



## EXPORT LICENSING, REGULATIONS, AND COMPLIANCE

### ALL U.S. EXPORTS ARE REGULATED BY THE FEDERAL GOVERNMENT

All U.S. exports (goods *and* services) are regulated by the United States Federal Government for reasons of national security, foreign policy, and the protection of U.S. resources and economic interests. In order to comply with federal law, your company must first determine *which* federal government agency has jurisdiction over your exports, and *if* your exports need an export license. There are approximately 29 federal regulations and statutes controlling exports. Most exports will fall under the jurisdiction of the Export Administration Regulations (EAR) of the U.S. Department of Commerce. However, there are other federal agencies that regulate U.S. exports and issue export licenses. For example, if you export defense-related products you may be subject to the U.S. State Department's International Traffic in Arms Regulations (ITAR). See page 4 of this document for more information on the different federal agencies involved in regulating U.S. exports and issuing export licenses.

### **Export Administration Regulations (EAR)**

The EAR is part of the U.S. Code of Federal Regulations and is administered by the Bureau of Industry and Security (BIS). More information about the EAR is available at <http://www.gpo.gov/bis/index.html>, including contacts, procedures on how to use the EAR, export licensing information, and a list of general prohibitions and applicability (see Part 736 of the EAR).

BIS is a division of the U.S. Department of Commerce, and its mission is to protect U.S. national security, foreign policy, and economic interests. BIS Agents essentially “police” exports by enforcing export laws and regulations. BIS works closely with other federal agencies involved in exports and will be able to guide you to the right federal agency that regulates your exports. For information on export licensing, compliance issues, and EAR regulations, the Office of Exporter Services of BIS is a good place to start: <http://www.bis.doc.gov/about/programoffices.htm>

**BIS in Washington D.C.:** (202) 482-4811; <http://www.bis.doc.gov/>

The majority of products exported from the U.S. fall under the designation EAR 99, which refers to items that can be shipped without a license to most destinations under most circumstances. Often, the term “no license required” (NLR) is used simultaneously, i.e., EAR 99 NLR. EAR99 is also the designation for dual-use goods (items with both civilian and military applications) that are covered by the EAR but are not specifically listed in one of the categories on the Commerce Control List, which designates product categories that require export licenses.

Exporters should be aware of restrictions on “re-exports” and “deemed exports”, as defined in the EAR. A “re-export” is when the final destination of your product is in a country beyond where you shipped it. A “deemed export” is considered to have occurred when information is shared with a foreign national within the U.S. If a U.S. company has a product or technology that is controlled by the EAR's Commerce Control List and it wants to hire foreign students or workers, or offer a tour of their facility to a foreign buyer/partner, an export license could be required.



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### BIS Export Compliance Guidelines

Regardless of license requirements, all exporters should consider the following criteria before selling goods or services overseas:

- Develop a customized compliance manual for your company and ensure its adoption throughout all aspects of the business. Educate your staff on the importance of trade compliance and procedures. See “Export Management System” on page 5 of this document.
- Know your customer. Exporters must conduct reasonable due diligence to know who is buying their product or service, and what they intend to do with it.
- Check the parties to your transaction (including freight forwarders, intermediate consignees, and the ultimate consignee) to be sure they are not a “bad guy” before quoting or shipping.
- Be aware of and report “red flags” to U.S. Customs, such as a request to not ship via an Israeli vessel, or a solicitation for a payment to help ensure your product’s market entry (a bribe).
- Be secure in all aspects of your business, including staff, visitors, inventories, supplier and buyer channels.
- Maintain records for a minimum of five years.

### Red Flags

- The customer or its address is similar to someone on a denied party, or “bad guy” list.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, export, or re-export.
- The customer or purchasing agent is reluctant to share plans for the end-use of the item.
- The product's capabilities do not fit the buyer's business, like an order for sophisticated computers from a small bakery, or the item is incompatible with the technical level of the ordering country, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background or the customer is unfamiliar with the product's performance characteristics, but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.
- Packaging is inconsistent with the stated method of shipment or destination.

### “Bad Guy” Lists

The U.S. federal government maintains lists of people, companies, countries, and other entities that have had trade restrictions imposed on them. These 7 “bad guy” lists are maintained by the U.S. Departments of Commerce, Treasury, and State.

