

Overview

Export Licensing Under EAR

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U.S. export control laws restrict the export of certain goods, technology, information, and services without prior authorization. While there are several categories of export controls, the two most important are the [Export Administration Regulations](#) (EAR) and the International Traffic in Arms Regulations (ITAR).

The vast majority of controlled exports fall under EAR, while the ITAR's scope is limited to only military and defense-related articles, services, information, and technology. The U.S. Department of Commerce's Bureau of Industry & Security (BIS) enforces EAR under [15 C.F.R. Parts 730-774](#). This article provides an overview of export licensing requirements under EAR.

EAR governs whether a person/entity may:

- Export an item from the U.S.
- Reexport that item from a foreign country
- Transfer an item from one person to another

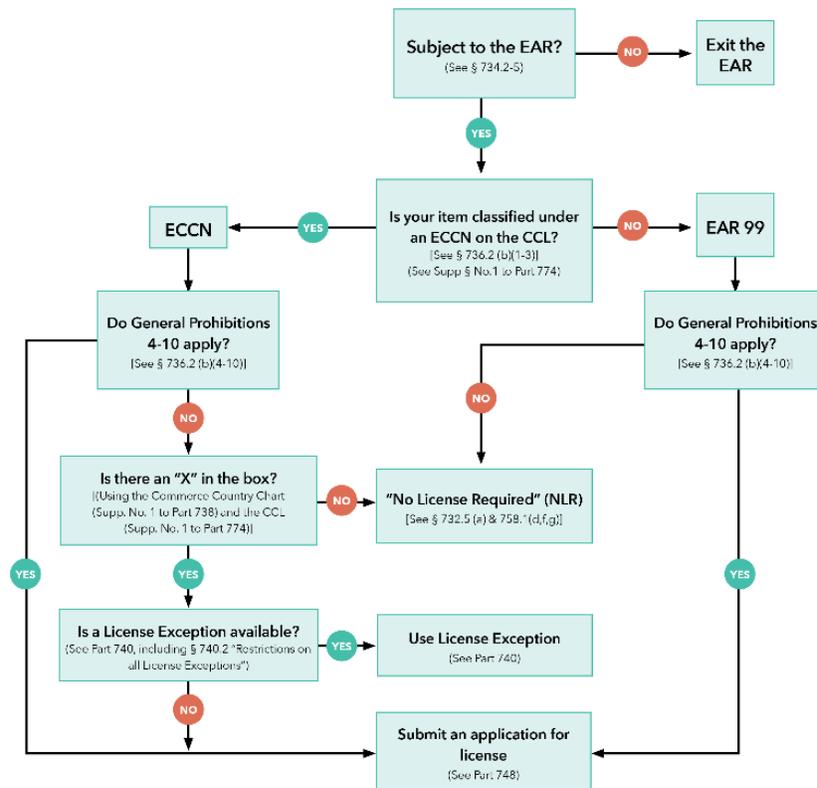
The purpose of EAR is to safeguard U.S. national security interests by ensuring that certain critical technology does not fall into the wrong hands. Violations of EAR carry [heavy penalties](#). An EAR violation can result in civil penalties of \$300,000 per violation or twice the value of the transaction, whichever is greater. EAR violations can even result in criminal liability, such as \$1 million criminal penalty per violation or up to 20 years in prison.

EAR violations can also result in items being surrendered, loss of export privileges, and harm to an [exporter's reputation](#). A key first step to avoiding the civil and criminal consequences of noncompliance is an informed understanding of export licensing requirements and exceptions.

The following [export control decision tree](#) is a flowchart found in Supplement No. 1 to Part 732 of EAR. This article explains how to navigate the export control decision tree.

SUPPLEMENT NO. 1 TO PART 732

Export Control Decision Tree



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Export Defined

Under EAR, an export is broadly defined. Exporting for the purposes of EAR includes the traditional concept of exporting—sending an item to anyone outside of the U.S.—but it also includes a transfer or release of a controlled item to any foreign entity or national wherever located, including within the U.S. A foreign national is anyone who is not a U.S. citizen, U.S. permanent resident, or a protected person—such as a political refugee or asylum holder.

For the purposes of EAR, exports include more than physical goods. They include software, technology, and technical information. EAR considers an item an export even if it is not for sale or is leaving the U.S. for only a short period of time.

EAR Export Applicability

Once you determine that your proposed shipment or transfer is an export, you must evaluate your proposed export via the export control decision tree.

The first step of the export control decision tree is to determine whether your export is subject to EAR. The scope of items subject to EAR is exceedingly broad. Pursuant to [15 C.F.R. § 734.3](#), the following items are subject to EAR:

- 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
- All U.S. origin items wherever located
- Foreign-made commodities that incorporate:
 - Controlled U.S.-origin 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 that is commingled with controlled U.S.-origin technology
- Certain foreign-made [direct products](#) of U.S. origin technology or software (i.e., those products immediately produced by the use of the U.S. technology or software)
- Certain commodities produced by any plant or major component of a plant located outside of the U.S. that is a direct product of U.S.-origin technology or software

If the proposed export is not subject to EAR, then EAR does not apply to the subject export. However, if the proposed export is subject to EAR, then the exporter should move on to the next step in the export control decision tree: classification.

