

EXPORT GUIDEBOOK



NYS SCIENCE+TECHNOLOGY
LAW CENTER

AT SYRACUSE UNIVERSITY COLLEGE OF LAW



**Division of
Science, Technology
& Innovation**

About the Export Control Guidebook:

This guidebook was compiled by the New York State Science & Technology Law Center to assist individuals considering the export of their technology. Exports are heavily regulated, and any consideration of expanding a market through exporting requires that a company structure a system to insure compliance. This sometimes is best accomplished by retaining a consultant.

This guidebook provides an overview of the system of export controls to acquaint the user with the regulatory scheme necessary to successfully export items to other countries. Topics include an overview of the general prohibitions on exports; an explanation of the inquiry to determine whether a license is required to export an item and, if so, how to obtain one; and other important factors to be aware of when considering the export of items.

About the New York State Science & Technology Law Center:

The New York State Science & Technology Law Center (NYS STLC) has been a leading resource in technology commercialization for nearly a decade. Since its inception, the NYS STLC has assisted with hundreds of commercialization projects across New York State. It was established at the Syracuse University College of Law by Empire State Development's Division of Science, Technology and Innovation (NYSTAR) to facilitate New York State's economic development by leveraging the experience and expertise of law faculty and SU College of Law students to assist New York businesses and institutions in delivering new and emerging technologies to the marketplace.

Advisement:

The information contained in this pamphlet is intended to be an introductory guide on the export control regulatory scheme. No part of the guidebook, attachments, or related discussions constitutes legal advice or written opinion of counsel. For legal advice, please consult with an attorney.

Any opinions, findings, conclusions, or recommendations expressed are those of the author and do not necessarily reflect the views of the New York State Department of Economic Development.

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1 Overview of Export Regulations for Commercial Items

Several sets of regulations control exports of items from the United States. Export controls for commercial items are governed by the Export Administration Regulations (EAR), which are set out in Title 15 of the [Code of Federal Regulations, Parts 730 through 774](#). This manual provides guidance for understanding exports governed by the EAR. Export controls for defense items are governed by the International Traffic In Arms Regulations (ITAR), and other export controls cover other specialized areas. This manual does not cover exports of defense items that are subject to ITAR, or other specialized areas of export controls.

Two federal agencies are involved in control of exports of commercial items. The Bureau of Industry and Security (BIS) administers the classification of exports and the regulatory requirements for each class of exports under the EAR, while the Customs and Border Protection (CBP) division of the Bureau of Census processes exports from the United States and enforces the EAR by inspection of export documents and the associated items being exported.

Exports are defined to include more than products, hence the use of the term “items” instead of products in the title of this manual. Exports are generally defined to include the following activities: 1) shipments of products from the United States to destinations outside of the United States, 2) enabling removal of products from the United States to destinations outside of the United States, and 3) disclosures of information describing technology to any foreign person, whether the disclosure occurs in a foreign country or in the United States. Items therefore refer to products and disclosures of technology. It is important to keep in mind that the regulations described in this manual apply to all three types of activities covered by the definition and that export controls can and do apply to transactions that occur within the United States, as well as the more typical shipment of items from the United States to a foreign destination. Controls that apply to transactions in the United States will be mentioned where appropriate in the manual.

Exports also include “re-exports,” which for purposes of this manual can be considered to be a first export of an item from the United States to a first foreign country, coupled with a second export of the same item to a second, different foreign country. The second export is the re-export. For purposes of EAR compliance, both the first and second exports—e.g., the original export and the re-export—must satisfy the terms and conditions of the regulations.

This manual addresses export controls of commercial items by providing guidance on two general areas of activity that are necessary to handle an export transaction: 1) classifying a contemplated export to determine whether or not an export license is required, and 2) creating export documentation that is necessary to clear exported items through customs and reporting export transactions.

1.1 Classifying An Export To Determine Export License Requirements

Classification of exports is the means used to determine whether an export can be made without obtaining an export license from BIS or whether a license is necessary. Exports of commercial items are classified into four classes: 1) transactions for which no license is required (NLR transactions), 2) transactions for which a license exception can negate the necessity to obtain an export license, if prescribed conditions are met (LE transactions), 3) transactions for which a specific license from BIS is required (LR transactions), and 4) prohibited export transactions. The approach to handling exports of commercial items outlined in this manual is to first provide guidance on how to determine which classification applies to the contemplated export. This step will determine whether the export is permitted and, if so, whether it is either NLR and requires no license, LE because it meets the conditions to qualify for an applicable licensing exception, or LR and requires application for and obtaining a specific license from BIS.

1.2 Export Clearance through Customs

All permitted exports of commercial items must be accompanied by a set

of export documents that will be used by CBP to evaluate and process the export through customs, and exports also must be reported to CBP. The second activity for handling an export transaction is covered in the manual by providing guidance on the documents that are necessary to create an acceptable set of export documents to enable processing the export through CBP, the information that must be in hand to create this set of documents, and how to report exports to CBP.

Compliance with the export controls set out in the EAR is the responsibility of the U.S. company that sells an item that is exported or engages in an activity that is subject to export controls, to the extent that the U.S. company knows that the purchaser is located in a foreign country or is an agent for a purchaser that is located in a foreign country. The U.S. company in the foregoing situations is designated the U.S. Principal Party in Interest (USPPI), and the USPPI is responsible for compliance with the EAR. The term “routed exports” covers transactions in which a USPPI delivers an item covered by the EAR to a foreign customer or an agent for a foreign customer at a location in the United States and relies on the foreign customer or its agent to arrange the export. The USPPI remains responsible for compliance with the EAR for all routed export transactions.

