Export Control - International Mailing

Presented

By

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Based on a wide range of considerations:

- Prevent transfer of sensitive items and technology to parties that could use them to harm the interest of the United States or its allies
- Balance safeguarding sensitive technology vs. commercial considerations of promoting exports
- Address various US foreign policy concerns
- Satisfy US domestic political concerns
- Additional foreign policy tool alternative to diplomacy or war
Export Control regulates Activities

- Exports
- Reexports
- Intra-country transfers
- Reexport or transfers of non-US origin items
- Deemed export and reexports
- Certain other activities
Primary U.S. Laws/Regulations

Agencies & Jurisdictions

**International Traffic in Arms Regulations (ITAR)**
Department of State
- Directorate of Defense Trade Controls (DDTC)
  - 22 CFR Parts 120 - 130

**Export Administration Regulations (EAR)**
Department of Commerce
- Bureau of Industry and Security (BIS)
  - 15 CFR Parts 730 - 774

**Office of Foreign Assets Control (OFAC)**
U.S. Depart of the Treasury
- 31 CFR 500

**Licenses Defense Articles and Services**
Primary Licensing Agency for Dual-Use Exports
Administers Economic Sanctions (Embargoes)
Controls military and commercial items that are not on other export control lists such as the USML and the Nuclear Equipment and Materials List (NEML).

The Commerce Control List (CCL) controls most commercial and dual use items, i.e., products, materials, technology, and software that are not on any other export control list.

The CCL requires licenses based on the Export Control Classification Number (ECCN) of the item and the destination, recipient and use.
Covered Items/Activities:

- Export, re-export, and manufacture of defense articles.
- Export and re-export - including deemed export and re-export - of technical data.
- Performance of defense services for foreign persons.
- Brokering activities.
- Temporary Imports of defense articles.
Near-total embargoes, covering most business dealings, against Cuba, Iran, Sudan, North Korea, and Syria.

Partial embargo against 27 countries

Exception for "information and informational materials," but not if the information is subject to export controls and not for "services."
OFAC Restrictions (31CFR560)

- OFAC prohibits the transfer of anything of value and the provision of services to countries subject to U.S. sanction programs, boycotts, etc. without a license.

- Sanctions are complicated and vary across countries.

- OFAC often prohibits US Persons for being involved in or facilitating transactions with embargoed countries or listed parties.
The deemed export rule states that the release of controlled technology or software to a foreign person in the United States is deemed to be an export of such technology/software to the home country of the FN.

- Visual inspection by foreign persons of U.S.-origin equipment and facilities
- Oral exchanges of information
- Visual or re-engineering of an Item to extract the technology within the article as technical data or software.
### 35 EAR Favorable Countries

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What Is An Export?

An export is the transfer of export controlled information, commodities or software either inside the U.S. or outside the U.S. States. It is:

- **Physical shipment** of goods or items, e.g., biological and chemical samples, diagnostic and analytical instruments and tools, etc.

- **Release** of specific technical data to any foreign national, e.g., reports, drawings, specs, etc.;

- **Providing access** to a foreign national, e.g., visiting scientist, faculty, student, post doc, etc., to any controlled product, technology;

- **Electronic/digital/oral transmission/disclosure** of goods, technical data or items, e.g., email, phone, fax, internet, CD, discussions, etc.
What is Subject to Export Controls?

- Commodities
- Technical data
- Software
- Defense services
- Technology
Important Terms

- **Item**
  - Commodities, software and technology.

- **Technology**
  - Specific information necessary for the "development", "production", or "use" of a product. The information takes the form of "technical data" or "technical assistance".

- **Export**
  - A shipment or transmission of items out of the US.

- **Re-export**
  - A shipment or transmissions of items subject to Export Controls from one foreign country to another foreign country.

