Export Compliance Training

November 8, 2012
ML – Damon Room

Online training can be found here:
EAR License Determination
Ear Export Flow Chart

1. Define the item/activity. Is it controlled?
   - IF YES: Who has Jurisdiction?
     - EAR or ITAR?
       - IF ITAR: Do Administration, Documentation & SHIP!

2. Classify the Item. Can I use NLR?
   - IF YES: Is there a Catch All Control?
     - IF NO: APPROVED
     - IF YES: Apply for a License
       - IF YES or NO: STOP or change transaction
   - IF NO: Is there a License Exception?
     - IF YES: Is there a Catch All Control?
       - IF NO: DENIED

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Is it controlled?

- Items
- Software
- Technology
- Technical data
- Defense services
- Deemed exports
- Exports and reexports
What’s NOT controlled?

– Publicly available technical data and software
– Published for sale, in libraries open to the public, or through patents available at any patent office
– General scientific, mathematical, or engineering principles commonly taught in colleges and universities
– Available through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition (provided no previous government or industry restrictions on distribution applied)
– Arises during or results from fundamental research, where no restrictions on publication or access accepted
– Non-technical contract or business documents
START
Define the item/activity. Is it controlled?

IF YES
Who has Jurisdiction?
EAR or ITAR?

IF ITAR
Go to ITAR

IF EAR
Do Administration, Documentation & SHIP!

IF NO
APPROVED

Classify the Item. Can I use NLR?

IF YES
Is there a Catch All Control?

IF NO
STOP or change transaction

IF YES
Apply for a License

IF NO
Is there a License Exception?

IF YES
Is there a Catch All Control?

IF NO
DENIED
Who has jurisdiction? EAR or ITAR?

- Look at ITAR first!
- USML – US Munitions List
- USML is very specific
- Contains defense articles
- Things that go ‘boom’ or make other things go boom
- Satellites
EAR Export Flow Chart

START

Define the item/activity. Is it controlled?

- IF YES
  - Who has Jurisdiction?
  - EAR or ITAR?
  - IF ITAR
    - Go to ITAR

- IF EAR
  - Classify the Item.
    - Can I use NLR?
      - IF YES
        - Is there a Catch All Control?
      - IF NO
        - APPROVED
      - IF NO
        - Is there a License Exception?
          - IF YES
            - Is there a Catch All Control?
          - IF NO
            - IF YES or NO
              - DENIED
              - STOP or change transaction

Do Administration, Documentation & SHIP!
ITAR

- If it is on the USML, a license or documented exemption is required prior to any export anywhere in the world.
- If it is on the USML, it doesn’t matter if you might find it also on the CCL. ITAR has jurisdiction.
EAR Export Flow Chart

START

Define the item/activity. Is it controlled?

IF YES

Who has Jurisdiction?

IF ITAR

Go to ITAR

IF EAR

Classify the Item.

IF YES

Can I use NLR?

IF NO

Is there a License Exception?

IF YES

Is there a Catch All Control?

IF NO

APPROVED

DENIED

STOP or change transaction

IF YES or NO

Apply for a License

Do Administration, Documentation & SHIP!

IF NO

Is there a Catch All Control?
If not on USML, where is it on the CCL?

- CCL = the Commerce Control List
- A very big list
- 10 categories (0-9)
- 5 sub-categories (A, B, C, D, E)
Commerce Control List

**Ten Categories**

0 = Nuclear materials, facilities and equipment  
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 = Propulsion Systems, Space Vehicles, and Related

**Five Product Groups**

A. Systems, Equipment and Components  
B. Test, Inspection and Production Equipment  
C. Material  
D. Software  
E. Technology
Apple iPhone 5

- **ECCN:** 5A992

  - a. Telecommunications and other information security equipment containing encryption.
  - b. "Information security" equipment, n.e.s., (e.g., cryptographic, cryptanalytic, and cryptologic equipment, n.e.s.) and components therefor.
  - c. Commodities that BIS has received an encryption registration or that have been classified as mass market encryption commodities in accordance with § 742.15(b) of the EAR.

- **Reason for Control:** AT1 – **No License Required (NLR)** for any country except Cuba, Iran, N. Korea, Sudan, or Syria.
iTunes Software

• **EC CN: EAR99**

  • EAR99 Items subject to the EAR that are not elsewhere controlled by any other category in the CCL are designated by the number 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.
Reas ons for Cont rol

AT Anti-Terrorism
CB Chemical and Biological Weapons
CC Crime Control
CW Chemical Weapons Convention
EI Encryption Items
MT Missile Technology
NP Nuclear Nonproliferation
NS National Security
RS Regional Stability
ME Military End-Use
UN U.N. Sanctions
License Exceptions

Only three exceptions potentially apply to Deemed Exports.