This manual provides guidance on complying with the EAR and should enable the reader to use the EAR more effectively to process export transactions. The manual, however, does not provide sufficiently detailed information to process export transactions, and reference to the EAR will be necessary in all cases to process actual export transactions.

2 Qualifying as an NLR Export

Classification of an export begins with determining whether or not the export qualifies for NLR status. If the contemplated export qualifies as NLR, no evaluation is necessary regarding whether a license exception is available or the probability of obtaining an export license under the licensing policies of BIS. Determining whether an export qualifies as NLR is a multistep process, based on determining whether the export would violate any one of 10 general prohibitions on exports which are set out in [15 CFR Part 736.2](#).

For purposes of this manual, the 10 general prohibitions are generalized into four sets of restrictions as follows: 1) restrictions based on the nature of the item considered for export (prohibitions 1, 2, and 3), 2) restrictions based on the customer to whom the export would be made (prohibitions 4, 5, and 7), 3) restrictions based on the country that is a final destination of the export or a country through which an export shipment is routed (prohibitions 6 and 8), and 4) restrictions based on violating an export license or an export requirement (prohibitions 9 and 10). An export qualifies as NLR only if none of the 10 general prohibitions will be violated by the export. An overview of how to perform the NLR evaluation, using the four sets of restrictions listed above, is provided in the next sections.

It will become apparent that evaluating the four sets of export restrictions to determine whether an export license is necessary ultimately involves answering the following five questions. 1) What is being exported? 2) Where is the export going? 3) Who is the customer that will receive the export? 4) What is the business or other activities in which the customer is engaged? 5) How will the customer use the exported item and is that use consistent with the customer's business?

2.1 Restrictions Based on the Nature of the Item

Item-based restrictions apply to: 1) products of U.S. origin, e.g., that are produced in the United States, 2) products that contain parts or components of U.S. origin, unless the content of U.S. origin is de minimis,

and 3) product design technology and software of U.S. origin. Item-based restrictions apply to items that are included in the Commerce Control List (CCL); if an item is not on the CCL, no item-based restrictions apply. The CCL uses Export Control Classification Numbers (ECCN) to organize all items for purposes of item-based restrictions, and it is necessary to know what ECCN covers an item, as well as how the CCL-ECCN framework functions, to determine whether or not an item is covered by the CCL. A brief overview of the CCL-ECCN framework and how to assign an item to its ECCN are provided in the next sections.

The CCL-ECCN framework is described in general in [15 CFR Part 738](#), and the CCL itself is set out in [15 CFR Part 774](#). The CCL-ECCN framework classifies all items by assigning each item to an ECCN that describes the type of item and the reason why the export of such items are restricted. An item's type is specified by assigning the item to one of 10 item categories and then further assigning the item to one of five subgroups of item types within each category. Examples of item categories are: Category 3, Electronics, and Category 7, Navigation and Avionics. Examples of item subgroups are: Subgroup A, Equipment, Assemblies, and Components, and Subgroup D, Software. Each unique category-subgroup combination is associated with a specified reason(s) for controlling the export of items within that category-subgroup combination. Examples of reasons for control are: National Security and Crime Control. The structure of the CCL and ECCNS are explained in [15 CFR Part 738.2](#), which also lists the 10 item categories, five subgroups, and all reasons for control.

ECCNs are five-digit numbers that reflect the category, subgroup, and reasons for control for items assigned to a particular ECCN. ECCNs are read as follows: 1) the first digit represents the item category, 2) the second digit represents the item subgroup, 3) the third and fourth digits represent the reason for control and whether the reason for control is imposed unilaterally by the United States or because of a multilateral agreement, and 4) the fifth digit is a sequential number for the ECCN. For example, the ECCN 4A001 would cover computer equipment (the 4A part of the number), that is controlled for the national security reason for control

pursuant to a multilateral agreement (the 00 part of the number), and it is the first ECCN in a group that has 4A00 as the first four digits.

ECCNs that are included in the CCL are assigned an appropriate specific ECCN, and items that are not included in the CCL are assigned the generic ECCN designation EAR99. An item properly designated EAR99 is not subject to export restrictions based on the nature of the item, although it is subject to the other three sets of export restrictions. An item designated with a specific ECCN may or may not be subject to item-based restrictions, depending on the country to which it is exported and the reason(s) for export control specified for that ECCN. Therefore, the reason for control for an ECCN will prove to be a key determinant of whether item-based export restrictions apply.

The first step in evaluating an item for NLR status is to determine its ECCN. One way to do this is to review the alphabetical index to ECCNs, which is [Supplement No. 4 to 15 CFR Part 774](#), and find the tentative ECCNs that appear to be closest to your item. If there is no ECCN that appears close to your item, it may be EAR99, which is the case for many commercial items that have no potential for a use that is associated with a reason for control. If you do find one or more tentative ECCNs that could cover your item, go to the CCL itself and review the descriptions of the items that are provided for the tentative ECCNs that you selected and choose the one that best fits your item. If you have difficulty in assigning your item to an ECCN, or if you want confirmation that you have correctly identified the ECCN, it is possible to contact BIS and request an ECCN for your item. The best way to engage BIS to designate the ECCN for an item is to utilize the Internet-based [Simplified Network Applications Processing Redesign \(SNAP-R\) system](#). (The SNAP-R system is described in more detail in the section of this manual on applying for an export license.) If your item is determined to be EAR99, it is not subject to item-based export restrictions, and an export license will not be required because of item-based restrictions. If your item is assigned a specific ECCN, then you will use the Commerce Country Chart to determine whether item-based restrictions apply.