Current lists can be found at the following website and must be checked prior to making an export shipment: <http://www.bis.doc.gov/ComplianceAndEnforcement/ListsToCheck.htm>



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### Anti-Boycott and Embargo Sanctions

BIS also enforces regulations that support foreign policy. The U.S. has established 2 anti-boycott laws that are intended to prohibit or discourage participation in international boycotts not sanctioned by the U.S., such as boycotts against Israeli goods and the use of shipping firms based in Israel or their ports. All U.S. export documents should be examined to make certain that boycott language is not included in any correspondences, purchase orders, letters of credit or sales contract terms. If they are included in these types of export documents, the exporter may be deemed to have supported the boycott request (in violation of U.S. federal law), and the exporter must report the boycott references to the BIS Office of Anti-boycott Compliance at (202) 482-2448 or online at: <http://www.bis.doc.gov/ComplianceAndEnforcement/AnitboycottCompliance.htm>

U.S. exporters must comply with foreign trade embargoes. Depending on your product, you may be able to obtain an export license, but be aware of export sanctions and other market risks associated with shipping to countries like Angola, Burma, Cuba, Iran, Libya, North Korea, Rwanda, or Sudan.

See: <http://www.bis.doc.gov/PoliciesAndRegulations/regionalconsiderations.htm>

### Export Licenses: How to Know if You Need One

Before you can determine if your product or service needs an export license, you must first determine which federal agency has jurisdiction over your exports. Since most exports fall under the jurisdiction of the Export Administration Regulations of the U.S. Department of Commerce, which are administered by BIS, the following information relates to its procedures. The other federal agencies listed on page 4 will have their own specific procedures to follow.

BIS is the primary licensing agency for dual-use exports – commercial items which could have military applications. To determine if you need an export license, you must first get your product's Export Control Classification Number (ECCN) from the Commerce Control List (CCL). Every product category controlled by Commerce has been assigned an ECCN. The ECCN is used to determine which export authorization (License, License Exception, or No License Required) may be used to export or re-export the product or service to the intended destination. Companies can classify their products internally by having a technical person at the company review the product against the CCL in the EAR and verifying the classification with the original manufacturer. Another option is to send an ECCN request to Commerce, which can be done electronically through their SNAP-R system. For more information, see [http://www.bis.doc.gov/licensing/do\\_i\\_needaneccn.html](http://www.bis.doc.gov/licensing/do_i_needaneccn.html).

The ECCN in the CCL (Part 774 of the EAR) is available at: [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html) The BIS overview of export controls is at: <http://www.bis.doc.gov/Licensing/exportingbasics.htm> and includes links on how to classify your product/service using an ECCN.



## EXPORT LICENSING, REGULATIONS, AND COMPLIANCE

### U.S. FEDERAL AGENCIES THAT ISSUE EXPORT LICENSES

If you have defense-related products, you may be subject to the International Traffic in Arms Regulations (ITAR), which are controlled by the Directorate of Defense Trade Controls (DDTC) at the U.S. State Department. All U.S. manufacturers, exporters, and brokers of defense articles, services, and related technical data, as defined by the U.S. Munitions List, must register with DDTC. See "Getting Started" page at <http://pmdrtc.state.gov/> or call (202) 663-2813, -2815, or -2986.

Defense Threat Reduction Agency - Technology Security. An agency of the Department of Defense (DoD) responsible for the development and implementation of policies on international transfers of defense-related technology: Tel. (703) 604-5186

If you are involved with nuclear material and equipment, contact the Nuclear Regulatory Commission, Office of International Programs: Tel. (301) 415-8200  
<http://www.nrc.gov/about-nrc/international.html>

U.S. Department of Energy, Office of Arms Controls and Nonproliferation, Export Control Division. Licenses nuclear technology and technical data for nuclear power and special nuclear materials: Tel. (202) 586-2112 and the Office of Fuels Programs: Tel. (202) 586-9482

Drug Enforcement Administration, Import/Export Unit. Oversees the import and export of controlled substances and listed chemicals used in the production of controlled substances under the Controlled Substances Act: Tel. (202) 307-7969,  
[http://www.deadiversion.usdoj.gov/imp\\_exp/index.html](http://www.deadiversion.usdoj.gov/imp_exp/index.html)