- **Deemed export/re-export**
  - Release of technology or source code to a foreign person in the U.S. is deemed to be an export; the release by a foreign person to a foreign person of another foreign country is deemed to be a re-export.
0 - Nuclear Materials, Facilities & Equipment (and Misc. Items)
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 - Propulsion Systems, Space Vehicles and Related Equipment
CCL Groups – EAR

A - Equipment, Assemblies and Components
B - Test, Inspection and Production Equipment
C - Materials
D - Software
E - Technology
USML Categories – ITAR (military)

**U.S. Munitions List:** Core of ITAR system, listing all key military items subject to ITAR controls and divided into 21 “categories”:

I-Firearms, Close Assault Weapons and Combat Shotguns
II-Guns and Armament
III-Ammunition/Ordinance
IV-Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
V-Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
VI-Vessels of War and Special Naval Equipment
VII-Tanks and Military Vehicles
VIII-Aircraft and Associated Equipment
IX-Military Training Equipment
X-Protective Personnel Equipment
XI-Military Electronics
XII-Fire Control, Range Finder, Optical and Guidance and Control Equipment
XIII-Auxiliary Military Equipment
XIV-Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
XV-Spacecraft Systems and Associated Equipment
XVI-Nuclear Weapons, Design and Testing Related Items
XVII-Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
XVIII-Directed Energy Weapons
XIX-Gas Turbine Engines and Associated Equipment
XX-Submersible Vessels, Oceanographic and Associated Equipment
XXI-Miscellaneous Articles
License Requirements

An **export license is required** when exporting technologies regulated by the EAR, ITAR or when engaged in activities regulated by OFAC. The following examples deserve special attention:

- Shipment of covered hardware and software outside the U.S. requires a license (EAR, ITAR, and OFAC).
- Technical Assistance Agreements (TAAs) where U.S. citizens or permanent residents are providing training of foreign persons where a covered technology is involved, requires a license.
- Acceptance of export controlled data for use by foreign national researchers in a University laboratory requires a license.
- When a research agreement carries restrictions on publications/foreign nationals, a license is required.

An **EAR and ITAR export licenses are not required** when there are no publication, foreign national, or access and dissemination restrictions, **but OFAC** may require a license.
The international transfer of information via various mail and delivery/courier services requires diligence on the part of the sender:

- Transfer of any item overseas is an export
- Must comply with all U.S. export laws and regulations.
International Mailing Form

Form (attach copy of courier mailing label):

- Package contents (detail) ___________________________
- EAR CCL or ITAR Category ___________________________
- Name and address of ultimate receiver ________________
- Number of articles to the same address (separate form for each) ______
- Sender’s name ____________________________________
- Sender’s department ________________________________
- Account (fund) number ______________________________
- Signature (PI/Originator) ____________________________

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Questions

- Who controls the shipping labels?
- Who knows what is to be shipped?
- Whose responsibility to acquire the CCL or USML Category?
- Whose signature is required?
- Export Control CCL/USML designation prior to mailing?
Export Control Compliance Questions:

What is the Item? Know the classification (ECCN) of the item/technology being exported. e.g., technology parameters, functions, characteristics? What is the end use? Is it “military” or “dual use”?

Where is it going? Know the receiving country.

Who will receive it? Know who will use it.

Who will use it?

What will be the end-use? Ensure that it will not be used for purposes contrary to the regulations.

An export is judged both on physical destination and citizenship of end-user, e.g., if the software has been lawfully exported to Germany and you invite a Chinese national to access the software in Germany, it is considered an export to both countries.

An additional point, if you exporting from your office in Germany, then you may need permission from both Germany and the U.S.
No EC Designated Required (NLR)

- DS-2019 and associated paperwork
- VISA supporting documents
- Employment Offer letters
- Student application acceptance letters
- Student Records, etc.
- Marketing materials
- Mass mailings
- Executed Agreements, MOUs, NDAs, etc.
- Published and Public Domain materials
Why does Rensselaer want to comply?

Voluntary Self-Disclosure

&/or

Penalties
§ 758.3 RESPONSIBILITIES OF PARTIES TO THE TRANSACTION

PRINCIPLE PARTY OF INTEREST:

“All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.”
http:www.rpi.edu/exportcontrol

- Posted:
  - Red Flags
  - Presentation
  - Export Control Management Plan (being revised)
  - International Travel
    - Special Rules for Laptops & Smart Phones; Conduct
  - International Mailing

- Future:
  - FAQs
  - Do’s & Don’ts
  - Embargoed & Sanctioned Countries