The Commerce Country Chart lists foreign countries and for each country identifies the reason or reasons for controlling exports to that country. To use the Commerce Country Chart, the reason for control designated for the ECCN of your item is compared to the reasons for control that apply to the country to which export of the item is contemplated. If there is a match between a reason for control that is specified in the ECCN for your item and a reason for control for the country, item-based restrictions apply, and if there is no match between a reason for control for the country and your ECCN, item-based restrictions do not apply.

To sum up the evaluation of item-based export restrictions, the ECCN of the item must first be determined. If the item is EAR99 and not subject to the CCL, item-based restrictions do not apply. If the item is subject to the CCL and has a specific ECCN, look up the country of destination in the Commerce Country Chart and the reasons for control for the country and compare the reasons for control for the item's ECCN. Item-based restrictions apply only if there is a match between the reasons for control. If item-based restrictions apply, that means that you cannot export your item to the country unless: 1) a license exception applies and you satisfy the conditions to qualify for the exception, or 2) you obtain a license in the case when no exception applies.

2.2 Restrictions Based on the Customer

Two general types of export restrictions are based on the customer to whom the export would be made. The first type of customer-based restriction requires a USPPPI to screen potential customers against a group of persons and companies that have been identified by various government agencies as potentially dangerous to the security interests of the United States (Denied and Restricted Parties). The Denied and Restricted Parties have been either denied the right to receive exports from the United States or subjected to heightened review by the government of any proposed export. The second type of customer-based restriction requires a USPPPI to conduct enough due diligence on all of the USPPPI's customers to recognize situations in which the customer is likely to use the exported item for

prohibited uses which pose security risks to the United States or its allies, even when the customer is not included in the group of Denied and Restricted Parties. The customer-based restrictions are set out in [15 CFR Parts 736.2, 744.1, and 744.2](#).

In general, the customer-based export restrictions apply to any sale and shipment of items subject to export controls, regardless of where the sale is concluded and the item is delivered. This set of restrictions applies to sales made in the United States and shipments delivered in the United States; the restrictions are not limited to the typical export scenario in which an item is shipped and delivered to a customer outside of the United States. An overview of how these two types of customer-based export restrictions are implemented is presented in this section.

The first type of customer-based restriction is implemented by screening the name of the customer that would receive an export against a number of lists published by various governmental agencies. There are many of these lists of Denied and Restricted Parties, but for our purposes the lists of concern are those issued and maintained in association with the EAR. These lists include: 1) The Denied Person List, 2) The Entity List, 3) The Unverified List, and 4) several Designated Terrorists Lists. Persons and companies on the Denied Person List and Designated Terrorists Lists have been denied the right to receive exports from the United States by executive order. Persons and companies on the Entity List have been associated with activities contrary to the national security or foreign policy interests of the United States and exports to them are either denied or subject to close scrutiny before a license would be granted. The Unverified List includes persons and companies under suspicion of being associated with activities contrary to the national security or foreign policy interests of the United States, and exports to them are subject to special conditions. Finally, BIS makes available a Consolidated Screening List, which combines the entries of all lists of Denied and Restricted Parties to facilitate efficient screening.

These lists of Denied and Restricted Parties each contain many entries, and effective screening using the lists is best done with any one of several

commercially available software-based screening packages. The Denied and Restricted Party screening software tends to be designed to be fairly sensitive, and using it often generates many potential but uncertain matches between a customer and an entity on one of the lists, due to ambiguous person and company names or addresses. Additional due diligence is necessary on the software-generated matches to either verify a bona fide match, which would prohibit an export, or rule out false positive matches, which result in the ability to do the export. Screening for Denied and Restricted Party restrictions should be done at least twice, once when a customer relationship is established (typically in conjunction with a credit check) and again before processing an order for shipment to the customer.

The second type of customer-based restriction requires that the USPPPI perform enough due diligence on its customers to support a conclusion that the customer is a legitimate business and does not pose a significant risk of using the exported item for an end use that is prohibited under [15 CFR Part 744](#). The scope of prohibited end uses can be seen by reviewing the table of contents for Part 744 and generally encompasses activities such as military uses, chemical and biological weapons, nuclear proliferation, terrorist activities, and surveillance systems. BIS provides helpful guidance on steps for a USPPPI to take to ensure that it knows its customers and can recognize certain red flags that should trigger suspicion that a potential customer may be involved in a prohibited end use. The BIS has a [webpage](#) which contains the list of red flag indicators that it recommends be evaluated to raise suspicion that a customer may intend a prohibited use for an exported item. Ultimately, the obligation to know the customer requires that a USPPPI export without a license only to customers that it believes, with a high degree of confidence, to be legitimate and not engaged in a prohibited end use after conducting a reasonable amount of due diligence.

To sum up the evaluation of customer-based export restrictions, an export will be NLR only if a screen against the lists of Denied and Restricted Parties is negative and there are no reasons to suspect that the customer will use the export for a prohibited end use after doing due diligence focused on any red flag indicators.

2.3 Restrictions Based on a Particular Country

Restrictions based on a country are of two types, those based on the country where the final destination of the export is located and those based on a country through which an export is routed on its way to the final destination.