Department of the Interior, Division of Management Authority. Controls the export of endangered fish and wildlife species: Tel. (703) 358-2093

Patent and Trademark Office, Licensing and Review. Oversees patent filing data sent abroad: Tel. (703) 308-1722

Environmental Protection Agency, Office of Solid Waste, International & Special Projects Branch. Regulates toxic waste exports: Tel. (800) 424-9346 or (703) 308-8751

Food and Drug Administration, Office of Compliance. Sometimes foreign customers will request that the U.S. exporter submit an "Export Certificate" or "Certificate of Free Sale" when they ship FDA regulated products, such as pharmaceutical drugs, medical devices, animal drugs, medicated animal feed, foods, dietary supplements, cosmetics, or infant formula. This certificate is not an export license, but certifies to your buyer that your product (if correct and applicable under FDA jurisdiction) meets domestic U.S. requirements and is eligible for sale in the U.S. ("free" of known harmful or legal claims against it). See the "international" link at [www.fda.gov](http://www.fda.gov) or call (301) 436-1143 or -2776.

Treasury Department- Office of Foreign Assets Control (OFAC). Regulates foreign monetary transactions: Tel. (202) 622 - 2000, <http://www.treas.gov/offices/enforcement/ofac/sdn/>



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### EXPORT MANAGEMENT SYSTEM (EMS)

As part of an Export Compliance manual and due diligence for compliance in export licensing or export regulations, exporters are advised to set up an Export Management System. This will help establish an internal process to deal with export license issues and, if a violation occurs, your staff will be better prepared to communicate with BIS to resolve the matter.

- Issue a clear statement of management policy, signed by the President or CEO, to all departments within the company, such as: sales and marketing, export administration, planning, engineering, legal counsel, finance, accounting, order entry, production, shipping, traffic, customer service and technical support.
- Identify positions and individuals who will be responsible for compliance with export control regulations. After export control responsibilities have been assigned to specific people in your organization, distribute an organizational chart identifying individuals and their specific responsibilities, the names of back-up personnel in case of extended absences, and the names of individuals with equivalent responsibilities at your company's customers, consignees or suppliers.
- Institute a program to ensure that all export control documents are maintained in a consistent manner and are supported by a filing system that allows invoices, Electronic Export Information (EEI, formerly the SED form), delivery notes and Air Waybills to be easily matched. Documents must be available for inspection as required by the EAR (document retention period is 5 years from date of export, re-export or any other termination of the export transaction).

### VEDP TRADE EVENTS

For a complete listing of VEDP's international trade events, please visit the "Events" tab on our website: [www.ExportVirginia.org](http://www.ExportVirginia.org)

### VEDP CONTACT INFORMATION

**Virginia Economic Development Partnership  
Division of International Trade**  
P.O. Box 798, 901 East Byrd Street  
Richmond, Virginia 23219  
E-mail: [clientservices@yesvirginia.org](mailto:clientservices@yesvirginia.org)  
Website: [www.exportvirginia.org](http://www.exportvirginia.org)  
Phone: (804) 545-5754 Fax: (804) 545-5751

### WORKS CITED

Jago, John R. Export Sales & Marketing Manual 2004. 17<sup>th</sup> Ed. Export Institute. 2004.  
Available at: <http://www.exportusa.com/>

*NOTICE: Certain products are subject to export controls under the U.S. Export Administration Regulations (EAR) and the International Traffic In Arms Regulations (ITAR). If a product is subject to export controls, disclosure of technical data related to that product to a foreign national is also subject to export control, even if the disclosure occurs in the U.S. Technical data includes information for the design, manufacture or use of the product, including technical drawings, instruction manuals, training materials, etc.*

*It is the company's responsibility to determine if products that it is promoting through VEDP trade promotion programs are subject to export restrictions. All responsibility for compliance to U.S. export control regulations rests with the company. The VEDP bears no liability for obtaining nor complying with a company's applicable export controls. It is further the company's responsibility to determine if disclosure of technology, software, or other information to VEDP's foreign national representatives or contractors is subject to export controls, and if so, to obtain the requisite export license authority.*

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