



OVERVIEW ON U.S. EXPORT CONTROLS

Most export transactions do not require specific approval from the U.S. Government. In order for certain export transactions to take place legally, however, an exporter must obtain, in advance, a special export permission, called a license. Licenses are required in certain situations involving national security, foreign policy, short-supply, nuclear non-proliferation, missile technology, chemical and biological weapons, regional stability, crime control, or terrorist concerns.

Four U.S. Government agencies have primary export licensing responsibilities: the Departments of Commerce, Energy, State, and the Treasury. The majority of exports which do require a license are either controlled on the Commerce Control List (CCL), administered by the Commerce Department, or the U.S. Munitions List (USML), administered by the State Department. The CCL is used to regulate the export and re-export of items that have commercial uses but also have possible military applications ("dual-use" items). The USML is used to control the export of defense articles, services, and related technologies. The Defense Department is actively involved in the inter-agency review of those items controlled on both the CCL and the USML. The agencies work together when there is a question about whether a proposed export is controlled on the CCL or the USML. The Energy Department controls nuclear technology and technical data for nuclear power. These agencies collectively review certain proposed dual-use exports.

The Treasury Department is responsible for economic and trade sanctions against targeted foreign countries and their agents, terrorists and terrorism-sponsoring organizations, and international narcotics traffickers.

Several other federal agencies also have some licensing responsibilities. These are listed on the Commerce Department's webpage at <http://www.bxa.doc.gov/reslinks.htm>, along with a brief explanation of each agency's responsibilities.

The U.S. Government controls exports on a case-by-case basis, examining the following factors: the destination, the end-user, the product, and its end-use. Those entities handling or servicing the sale of the product may also be a factor. When a company decides to export, it must review these factors for each transaction:

THE DESTINATION: ARE THERE COUNTRIES TO WHICH I AM NOT PERMITTED TO EXPORT?

The United States severely restricts exports to several countries. Certain exports, however, may be approved with a license. The Office of Foreign Assets Control (OFAC) at the Treasury Department has information about embargoed countries on its website at <http://www.treas.gov/ofac>, or the office can be contacted at (202) 622-2426. Currently, U.S. persons are generally prohibited from exporting to Cuba, Iran, Iraq, Libya, Sudan, and the Unitafaction in Angola. U.S. persons cannot export mining equipment, military material, petroleum and petroleum products, aircraft and aircraft components, motorized vehicles or watercraft and any related spare parts to Angola other than through certain designated ports. The provision of mining, transportation and aircraft services is similarly restricted to areas that are considered not

to be under the control of the Angolan central government. (For more information about permitted ports and restricted areas in Angola, please see Title 31, Part 590 of the Code of Federal Regulations, available on <http://www.treas.gov/ofac>). In most cases, licenses are issued for exports of agricultural goods, medicines, and medical equipment to sanctioned countries.

THE END USER: ARE THERE ENTITIES TO WHICH I AM NOT PERMITTED TO EXPORT?

Exporters should screen all parties involved in an international transaction against the "Prohibited Parties Lists". The "Prohibited Parties Lists" is a term used to describe the four lists of entities with which an exporter is prohibited from doing business under most circumstances:

- The **SDN** (Specially Designated Nationals) List is published by OFAC on the internet (<http://www.treas.gov/ofac>) as well as in the Federal Register. SDNs are individuals and entities located throughout the world that are blocked pursuant to the various sanctions programs. SDNs can be front companies, parastatals, or individuals determined to be owned or controlled by, or acting for or on behalf of, targeted countries or groups. They can also be specifically identified individuals such as terrorists or narcotics traffickers. U.S. persons are prohibited from engaging in any transactions with SDNs and must block any property under their control in which an SDN has an interest.

In the aftermath of the September 11 terrorist attacks, President Bush issued Executive Order 13224 for the purpose of "blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism." This order created a new category of SDNs called "Specially Designated Global Terrorists" (SDGTs), resulting in a significant expansion of the SDN list. Due to the frequency of additions to the SDN list, U.S. persons are encouraged to check the [OFAC web site](#) on a daily basis for updates.

- The **Denied Persons List** contains the names of persons who have been issued a denial order by the Commerce Department's Bureau of Industry and Security (BIS). U.S. exporters, and third parties in general, are prohibited from dealing with denied parties in transactions involving U.S. items. The list can be accessed at <http://www.bxa.doc.gov>.

- BIS also maintains an **Entities List**, comprising foreign end-users engaged in proliferation activities. Since these entities pose proliferation concerns, exports to them are usually prohibited without a license. However, since the BIS guidelines are administered under a case-by-case basis, there are some listed entities that can still receive low-level technology without an export license. This list can be accessed through BIS's website at <http://www.bxa.doc.gov>.

- The **Debarred Parties List** is maintained by the U.S. State Department. It lists the names of individuals denied export privileges under the International Traffic in Arms Regulations (ITAR). The information can be accessed at <http://www.pmdtc.org>.