Restrictions on exports to countries in which the final destination of the export is located are set forth in [15 CFR Part 746](#) and are commonly referred to as embargoes. The part 746 regulation describes two categories of embargo controls, comprehensive controls and more selective controls that apply to specified categories of items. Comprehensive controls would apply to all items subject to the EAR, including both items subject to the CCL and items that are EAR99 (not subject to the CCL). Comprehensive controls now apply to Cuba, Iran, and Syria, and to the Russian deep-water oil drilling industry. Selective controls generally apply to items on the CCL, but not to items that are EAR99. Selective controls now apply to Iraq, North Korea, the Crimea Region of Ukraine, and countries that are subject to United Nations Security Council arms embargoes (Central African Republic, Congo, Eritrea, Lebanon, Libya, Somalia, and Sudan). For practical purposes, if the country of final destination of an export is subject to an embargo, a license will be required for the export unless: 1) the embargo is selective and does not apply to the item you intend to export, or 2) the export meets the conditions of a license exception.

Restrictions based on countries through which an export is routed on its way to a final destination are set forth in [15 CFR Part 736.2](#) (8). This restriction prohibits shipping an export through a group of countries that have weak customs and export controls and present a high risk that a shipment could be diverted to an embargoed country, to Denied and Restricted Parties, or for prohibited end uses. The regulation at Part 736.2 (8) (ii) lists the countries subject to the routing restrictions. Exports cannot be routed through any of these countries unless either: 1) shipment of the items to the country as a final destination would be permitted, 2) a license exception would permit shipment to the country as a final destination, or 3)

an export license is obtained.

2.4 Restrictions Based on Violations of Executive Orders or Licenses

This restriction is a general rule that prohibits circumvention of the foregoing item-based, customer-based, and country-based restrictions. It prohibits: 1) exports that would violate an executive order that is made part of the EAR, 2) exports which the USPPPI knows, or reasonably should know, have not been vetted and classified properly based on the item-based, customer-based, and country-based restrictions, or 3) exports which the USPPPI knows, or reasonably should know, will violate the terms and conditions of a license exception or an issued export license.

2.5 Recap of Qualifying for NLR Status

An export qualifies as NLR only if, after reasonable due diligence by the USPPPI, no item-based restrictions, no customer-based restrictions, and no country-based restrictions apply to the export, and the USPPPI is not aware that the export will violate any executive order, license exception, or export license.

3 Qualifying For a License Exception

If a contemplated export does not qualify for NLR status, the next step is to determine whether or not the export satisfies the conditions of any available license exception. If the contemplated export satisfies the conditions of a license exception, the export can be made without obtaining an export license from BIS. License exceptions are available in circumstances when the export fails to qualify for NLR status because of an item-based restriction or a country-based restriction. Although rare license exceptions for customer-based restrictions can arise because a customer is included in one or more of the lists of Denied or Restricted Parties, this manual will not address those license exceptions because they are rare (they can be found at [15 CFR Part 744](#)). There are no license exceptions for restrictions based on violations of executive orders or licenses.

License exceptions are exercised by the USPPPI by self-certifying that an export meets the conditions and restrictions of a license exception; in other words, there is no application to BIS for permission to use a license exception. The USPPPI submits a certification of the right to a license exception as part of the export documentation submitted to CBP for processing an export.

3.1 License Exceptions for Item-Based Restrictions

There are two types of license exceptions for situations in which an export fails to qualify for NLR status because of item-based restrictions: 1) exceptions that are specified in the ECCN listing for an item (ECCN Exceptions), and 2) exceptions that are based on the situational circumstances of the export, regardless of the ECCNs of the items involved in the export (Situational Exceptions). ECCN Exceptions are available for an export only if the license exception is listed in the ECCN tabular entry for each of the items being exported. Situational Exceptions are available only if the export satisfies all of the situational circumstances described for the exception.

ECCN Exceptions and Situational Exceptions are set out in [15 CFR Part](#)

[740](#). Both ECCN Exceptions and Situational Exceptions are designated by three-letter codes, which are used in the self-certification to indicate which license exception is being claimed. All ECCN Exceptions and Situational Exceptions must satisfy the general restrictions and conditions set out in [15 CFR Part 740.2](#), as well as the restrictions and conditions set out in the subpart of Part 740 that provides for the specific license exception. It should be noted that many of the ECCN Exceptions and Situational Exceptions are based on the export's country of destination. Several Country Groups are set out in the Supplement to Part 740, and many ECCN Exceptions and Situational Exceptions are limited to countries in a particular Country Group.

It would be impractical to attempt to describe in detail the restrictions and conditions that must be met for the various ECCN Exceptions and Situational Exceptions. However, the following sections list the ECCN Exceptions and Situational Exceptions and provide a brief characterization of each one. This overview provides some guidance that should enable more effective use of the regulations to determine if a particular license exception is available.

3.2 ECCN Exceptions for Item-Based Restrictions

1. LVS, Limited-Value Shipments, [Part 740.3](#). The exception allows low-value shipments of items to destinations in countries that are classified in Country Group B, if the ECCNs of the exported items specify the code LVS and the value is below a prescribed maximum. The maximum value of items covered by an ECCN that is permitted in one export to a customer is listed in the ECCN, and the annual maximum for that customer is 12 times the maximum per-export value listed in the ECCN.