- **CIV: Civil End Use (EAR 740.5)**
  Applies to Deemed Exports for 3E001/3E002 technology
  Requires Foreign National Review

- **TSR: Technology and Software Under Restriction (EAR 740.6)**
  Applies to technology and software under national security only for Country Group "B" nationals.
  Requires letter of Assurance

- **APP: Applied Peak Performance (EAR 740.7)**
  Applies to Deemed Exports for 4D001/4E001 software and technology
  Requires Foreign National Review
LICENCE EXCEPTION STRATEGIC TRADE AUTHORIZATION (STA)

This exception authorizes exports, reexports and in-country transfers, including releases within a single country of software source code and technology to foreign nationals in lieu of a license that would otherwise be required pursuant to part 742 of the EAR. The STA exception is eligible for use the only applicable Reasons for Control are National Security (NS), Chemical or Biological Weapons (CB), Nuclear Nonproliferation (NP), Regional Stability (RS), Crime Control (CC), and/or Significant Items (SI) — the last a non-Country Chart control — are going to destinations in or the nationals of Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, or United Kingdom; or when National Security (NS) only applies for destinations in or the nationals of Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, or Taiwan. There are 48 ECCNs that contain special restrictions, detailed in the License Exceptions section of the ECCN manifest for each.
• **SHIPMENTS OF LIMITED VALUE (LVS)**

License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by "LVS-$\text{(value limit)}$" on the CCL. This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry. See 740.3 for definitions, eligibility details, and restrictions.
SHIPMENTS TO GROUP B COUNTRIES (GBS)

License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740) of those commodities where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by "GBS - Yes" on the CCL. See 743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception GBS.
• **CIVIL END-USERS (CIV)**

License Exception CIV authorizes exports and reexports of items on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) that have a license requirement to the ultimate destination pursuant to the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) for NS reasons only; and identified by "CIV - Yes" in the License Exception section of the Export Control Classification Number (ECCN), provided the items are destined to civil end-users for civil end-uses in Country Group D:1, except North Korea (Supplement No. 1 to part 740 of this part).

• You may not use CIV if you "know" the item will be or is intended to be exported, reexported, or transferred within country to military uses or military end-users. Such exports, reexports, and transfers will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR. Deemed exports under License Exception CIV are not authorized to foreign nationals in an expired visa status. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States. See 743.1 of the EAR for reporting requirements for exports of certain items under this License Exception.
TECHNOLOGY AND SOFTWARE UNDER RESTRICTION (TSR)

License Exception TSR permits exports and reexports of technology and software where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by "TSR - Yes" in entries on the CCL, provided the software or technology is destined to Country Group B. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting under this License Exception. See 740.6 for details.
• **COMPUTERS (APP)**

License Exception APP authorizes exports and reexports of computers, including "electronic assemblies" and specially designed components therefor controlled by ECCN 4A003, except ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception APP eligibility, use the APP parameter to the exclusion of other technical parameters in ECCN 4A003.

License Exception APP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the "development", "production", or "use" of computers, including "electronic assemblies" and specially designed components therefor classified in ECCN 4A003, except ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section. Technology for computers controlled for missile technology (MT) reasons are not eligible for License Exception APP. See 740.7 for restrictions and eligibility details.
• **TEMPORARY IMPORTS, EXPORTS, AND REEXPORTS (TMP)**

  This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

  See 740.9 for scope, restrictions, and eligibility details.
• **SERVICING AND REPLACEMENT OF PARTS AND EQUIPMENT (RPL)**

  This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment. See 740.10 for restrictions, reporting, and eligibility details.
• **GOVERNMENTS, INTERNATIONAL ORGANIZATIONS, AND INTERNATIONAL INSPECTIONS UNDER THE CHEMICAL WEAPONS CONVENTION (GOV)**

• This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; and international inspections under the Chemical Weapons Convention. See 740.11 for restrictions, reporting, and eligibility details.
• **GIFT PARCELS AND HUMANITARIAN DONATIONS (GFT)**

  The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of "gift parcel."

  Note to paragraph (a) of this section: A gift parcel, within the context of this paragraph (a), does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in 734.2(b) of the EAR, must be licensed by BIS. (See 748.9(e) of the EAR for licensing of multiple gift parcels).

  See 740.12 for restrictions and eligibility details.
• **TECHNOLOGY AND SOFTWARE UNRESTRICTED (TSU)**

  This license exception authorizes 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 encryption source code (and corresponding object code) that would be considered publicly available under § 734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of 740.13).

• See 740.13 for restrictions, reporting, recordkeeping, and eligibility details.
• **BAGGAGE (BAG)**

  This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities and software described in this section. See 740.14 for eligibility details and special provisions.
• **AIRCRAFT AND VESSELS (AVS)**

  This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents. Generally, no License Exception symbol is necessary for export clearance purposes; however, when necessary, the symbol "AVS" may be used. See 740.15 for details.
• **ENCRYPTION COMMODITIES AND SOFTWARE (ENC)**

License Exception ENC authorizes export and reexport of software and commodities and components therefor that are classified under ECCNs 5A002.a.1, a.2, a.5, a.6 or a.9, 5B002, 5D002, and technology that is classified under ECCN 5E002. This License Exception ENC does not authorize export or reexport to, or provision of any service in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR, or release of source code or technology to any national of a country listed in Country Group E:1. Reexports and transfers under License Exception ENC are subject to the criteria set forth in paragraph (c) of this section. Paragraph (d) of this section sets forth information about review requests required by this section. Paragraph (e) sets forth reporting required by 740.17.

