

EXPORT CONTROLS AND REGULATIONS

UNDERSTAND WHICH EXPORTS REQUIRE LICENSES

OVERVIEW

All U.S. exports (goods and services) are regulated by the U.S. federal government. In order to comply with federal law, your company must determine which government agency has jurisdiction over your exports and whether your exports need an export license. Any item that is sent from the U.S. to a foreign destination is an export, including commodities, software, and technology (such as blueprints or technical information). While a relatively small percentage of exports and re-exports require a license, it is the exporter's responsibility to determine whether the export requires a license. License requirements are dependent upon, among other things, an item's technical characteristics, the destination, the end user, and the end use.

Your company must determine which regulations apply to its exports. Most exports are regulated by either U.S. Department of Commerce Export Administration Regulations (EAR) or U.S. Department of State International Traffic in Arms Regulations (ITAR). Certain exports, such as those related to nuclear technology, are regulated by other U.S. agencies. The following is general information on the categories of products regulated by the EAR or ITAR. You should always consult with your legal counsel or the agency itself to confirm you have the most current information on the regulations.

Export Administration Regulations (EAR)

Bureau of Industry and Security, U.S. Dept. of Commerce

EAR regulates the export of:

- Most commercial goods
- Dual-use items with civilian and military applications involving national security, foreign policy, short-supply, nuclear non-proliferation, missile technology, chemical and biological weapons, regional stability, crime control, or terrorist concerns

While some of these items require an **export license under EAR**, many fall under the designation EAR 99, which refers to items that can be shipped without a license to most destinations under most circumstances.

International Traffic in Arms Regulations (ITAR)

Directorate of Defense Trade Controls, U.S. Dept. of State

ITAR regulates the export of:

- Items specifically designed, developed, or adapted for a military application—regardless of intended use
- Technical data/software or services related to any item controlled by ITAR

An export is regulated by ITAR if it is listed on the **U.S. Munitions List** or if it is technical data/software or a service related to an item on the U.S. Munitions List.

Resources

Your company should work with a legal or other expert in export laws and regulations to develop an export compliance strategy. That strategy may include:

- Create customized **export compliance guidelines** for your company
- **Exporters must now screen** not just the customer, but also the full ownership structure of foreign companies for prohibited end users.
- Tools to raise awareness of and reporting on “**red flags**,” such as a customer’s unwillingness to disclose an item’s end use (view the **Export Screening Video**)
- **Records retention requirements** on all export transactions, administrative elements, and compliance efforts for five years

Additional export considerations to be aware of include **Anti-Boycott Compliance**, **Foreign Corrupt Practices Act (FCPA)**, **Foreign Trade Embargoes/Sanctions**, and **Deemed Exports**.

Informed, voluntary compliance with U.S. export controls by the export trade community is an important contribution to U.S. national security. All parties to U.S. export transactions must ensure their exports fully comply with all statutory and regulatory requirements. Compliance involves not only controlled goods and technologies, but also restrictions on shipping to certain countries, companies, organizations, and/or individuals.

For more information, please contact the global trade and investment team:
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