (embargoed countries).

Use of License Exceptions

- Use of a License Exception constitutes a certification that all terms, provisions, and conditions for the use of the License Exception have been satisfied.
- The three letter symbol for the License Exception must be indicated on the EEI or AES transmission, except for License Exception TMP.
- A Destination Control Statement may need to be entered on commercial documents per EAR Section 758.6.
- Records relating to transactions for which License Exceptions are used must be maintained in accordance with the recordkeeping requirements of EAR Part 762.

Key EAR License Exceptions

- Temporary Imports, Exports, and Re-exports (TMP)
 - Authorizes various temporary exports and re-exports; exports and re-exports of items temporarily in the United States (tools of trade, Items for exhibition/demonstration, et al.)
 - Transaction based exception
- Servicing and Replacement of Parts and Equipment (RPL)
 - Authorizes exports and re-exports associated with one-for-one replacement of parts, components, accessories, and attachments or servicing and replacement of equipment.
 - Transaction based exception
- Shipments of Limited Value (LVS)
 - Authorizes the export and reexport in a single shipment of eligible commodities as identified by “LVS - \$(value limit)” on the CCL
 - List-based Exception
- Shipments to Country Group B Countries (GBS)
 - Authorizes exports and reexports to Country Group B.
 - List-based Exception

Key EAR License Exceptions

- Strategic Trade Authorization license exception (STA), authorizes the export, reexport and in-country transfer, of items with multiple reasons for control to a list of 37 countries and of national security reason for control to a smaller list of 8 countries. Prior consignee Statement required as well as consignee notification of shipment and reporting.
 - Defense trade with NATO countries and other close allies more efficient
 - List-based Exception
- Technology and Software — Unrestricted (TSU): authorizes the exports and reexports of operation technology and software; sale technology and software; software updates (bug fixes); “mass market” software subject to the General Software Note; and release of technology and source code in the United States by U.S. universities to their bona fide and full time regular employees.
 - Transaction based exception

Commerce Control List Entry

B. “Test”, “Inspection” and “Production Equipment”

5B001 Telecommunication test, inspection and production equipment, “components” and “accessories,” as follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart (See Supp. No. 1 to part 738)
NS applies to entire entry	NS Column 2.
AT applies to entire entry	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: \$5000, except N/A for 5B001.a (for 5A001.j)

GBS: Yes, except N/A for 5B001.a (for 5A001.j)

ACE: Yes for 5B001.a (for equipment and “specially designed” “components” or “accessories” therefor, “specially designed” for the “development” or “production” of equipment, functions or features, controlled by 5A001.j), except to Country Group E:1 or E:2. See § 740.22 of the EAR for eligibility criteria.

Special Conditions for STA

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EAR Violations

- 10 Prohibitions
- Causing, aiding, or abetting a violation
- Solicitation or attempt
- Conspiracy
- Ordering, buying, selling, transferring, transporting or taking other specified actions with respect to an item with knowledge that a violation has occurred, is about to occur, or is intended to occur in connection with the item concerned (same as G.P. # 10)
- Misrepresentation and concealment of facts
- Engaging in a transaction with intent to evade the EAR
- Failure to comply with reporting or recordkeeping requirements
- Altering a license or other export control document
- Acting contrary to the terms of a denial order

“Knowledge”

- Most EAR prohibitions and civil violations are per se violations that do not require knowledge – e.g., exporting without a required license
- Some knowledge-based violations and license requirements – e.g. GP 7 (Providing services you know will assist proliferation activities), GP 10 (Engaging in transaction with knowledge that a violation of the EAR or a license or other authorization has occurred, is about to occur or is intended to occur with respect to the item concerned)
- Knowledge – “includes not only positive knowledge . . . but also awareness of a high probability of [a circumstance’s] existence or future occurrence”

EAR Civil Penalties

- Civil monetary penalty of up to \$374,474 for each violation or twice the amount of the underlying transaction
 - A single transaction may involve multiple violations
- Denial of Export Privileges
 - May be imposed as penalty or protective measure
 - May include suspension or revocation of licenses, deny or restrict exports, or restrict any dealings in which person benefits from export or re-export of items subject to the EAR

EAR Criminal Penalties

- Under the Export Control Reform Act of 2018, an individual or corporate officer who knowingly participates in a violation can be sentenced to imprisonment for up to 20 years
- Individuals and corporations can be fined up to \$1 million
- Export control prosecutions often involve charges of violations of other criminal statutes – conspiracy, money laundering (for which an export controls violation is a predicate offense), obstruction of justice – with accompanying fines and other penalties

Presentation and Other Resources

- The recording of this session will be available at the Squire Patton Boggs (SPB) blog, Trade Practitioner, in the Learning Center at <https://www.tradepractitioner.com/learningcenter/>.
- Any questions following the webinar and the forthcoming US export controls workshop, please email the SPB team at SPBUSExportControls@squirepb.com.

Questions?

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