- See 740.17 for restrictions, reporting, recordskeeping, and eligibility details.
Catch All Controls

• Prohibited Parties
  – Denied persons, entities, debarred, etc.

• Embargoed Countries
  – Check with OFAC

• Proliferation Activities
  – Weapons, missiles, nuclear activities to certain countries
Catch All Controls continued

• Military End Use: China
  – Certain items, certain ECCNs

• Military End Use: Microprocessors
  – Certain items, for military end use, for certain countries

• Suspicious, illegal activity
  – Red flags

• Having knowledge that a violation has occurred or will occur
Apply for a license

• Call Kerry Slaven in Logistics x1151
  or
• Call Dave Sundvall in Business Services
  x8898
EAR Export Flow Chart

START

Define the item/activity. Is it controlled?

IF YES

Who has Jurisdiction?
EAR or ITAR?

IF ITAR

Go to ITAR

IF EAR

Classify the Item. Can I use NLR?

IF YES

Is there a Catch All Control?

IF NO

APPROVED

IF YES

Apply for a License

IF DENIED

STOP or change transaction

IF NO

Is there a License Exception?

IF YES

Is there a Catch All Control?

IF YES or NO

Do Administration, Documentation & SHIP!
Ship

- Contact Logistics
- Paperwork, electronic filing
- Recordkeeping – 5 years after export
START

Define the item/activity. Is it controlled?

IF YES

Who has Jurisdiction?

Ear or ITAR?

IF ITAR

Go to ITAR

IF EAR

Classify the Item. Can I use NLR?

IF YES

Is there a catch All Control?

IF NO

APPROVED

IF YES

Apply for a License

IF YES or NO

STOP or change transaction

IF NO

Is there a License Exception?

IF YES

Is there a catch All Control?

IF NO

DENIED
Change the Transaction

• Maybe a different item could be shipped; one that might still meet project needs, but not be controlled in the same way.

• Maybe the project can be changed so that controlled items or tech data need not be shared.
Penalties for Export Control Violations

- **The Export Administration Regulations (EAR)**
  - **Criminal Sanctions:**
    - "WILLFUL VIOLATIONS"  
      - **Entity:** A fine of up to the greater of $1,000,000 or five times the value of the exports for each violation;  
      - **Individual:** A fine of up to $250,000 or imprisonment for up to ten years, or both, for each violation.
  - "KNOWING VIOLATIONS"  
    - **Entity:** A fine of up to the greater of $50,000 or five times the value of the exports for each violation;  
    - **Individual:** A fine of up to the greater of $50,000 or five times the value of the exports or imprisonment for up to five years, or both, for each violation.
  - **Civil (Administrative) Sanctions:**  
    - The imposition of a fine of up to $12,000 for each violation, except that the fine for violations involving items controlled for national security reasons is up to $120,000 for each violation. Additionally, for each violation of the EAR any or all of the following may be imposed:  
      - The denial of export privileges; and/or  
      - The exclusion from practice; and/or  
      - Seizure/Forfeiture of goods.

  - **NOTE:** Penalties associated with violations of the Export Administration Regulations presently fall under the purview of IEEPA, pending reauthorization of the Export Administration Act (EAA). IEEPA sanctions are as follows:
  - **Criminal Sanctions:**  
    - **Entity:** A fine of up to $1,000,000 for each violation;  
    - **Individual:** A fine of up to $1,000,000 or imprisonment for up to twenty years, or both, for each violation.
  - **Civil (Administrative) Sanctions:**  
    - **Entity:** A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater;  
    - **Individual:** A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater. Additionally, for each violation of the IEEPA any or all of the following may be imposed:  
      - The denial of export privileges; and/or  
      - The exclusion from practice; and/or  
      - Seizure/Forfeiture of goods.
Penalties for Export Control Violations

- **The International Traffic in Arms Regulations (ITAR)**
  - **Criminal Sanctions:**
    - **Entity** - A fine of up to $1,000,000 for each violation;
    - **Individual** - A fine of up to $1,000,000 or up to ten years in prison, or both, for each violation.
  - **Civil Sanctions:**
    - **Entity** - A fine of up to $500,000 for each violation;
    - **Individual** - A fine of up to $500,000 for each violation.
    - Additionally, for any violation of the ITAR either or both of the following may be imposed:
      - The denial of export privileges; and/or
      - Seizure/Forfeiture of goods.

- **The Office of Foreign Assets Control (OFAC)**
  - **Criminal Sanctions:**
    - **Entity** - A fine of up to $1,000,000 for each violation;
    - **Individual** - A fine of up to $1,000,000 or up to twenty years in prison, or both, for each violation.
  - **Civil Sanctions:**
    - **Entity** - A fine of up to $55,000 for each violation;
    - **Individual** - A fine of up to $55,000 for each violation.
    - Additionally, for any violation of the OFAC regulations, seizure and forfeiture of goods may result.