2. GBS, Shipments to Country Group B, [Part 740.4](#). The exception allows shipments to destinations in countries that are classified in Country Group B, if the ECCNs of the exported items specify the code GBS and the only Reason for Control listed in the ECCNs of items in the export is National Security.

3. CIV, Shipments to Civil End Users, [Part 740.5](#). The exception

allows shipments to destinations in countries that are classified in Country Group D (excluding North Korea), if a) the ECCNs of the exported items specify the code CIV, b) the customer is a civil end user (no government or military agency or agent), and c) the only reason for control listed in the ECCNs of items in the export is National Security.

4. TSR, Shipments of Technology and Software Under Restriction, [Part 740.6](#). The exception allows shipments to destinations in countries that are classified in Country Group B, if a) the ECCNs of exported items specify the code TSR, b) the only reason for control listed in the ECCNs of items in the export is National Security, and c) the customer provides a written assurance that the items will not be re-exported to a destination in Country Groups D or E.

5. APP, Exports of Certain Computers and Software, [Part 740.7](#). The exception permits exports of items assigned to an ECCN that specifies the code APP, if the destination is in a country listed in the Computer Tier 1 Country Group, which is listed in Part 740.7. Exports are also permitted to countries listed in the Computer Tier 3 Country Group, but there are fewer items covered. Deemed exports via disclosures of computer technology to foreign nationals of Tier 3 Countries while in the United States are subject to pre-approval by BIS.

3.3 Situational Exceptions for Item-Based Restrictions

1. TMP, Temporary Exports, [Part 740.9](#). The exception covers situations in which a USPPI exports items to a foreign destination for an authorized temporary use in the destination country for less than one year, maintains control over the items during their temporary residence, and ensures their return to the United States. Authorized temporary uses include: a) tools of trade of personnel who travel to the destination country to conduct business, b) exhibition or demonstration of items in the destination country, c) export of items to the destination country for repair or calibration, d) export of components and material to Mexico that will be assembled into finished product in the Maquiladora industrial program and returned to the United States, and e) exports to a U.S. company's

subsidiary located in a Group B Country. Restrictions on types of items apply to exports to Countries in Groups D and E.

2. RPL, Replacement of Parts and Servicing of Equipment, [Part 740.10](#). The exception covers situations in which replacement parts for an item already in a foreign country are exported to repair the item, based on a one-for-one exchange for bad parts, and situations in which items imported into the United States from a destination country for repair can be returned to the destination country after having been repaired. Restrictions on types of items apply to exports to Countries in Groups D and E.

3. GOV, Governments and International Organizations, [Part 740.11](#). The exception covers situations in which items are exported to cooperating governments and specifically identified international agencies that operate to promote activities sanctioned by the U.S. government. International agencies include International Atomic Energy Agency, Organization for the Prohibition of Chemical Weapons, and International Space Station. The scope of this exception is limited based on certain reasons for control of exported items.

4. GFT, Gifts To Individuals or Charitable Organizations, [Part 740.12](#). The exception covers situations in which items for personal or consumer use, food, and medicine are exported directly to an individual or organization. The scope of this exception is limited based on certain reasons for control of exported items.

5. TSU, Exports of Unrestricted Technology and Software, [Part 740.13](#). The exception covers situations in which mass-market software and unrestricted technology is exported. Mass-market software consists of software that is sold to consumers in the United States at retail and is installed and operated by the end user, excluding certain types of encryption software. Unrestricted Technology can be characterized as updates to software that is embedded in consumer electronic equipment that previously was legally exported, as well as software and data that are used in connection with marketing and selling legally exported items.

6. BAG, Baggage, [Part 740.14](#). This exception permits individuals

traveling out of the United States to take with them to their destination personal effects, household goods, and vehicles that are consistent with their travel itinerary.

7. AVS, Aircraft and Vessels, [Part 740.15](#). This is a specialized exception for aircraft and ships that are departing from the United States on approved flight plans or travel routes, which covers the aircraft or vessel itself, including any repairs and replacement parts. Any cargo must be separately cleared for export.

8. APR, Additional Permissive Re-exports, [Part 740.16](#). This exception addresses situations in which items were lawfully exported from the United States to a recipient in a foreign country, and the recipient desires to further export those items to another foreign destination. The second export is deemed to be a re-export governed by U.S. law. The re-export can be justified by this exception, if it satisfies one of several sets of conditions set out in Part 740.16. As an example, one of the sets of conditions permits re-exports from a country in Group A to another country in Group A if the items to be re-exported are not controlled for reasons of Missile Technology or Nuclear Proliferation and do not include certain types of cameras or military items.

9. ENC, Encryption Commodities, Software, and Technology, [Part 740.17](#). The encryption technology that can qualify for this exception is identified in Part 740.17 by listing the specific ECCNs that are subject to the exception. The exception further provides for two processes that can be required of a USPPPI to qualify for the ENC exception, which are 1) registration or 2) classification of the encryption technology before export. Registration requires submission of an application for registration, after receipt of which BIS will issue an Encryption Registration Number that is used to claim the ECN exception. Classification requires submission of a more extensive application for a formal classification of the item, supported by technical information. BIS will issue a Commodity Classification Automated Tracking System (CCATS) number upon determining that the technology is covered by one of the ECCNs that are subject to the exception. The CCATS number is used to claim the ECN

exception.