Classifying Exports

The [commerce control list](#) is a list of EAR-controlled items (i.e., commodities, software, and technology) subject to the licensing authority of BIS. The CCL-designated specified [export control classification numbers](#) (ECCNs) to a broad range of items, along with the reasons for why those items are controlled by EAR. All items subject to EAR are either classified under a specific ECCN or designated the catch-all classification of [EAR99](#).

Practice Tip: It is essential to correctly classify your export to fully understand the export control implications. When seeking to classify your product, you should:

- Request the ECCN from the manufacturer and have your technical team verify that this ECCN is correct
- Research how competitors are classifying similar items (ECCNs are often included as part of marketing literature or technical specification sheets)
- Consult [BIS counselors](#) to assist you in classifying your export
- Seek legal counsel with assistance in the export classification process

ECCNs are a five-digit alphanumeric code. The first digit lists the [CCL category](#). Following are the 10 CCL categories that all CCL-listed controlled items fall into:

- 0: Nuclear Materials, Facility, Equipment, & Miscellaneous Items
- 1: Materials, Chemicals, Microorganisms, & Toxins
- 2: Materials Processing
- 3: Electronics

- 4: Computers
- 5 (Part 1): Telecommunications
- 5 (Part 2): Information Security
- 6: Sensors and Lasers
- 7: Navigation and Avionics
- 8: Marine
- 9: Aerospace and Propulsion

The second digit lists the product group. The following are the [five product groups](#) that all CCL-listed controlled items fall into:

- A: Systems, Equipment & Components
- B: Test, Inspection, & Production Equipment
- C: Material
- D: Software
- E: Technology

The last three digits identify the specific item and are broadly categorized for their reason for control—the basis for which a certain item is controlled by EAR. Every ECCN is associated with a reason for control. The last three digits are arranged by reason for control as follows:

- 000-099: National Security (NS)
- 100-199: Missile Technology (MT)
- 200-299: Nuclear Nonproliferation (NP)
- 300-399: Chemical & Biological (CB)
- 900-999: Foreign Policy (FP)
- 980-989: Short Supply (SS) / Crime Control (CC)
- 990-999: Anti-Terrorism (AT) / United Nations (UN)

The next steps in the export control decision tree process vary depending on whether the proposed export is classified under a specific ECCN on the CCL or whether it is designated as an EAR99 export.

General Prohibitions

Next, the exporter should determine whether the proposed export would violate [general prohibitions 4-10](#). Export authorization from BIS is required if any of these general prohibitions are violated. If the general prohibitions are not violated, then:

- **For EAR99 Exports:** A license is not required for EAR99 exports
- **For ECCN Exports:** Proceed to the “Is There an X in the Box?” analysis presented below.

General prohibitions 4-10 are as follows:

- **General Prohibition #4:** An exporter may not take any action prohibited by a denial order issued by [15 C.F.R. Part 766](#).

Practice Tip: Denial orders are published in the [Federal Register](#) as they are issued and prohibit certain transactions. It is imperative that exporters verify that their proposed export does not violate any denial orders.

- **General Prohibition #5:** Without a license, an exporter may not knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by Part 744 of the EAR.

Practice Tip: Exporters should understand the ultimate end-user and end-use of their proposed export. As part of their due diligence, exporters must research this information to determine whether a proposed export is exported to parties who are permitted to acquire the proposed export and exported for end uses that are authorized. A best practice is to have the ultimate consignee and purchaser fill out the end

user verification form, [BIS Form 711](#), to ensure that you have the necessary details to understand what your customer will be doing with the proposed export.

Practice Tip: Many prohibited end-users are explicitly listed in the [consolidated screening list](#). The CSL is a list of parties that the U.S. government maintains restrictions on certain exports, reexports, or transfers of items. Alternatively, the CSL can be accessed via a wide array of commercial software services available to facilitate your screening process. Commercial software services will document your searches and keep your records. However, if you choose to screen via the CSL list via the International Trade Administration's website directly, it is imperative that you "print-to-PDF" your search result to ensure that you have a record of your search, including the date and time that you searched the CSL to ensure that the potential customer is not a screened party.

These records are important to store carefully because the records demonstrate that you have exercised your due diligence when evaluating your customer. Furthermore, [when searching on the CSL](#) to ensure that the entities that you are considering exporting to are not listed, we encourage you to turn on the [fuzzy name](#) feature. This allows you to ensure that similarly spelled words also appear in the search results.