Even if a party is not a prohibited entity, the end-user will become an important factor if a transaction needs a license. The license issuing agency will want to screen the foreign customer's history, and examine any prior violations of U.S. laws or placement on any of the lists mentioned above. The U.S. firm applying for the license should also know not just who the customer is, but who owns the company.

THOSE SERVICING THE SALE OF THE PRODUCT: WHAT ABOUT SHIPPING LINES, INSURERS, AND BANKS?

It is important for exporters to take care in screening the parties involved in servicing the sale of the product. For example, an otherwise legitimate trade transaction may be a violation of sanctions if one of the banks involved in the financing is on OFAC's SDN List. Since the SDN List contains the names of banks, insurance companies, shipping lines, and freight forwarders throughout the world, exporters need to evaluate all parties to a trade transaction, not just the buyer or the end user.

THE PRODUCT AND ITS END USE: DOES MY PRODUCT REQUIRE A LICENSE?

Sophisticated and high technology products; short supply items; technical information and products that have defense, strategic, weapons development, proliferation or law enforcement applications can be subject to export licenses. Major factors in determining whether an export license is required include the destination and end-use of the product or service. Some chemicals, for instance, that could possibly be used in weapons of mass destruction are subject to export controls. For example, "precursor chemicals" are prohibited to Syria. However, some exports may be subject to controls regardless of the function or the country to which they are shipped.

It is up to the exporter to determine whether the product requires a license and to research the end use of the product, in other words, to perform "due diligence" regarding the transaction. Exporters should learn which federal department or agency has jurisdiction over the item they are planning to export in order to find out if a license is required.

- The Commerce Department focuses primarily on dual-use items, i.e., items that can be used for both military/strategic purposes and commercial applications. Exporters should consult the Commerce Department's BIS and find out if the items or services they are planning to export are classified on the Commerce Control List (CCL). If a product appears on this list, it may require a license. In general, this list contains items controlled by the Export Administration Regulations (EAR) because they are considered to be "dual use" items.
- The State Department's Office of Defense Trade Controls (DTC) licenses defense services and defense munitions articles.
- The Department of Energy licenses nuclear technology and technical data for nuclear power and special nuclear materials. It licenses the export of electric power to Mexico and Canada. It also licenses the export of natural gas.

An exporter should request a "commodity jurisdiction" (CJ) determination to resolve any uncertainty regarding the export licensing jurisdiction of an item or service. A CJ is used to determine whether an item or service is subject to the export licensing authority of BIS or DTC. Contact BIS at (202) 482-4811 for more details. Another option is to contact the Office of Defense Trade Controls at (703) 875-6644 or via fax at (703) 875-6647 (Attn: PM/DTC/CJ).

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WITH ALL THESE LISTS AND AGENCIES, WHERE SHOULD AN EXPORTER START TO ENSURE COMPLIANCE WITH THE VARIOUS EXPORT REGULATIONS?

The country to which a product is to be exported should be considered first. Potential transactions should be checked for compliance with the sanctions administered by the Treasury and Commerce Departments. If a transaction is subject to country-specific sanctions, it may be eligible for a license, depending on the goods involved. Call OFAC at 202-622-2490 with any questions regarding country-specific sanctions and where to apply for a license.

The next step should be to obtain information about a customer and how that customer will use a product. Information about the customer's location, including complete street address (P.O. boxes are not enough) and phone number, the nature of its business, ownership and control, and information with regard to the final destination and use of the product is necessary for determining if the export is in compliance with U.S. law. Always check all parties against the Prohibited Parties Lists, including Treasury, Commerce, and State. Don't forget freight forwarders, banks, shipping lines and insurers.

To determine whether a license is needed to export a particular product or service, an exporter must classify the item by identifying what is called an Export Control Classification Number (ECCN) for the item. View the Business and Security's website at <http://www.bxa.doc.gov> to get help with the ECCN and consult the TIC's "Ask the TIC" column online. Products under ECCN# EAR 99, a broad category, normally do not require a license when shipped to most destinations. For information on other categories, the exporter should contact BIS directly at (202) 482-4811. When in doubt about agency jurisdiction, the exporter can also contact BIS, as BIS will route the application to other agencies for a determination.

WHAT ARE THE PENALTIES FOR NOT COMPLYING WITH EXPORT CONTROL LAWS?

Millions of dollars in civil penalties are imposed each year by the federal government for violations of export control laws. BIS's website contains real-world examples of civil penalties that have been imposed in the past. Civil penalties assessed by OFAC are \$11,000 per prohibited transaction in most cases, but can reach \$275,000 per infraction under the sanctions against Iraq and \$1,000,000 if they involve narcotics "kingpins". In cases where there is criminal intent to violate export control laws, criminal penalties can be imposed, resulting in significant corporate or personal fines as well as imprisonment.

(Call the U.S. Export Assistance Center in New Orleans at 504-589-6546 or in Shreveport at 318-676-3064 for export assistance.)

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