For practical purposes, the ECN exception applies in three scenarios. The least restricted first scenario includes exports of items that can be qualified for the ECN exception a) without registration or classification if the country of destination is included in the Group of ECN Favorable Treatment Countries listed in [Supplement No 3 to Part 740](#), or b) with registration if the country of destination is not in the ECN Favorable Treatment Group. The second scenario includes exports of items that qualify for the ECN exception a) without registration or classification if the country of registration is included in the ECN Favorable Treatment Group, or b) with classification if the country of destination is not in the ECN Favorable Treatment Group. The third scenario includes exports of items that can be exported under the ECN exception only with classification to countries that are included in the ECN Favorable Treatment Group.

10. AGR, Agricultural Commodities, [Part 740.18](#). This exception permits exports to Cuba of agricultural commodities that are classified EAR99. BIS must be notified of the contemplated export via the Internet-based SNAP-R System (Simplified Network Applications Processing Redesign System) and the export can proceed only when BIS clears it by a notification send via the SNAP-R System.

11. CCD, Consumer Communications Devices, [Part 740.19](#). This exception permits exports to individuals and nongovernmental organizations located in Cuba of Consumer Communications Devices that are listed in Part 740.19.

12. STA, Strategic Trade Authorization, [Part 740.20](#). This exception permits exports to customers located in the group of countries listed in Part 740.20 provided that a) the exported items are controlled only for one or more of the following reasons for control: National Security, Chemical or Biological Weapons, Nuclear Proliferation, Regional Stability, Crime Control, and Significant Items, and b) the customer provides, before each export shipment, a signed statement acknowledging that the items cannot be re-exported.

3.4 License Exceptions for Country-Based Restrictions

License exceptions for country-based restrictions are expressed in terms of the exception codes summarized in the preceding sections for item-based restrictions.

License exceptions for exports to final destinations in embargoed countries are set out in [15 CFR Part 746](#), the same part that provides for the embargo sanction applicable to the country. For each embargoed country, the subsection of Part 746 that creates the embargo also sets out the license exceptions that can be used, if any, together with any additional limitations on the standard exception. For an embargoed country, a license exception is available only if the exception code is listed for the country in Part 746, and the contemplated export meets the conditions of the standard exception plus any additional limits set out in Part 746. For example, the embargo for North Korea is set out in [Part 746.4](#), and Part 746.4 permits the following exceptions: a) TMP, but only for news media, b) GOV, but only for the U.S. government, International Atomic Energy Agency, and the European Atomic Energy Community, c) GFT, excluding luxury goods, d) TSU only for unrestricted technology, e) BAG, and f) AVS.

License exceptions for the country restrictions that prohibit routing an export through one of the countries listed in [Part 736.2](#) (8) generally are the same as the exceptions that would permit exports to the country as a final destination.

3.5 Recap of Qualifying for a License Exception

A USPPPI bears the burden of determining whether or not a contemplated export that does not qualify for NLR status meets the terms and conditions of a license exception. The USPPPI implements the right to use a license exception by identifying the exception that is being used by its three-letter code and certifying that the terms and conditions of the exception are met. The certification is made as part of the Export Clearance Documents that are submitted to CBP to process the export. The Export Clearance Documents primarily consist of an Electronic Export Information filing in the Automated Export System (AES) and a Loading Document. The

Export Clearance Documents are described in a subsequent section of this manual. If a contemplated export that does not qualify for NLR status does not qualify for a license exception, it is necessary to obtain a license to export from BIS.

4 Obtaining an Export License

If it is necessary to obtain a license to export items, there are two primary considerations: 1) understanding the probability of obtaining an export license, and 2) understanding how to apply for the export license. Applying for an export license will require time and resources, and it is good practice to investigate the likelihood of success in applying for a license before expending the resources to make an application. If the probability of success in obtaining an export license is low, the best decision may be to not pursue the export transaction.

4.1 Evaluating the Probability of Obtaining an Export License

Applications for export licenses are submitted to BIS, and BIS evaluates the applications using criteria established by Control Policies. There are three main types of Control Policies: one based on the Reasons For Control of items on the CCL (relevant to the item-based restrictions), one based on the End User or End Use of the item to be exported (relevant to the customer-based restrictions), and one based on the nature of sanctions imposed on Embargoed Countries (relevant to the country-based restrictions).

If an export license is necessary because the item to be exported is on the CCL and does not qualify for NLR status because of an item-based restriction, then the relevant Control Policy is set out in [15 CFR Part 742](#). This part of the EAR is organized based on the Reasons For Control of items on the CCL, and for Each Reason For Control, the regulation summarizes the factors that will be considered in deciding whether or not to grant a license and the standards for review for such factors. The Control Policy factors typically are based on the specific nature of the items being exported, the parties involved in the transaction, and any circumstances that mitigate the danger addressed by the Reason For Control. Evaluation of the success of obtaining an export license would be done by identifying the Reasons For Control that are applicable to the ECCNs of the items to be shipped in the contemplated export and then assessing how the circumstances of the contemplated export might satisfy

the Control Policy factors that are relevant to those Reasons For Control.

If an export license is necessary because of a customer-based restriction (e.g., the End User who will get the exported items or the End Use of the exported items), then the relevant Control Policy is set out in [15 CFR Part 744](#). This part of the EAR is organized based on Restricted End Uses and End Users that are included on one of the Restricted Party Lists. Examples of Restricted End Uses are: 1) nuclear end uses, 2) chemical or biological weapons end uses, and 3) rocket and unmanned air vehicle end uses. Examples of Restricted End Users include suspected terrorists and entities associated with terrorists and proliferators of weapons. For each Restricted End Use or End User, this part of the EAR summarizes the factors that will be considered in deciding whether to grant a license. The Control Policy factors are based on the nature of the items to be exported and the degree to which the items could be used to increase the danger associated with the Restricted End Use or End User. The probability of success of obtaining an export license would depend on whether the circumstances of the contemplated export would satisfy the Control Policy factors that are relevant to the Restricted End Use or End User.