- **General Prohibition #6:** Without a license exception, an exporter may not export or reexport any item subject to the EAR to [embargoed destinations](#).
- **General Prohibition #7:** The proposed export may not support proliferation activities and certain military-intelligence end uses and end-users.
- **General Prohibition #8:** At the time of this writing, an exporter may not export or reexport an item through, or transit through, the following countries:
 - Armenia
 - Azerbaijan
 - Belarus
 - Cambodia
 - Cuba
 - Georgia
 - Kazakhstan
 - Kyrgyzstan
 - Laos
 - Mongolia
 - North Korea
 - Russia
 - Tajikistan
 - Turkmenistan
 - Ukraine
 - Uzbekistan
 - Vietnam

Practice Tip: Because the above list of countries is subject to change, we recommend you review the countries listed under general prohibition 8 in the regulations directly when evaluating your potential export. See [15 C.F.R. § 736.2](#).

- **General Prohibition #9:** Exporters may not violate any order, term, or conditions of a license or license exception.
- **General Prohibition #10:** Exporters may not proceed with transactions with knowledge that a violation has occurred or is about to occur.

Is There an X in the Box?

Every item subject to the EAR and designated with a specific ECCN on the CCL is controlled for specific reasons. These reasons for control apply depending on which country the item is being exported to. The [Commerce Country Chart](#) (CCC) identifies the reasons for control associated with the destinations.

Next, exporters of ECCN-designated items on the CCL that do not violate general prohibitions 4-10 must consult the CCC to determine whether the proposed export's reason for control is listed for the proposed export's destination. For example,

ECCN code 8A001 controls certain submersible vehicles and surface vessels. These exports are controlled for national security (NS) and anti-terrorism (AT). If your proposed export destination is Angola, the CCC reveals that exports of these vehicles and vessels are controlled for NS reasons but not for AT reasons.

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
	Afghanistan	X	X	X	X		X	X	X	X	X		X		X	
Albania ^{2,3}	X	X		X		X	X	X	X	X						
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		

If there is no X in the box—the destination is not controlled for the listed reason for control—then no license is required (NLR). However, if the destination is controlled for the listed reason for control, then license authorization is required unless a license exception applies.

License Exceptions

An export license exception is a broad, generally published authorization which allows an exporter to export or otherwise transfer items subject to EAR that would ordinarily require a license to export or transfer. Although in most instances, a license exception does not require advance approval from BIS, using a license exception may sometimes require supporting documentation and appropriate recordkeeping demonstrating that the proposed export meets the requirements of the license exception.

There are two broad categories of license exceptions: list-based exceptions and transaction-based exceptions. Below are common exceptions listed by category:

List-Based Exceptions
High-Performance Computers (APP)
Civil End-Use (CIV)
Group B Shipments (GBS)
Limited Value Shipments (LVS)
Technology & Software Under Restriction (TSR)
Transaction-Based Exceptions
Agricultural Commodities (AGR)
Additional Permissive Reexports (APR)
Aircraft, Vessels, & Spacecraft (AVS)
Personal Baggage (BAG)
Consumer Communication Devices (CCD)
Encryption Commodities, Software, & Technology (ENC)

Gift Parcels & Humanitarian Donations (GFT)
Governments & International Organizations (GOV)
Servicing & Replacement of Parts & Equipment (RPL)
Strategic Trade Authorization (STA)
Temporary Imports, Exports, Reexports, & Transfers (TMP)
Technology & Software Unrestricted (TSU)

If a proposed export is designated under a specific ECCN and violates a general prohibition, then license authorization is necessary. Similarly, if a proposed export does not violate a general prohibition, but there is an X in the box and a license exception is not available, then license authorization is necessary.

Submitting a License Application

An export license is a government document that authorizes specific export transaction(s). Applications for export licenses are submitted through the [Simplified Network Application Process Redesign \(SNAP-R\)](#). A license application contains detailed information on what the proposed export is, who will be using the item and for what purpose, the identities of individuals or entities who will receive the item, and its value.

Practice Tip: Although any exporter can submit a license application, you should consider referring the matter to counsel to ensure that the license application is drafted in a manner that is clear and is easily reviewed. Furthermore, after you have submitted your license application, BIS may have follow-up questions or scrutinize your proposed export. In such circumstances, we highly recommend retaining counsel to assist you in communicating proactively and effectively with BIS.

Conclusion

EAR was designed to safeguard U.S. national security interests by striving to ensure that critical technologies do not fall into the wrong hands. To understand EAR licensing implications for a proposed export, it is essential to determine:

- What the item is that you seek to export
- The end-use and end-user of the proposed export
- Whether the item is subject to EAR
- How the item is classified
- Whether it violates any of the general prohibitions
- Whether the proposed export qualifies for a license exception

EAR violations carry significant penalties and even criminal liability. It is critical that an exporter carefully understands the licensing requirements for its export.