If an export license is necessary because the destination is in an embargoed country, then the relevant Control Policy is set out in [15 CFR Part 746](#), which is organized by the country or region that is subject to the embargo. For each embargoed country or region, the Control Policy factors that will be considered in deciding whether to grant a license are set out. The Control Policy factors are based on the reasons for imposing trade sanctions on the country or region, and the probability of success of obtaining an export license will depend on the degree to which the circumstances of the contemplated export would satisfy the Control Policy factors that are prescribed for the embargoed country or region in which the destination of the export is located.

It is possible to obtain from BIS an Advisory Opinion regarding whether a contemplated export will require an export license. Requests for an Advisory Opinion must be made in writing and include information that is prescribed in [15 CFR Part 748.3](#), which includes: 1) identification of

the parties to the transaction and the end use of the items, 2) complete description and specifications of the items to be exported, 3) ECCNs of all items to be exported, and 4) the destination of the export.

4.2 Applying For an Export License

Applications for export licenses must be submitted electronically, unless permission to use paper submissions is obtained. Electronic submissions are made using the Simplified Network Applications System-Redesign (SNAP-R), which is accessed on the Internet. It is necessary to register to use the SNAP-R system, and registration is done on the SNAP-R website, <https://snapr.bis.doc.gov/registration>. Registration involves establishing a SNAP-R account and identifying an account administrator.

The USPPI must submit applications for export licenses, and if an agent or customs broker represents the USPPI, a written power of attorney is required. Applications are used for both export transactions and re-export transactions. The requirements for submitting applications are set out in [15 CFR Part 748](#), with the key provisions regarding the content of applications being covered by [Parts 748.5](#) and [748.6](#). Generally, the application must provide detailed information on three topics: 1) the parties to the transaction, 2) the final destination of the export, and 3) the nature of the items to be exported.

The parties to the transaction must be identified along with complete addresses. The parties include: a) the applicant, who is the USPPI, b) the purchaser, who is the person or company paying for the export, c) all intermediate and ultimate consignees, who are carriers that transport the exported items, and d) the end user of the exported items. The final destination is the location address of the end user of the exported items, including the country in which the end user address is located. The description of items to be exported includes: a) the ECCN, b) a description of the item by manufacturer and model number and a description of the functionality of the item and its performance specifications, such as that included in an owner's manual or directions for use, and c) the number of units shipped, the price per unit, and the total price of the shipment.

4.3 Approval or Denial of Applications

BIS processes applications for export licenses in accordance with rules set out in [15 CFR Part 750](#). Processing should be completed within 90 days, and the license is approved or denied on the basis of the relevant Control Policy. If BIS intends to deny a license application, it will provide a denial notification within five days of making the denial decision. The denial notification will include: 1) the regulatory basis for denial, with the factual considerations supporting the regulatory basis for denial, 2) whether any modification of circumstances or addition of restrictions could enable reconsideration of the application, 3) the name of a BIS representative to contact to discuss the denial, and 4) appeal procedures.

If a license is granted, it is limited to the parties, items, and end uses stated in the license for the period of time until the license expires. The expiration date will be stated in the license and typically will be four years; however, in some situations the term of the license is one year.

5 Export Clearance Requirements

The Bureau of Customs, acting through CBP, must clear all items exported out of the United States. One of the key requirements to clear a shipment for export is to establish the export authority for the shipment. The export authority for an item is either: 1) NLR-No License Required, 2) A License Exception Applies to negate the necessity for an export license, or 3) An Export License was obtained from BIS. A standard set of information is required to clear an export, and that information will be used to prepare a set of documents that are used to process and clear the export through customs. In addition, most exports must be reported to CBP electronically via the Automated Export System (AES), to generate statistics on exports as well as control them. This section of the manual provides a summary of the information needed to prepare the documents necessary to clear a shipment for export out of the United States, identifies the export documents themselves, and provides a brief description of the AES.

5.1 Information Required to Meet Export Clearance Requirements

Most of the information required to meet export clearance requirements is the same information that was necessary to determine the export authority for the items to be exported. The most important information for export clearance is:

1. **Parties to the Transaction.** The parties are the USPPPI, the purchaser who pays for the exported items, all consignees who transport the exported items to the ultimate destination, and the end user of the exported items.
2. **Origin and Destination.** The point of origin of an export is the port or other point of departure from the United States, and the destination is the final destination of the export, e.g., the address of the end user in the country in which the end user is located.
3. **Item Description.** The description of the items to be exported requires for each item, the ECCN, the Schedule B or Harmonized Tariff Schedule Number, a description of the item by manufacturer, model

number, and functional specification, number of units, price per unit, and total price.

4. Export Authority. The export authority for the exported items will be either NLR, A License Exception, identified by its three-letter code, or the Number of an Export License issued by BIS.

5. Destination Control Statement. For all exported items that are not EAR99, the appropriate export document must include the destination control statement:

1. These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user, either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

The Schedule B Number is required for the description of exported items that is used to process them through customs, e.g., for export clearance, even though it was not required to make the export authority determination covered in the first part of this manual. (That determination was made by using the ECCN.) The Schedule B Number is the basis for classifying items for processing by the Bureau of Census - CBP and for generating statistics on the U.S. export trade. The Schedule B Number and the Harmonized Tariff Schedule Number are related, and typically one can be derived from the other; however, the Schedule B Number is more specific to exports from the United States. The Bureau of Census operates a website to determine the Schedule B Number of a product, the Schedule B Search Engine, <https://uscensus.prod.3ceonline.com>. A description of the product is entered into the search engine and potential Schedule B numbers are returned, which can then be evaluated to select the best match. Contact information for Bureau of Census trade specialists are also provided for cases in which assistance is required to select a Schedule B Number.

5.2 Export Clearance Documents

The main documents used to process and clear exports are the Loading Document and the Commercial Invoice. The Loading Document will be in the form of a Bill of Lading, Air Waybill, Cargo Declaration, or Shipping Manifest, and it will contain the essential export clearance information. The Commercial Invoice contains the specific financial aspects of the export transaction and supports the Loading Document. It is essential that the export clearance information provided on the Loading Document and the Commercial Invoice are identical to any of the same information that was used to determine the export authority for the shipment.

In addition to the Loading Document and the Commercial Invoice, various exports of items that are subject to control by regulations of other U.S. agencies may require specialized supporting documents. For example, if a medical device that is not cleared for sale in the United States is being exported, it must be accompanied by an export certificate the Food and Drug Administration issues. Specialized supporting documents are beyond the scope of this manual, but the USPPI must be aware whether any of its products require specialized supporting documents for export clearance.

Export clearance documents and supporting records must be retained for five years and made available, upon request, for inspection by BIS or the Bureau of Census - CBP. Supporting records include correspondence, memoranda, contracts, bids, and other documents relevant to export transactions. Export records should be stored separately from accounting records so a single set of records is devoted to export transactions and available for audit or inspection by BIS or CBP.

5.3 The Automated Export System (AES)

The Bureau of Census -CBP requires that most exports be reported before they depart (e.g., before they are shipped) through the Internet-based AES. To use AES, the USPPI must make an application to the Bureau of Census for approval and certification, and establish a user account. After the AES account is established, each export that must be reported is entered into the AES by making an Electronic Export Information (EEI) filing. The EEI

filing contains the same export clearance information that is in the Loading Document and Commercial Invoice. Before AES became mandatory, the Shippers Export Declaration (SED) was used to report export clearance information to the Bureau of Census.

Exports that must be reported via the AES, unless an exception applies, include 1) shipments for which the value of items with the same Schedule B Number is more than \$2,500, 2) shipments that required an export license, regardless of value, 3) shipments for which any party to the transaction is listed on the Unverified List, regardless of value, and 4) shipments to a country in Country Group E, regardless of value. Additional types of exports must be reported via AES, regardless of value, which are listed (together with the foregoing commonly encountered types), in [15 CFR Part 758.1\(b\)](#).

Exemptions from the AES filing requirement are listed in 15 CFR Part 758.1(c). The exemptions include exports for which the export authority is the following License Exceptions: BAG, GFT, AVS, GOV, TSR, and TMP.

Enforcement of Export Regulations

BIS and CBP are empowered to conduct inspections or audits of persons and companies that export items out of the United States, e.g., USPPIs. The inspections can cover both records of export transactions and the business processes that the USPPi has in place to ensure compliance with the EAR. This includes training employees who process export transactions on how to follow the USPPi's export control business processes. For example, a routine inspection or audit might cover, among other things, whether the USPPi has processes in place to ensure that:

1. Items included in export transactions have been properly classified with respect to ECCNs and Schedule B Numbers.
2. Denied party screening is performed for transactions subject to export controls.
3. Export authority has been properly evaluated for exported items. This would involve review of exports for which NLR status or a License

Exception was claimed to ensure that the exports met the conditions for the export authority that was used.

4. All exports reportable via AES were, in fact, reported.

5. Exports under a license were carried out in conformity with all of the terms and conditions set out in the license.

Violations of the EAR are subject to administrative penalties, as well as criminal penalties for cases in which violations are intentional or willful. Administrative penalties include fines and the denial of export privileges. Fines can be as high as the greater of \$250,000 or twice the value of the exported items, and denial of export privileges can last as long as 10 years. Criminal penalties include fines up to \$1,000,000 and imprisonment for up to five years for general violations and 20 years for violations related to national security.

6 Conclusion

The export of commercial items from the United States requires knowledge of the Export Administration Regulations (EAR). Responsibility for compliance is on the USPPPI. Failure to comply or exercise due diligence subjects the USPPPI to fines and imprisonment. Links to export control resources on the internet are below.

- 15 CFR Subchapter C- EAR

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title15/15cfrv2_02.tpl

- Bureau of Industry and Security Export Administration Regulation (EAR) Downloadable files <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

- The Bureau of Census -- Schedule B Number Search Engine

<https://uscensus.prod.3ceonline.com>

- Commerce Control List (CCL)

<https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>

- Commerce Country Chart (CCC)

<https://www.bis.doc.gov/index.php/forms-documents/regulations-docs/14-commerce-country-chart/file>

- Export Control Classification Number (ECCN)

<https://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/export-control-classification-number-eccn>

- SNAP-R system

<https://snapr.bis.doc.gov/registration>

If you are looking to work with the NYS STLC or have a specific request for assistance please contact us at:

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