



# INTRODUCTION TO EXPORT LICENSING

*Joseph R. Brubaker*

*Ammon R. Hansen*

*Theo Smith*

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Joseph Brubaker  
Kirton | McConkie  
+1 801 323 5974  
jbrubaker@kmclaw.com



Ammon Hansen  
Kirton | McConkie  
+1 208 370 3325  
ahansen@kmclaw.com



Theo Smith  
Kirton | McConkie  
+1 801 321 4825  
tsmith@kmclaw.com

# INTRODUCTION TO EXPORT LICENSING

## Key Topics:

- Export Administration Regulations (EAR)
  - Scope
  - Licensing Process
  - Prohibitions
  - Exceptions
- International Traffic in Arms Regulations (ITAR)
  - Licensing
  - Exemptions

# EXPORT ADMINISTRATION REGULATIONS (“EAR”): *Scope*

## **Items Subject to the EAR**

- Commodities, software, and technology
- “Dual use” items on the Commerce Control List (“CCL”): commercial and military applications
- Trade-related activities with sensitive end-users or end uses
  - E.g., published materials related to “the proliferation of nuclear explosive devices, ‘missiles,’ chemical or biological weapons, whole plants for chemical weapons precursors”

## **Items Not Subject to the EAR, 15 CFR §734.3(b)(3)**

- Published materials
- Public domain materials
- Instructional academic or scientific curriculum
- Public (non-secret) patents
- Non-proprietary printed information

# EAR:

## *Scope*

### **Exports:**

- Actual Shipment
- Electronic Transmission
- Temporary Exports
- No Sale Necessary
- Deemed Export

### **Re-exports:**

- U.S. Origin (inter-foreign)
- U.S. Origin Content (25%, 10%, or 0%)
- Exports List (certain items always controlled)

**Transfers** (intra-foreign)



# EAR:

## *Licensing Process*

### **Licenses from Bureau of Industry and Security (U.S. Commerce Dept.)**

- Rule: Obtain license beforehand export or re-export

#### **Process:**

- 1. Classify item under Commerce Control List (CCL) by identifying its Export Control Classification Number (ECCN)
- 2. Check license exceptions and Commerce Country Chart
- 3. Submit appropriate licensing forms
- 4. Government review period
- 5. Don't let it accidentally expire



# EAR:

*Licensing Process #1: Classify item under Commerce Control List (CCL) by identifying its Export Control Classification Number (ECCN)*

Category	Group	Entry
0- Nuclear Materials, Facilities & Equipment	A- Equipment	0- National Security & Dual Use
1- Materials, Chemicals, "Microorganisms" & Toxins	B- Test, Inspection & Production Equipment	1- Missile Technology
2- Materials Processing	C- Materials	2- Nuclear Non-Proliferation
3- Electronics	D- Software	3- Chemical & Biological Weapons
4- Computers	E- Technology	5- National Security & Foreign Policy
5- Telecommunications & Information Security		6- Munitions
6- Lasers & Sensors		9- Anti-terrorism, Crime Control, Regional Stability, Short Supply, United Nations Sanctions
7- Navigation & Avionics		
8- Marine		
9- Propulsion Systems, Space Vehicles & Related Equipment		

# EAR:

## *Licensing Process #1: Classify item under Commerce Control List (CCL) by identifying its Export Control Classification Number (ECCN)*

**9B515** Test, inspection, and production “equipment” “specially designed” for “spacecraft” and related commodities, as follows (see List of Items Controlled).

### License Requirements

*Reason for Control:* NS, RS, AT

Control(s)	Country Chart

	<i>(See Supp. No. 1 to part 738)</i>
NS applies to entire entry	NS Column 1
MT applies to equipment in 9B515.a for the “development” or “production” of commodities in USML Category XV(e)(12) and XV(e)(19) that are MT controlled.	MT Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

**List Based License Exceptions** (See Part 740 for a description of all license exceptions)

*LVS:* \$1500; \$5000 for 9B515.b

*GBS:* N/A

a. Test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCNs 9A004.u, 9A515.a, or USML Category XV(a) or XV(e).

*Note:* ECCN 9B515.a includes equipment, cells, and stands “specially designed” for the analysis or isolation of faults in commodities enumerated in ECCNs 9A004.u or 9A515.a, or USML Category XV(a) or XV(e).

b. Environmental test chambers capable of pressures below (10<sup>-4</sup>) Torr, and “specially designed” for commodities enumerated in 9A515.a or USML Category XV(a).

# EAR:

## *Licensing Process #2: Check license exceptions and Commerce Country Chart*

- Read EAR's section on all involved ECCNs
- Read EAR's sections on all involved countries and the Country Group
- Check Commerce Country Chart for export controls and exceptions
- Check ECCNs against the countries' controls
- Check any other EAR or UN comments

**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 <sup>2,3</sup>	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		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X		X	X		X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia <sup>3</sup>	X					X		X	X							
Austria <sup>3,4</sup>	X					X		X	X			X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			

Export Administration Regulations

Bureau of Industry and Security

April 8, 2022

# EAR:

## *Licensing Process #3: Submit Appropriate Licensing Forms*

### **Filing Guidelines**

- Define the item(s) in terms of the technical parameter(s) of the ECCN(s)
- If technology, define what will and will not be transferred
- Identify the specific end-uses
- Provide any information you know about the ultimate consignee/enduser(s)
- Provide information on any internal controls in place to mitigate the risk of diversion or unauthorized end-users/end-uses
- BIS licenses authorize exports/re-exports *to and among the endusers* listed on the license, so craft the license application accordingly

# EAR:

*Licensing Process #4 and 5: Government review period. Don't let it accidentally expire.*

## **Waiting Period**

- Approximately 30 days

## **Expiration**

- Usually 4 years. This varies, so confirm.
- Do not engage in restricted exports or re-exports if license is not valid.

## **Ongoing Compliance**

- Maintain an internal export compliance program:
  - Training
  - Rigorous and timely product classifications
  - Audits
- Timely responses to questions posed through SNAP-R

# EAR:

## *Prohibitions*



### **Prohibitions**

- Export of controlled items to listed countries
- Export to embargoed destinations (Cuba, Iraq, North Korea, Ukrainian regions, Iran, Russia and Belarus, Syria)
- Export to prohibited end-uses or end users (e.g., Russia)
- Denied Persons List, Unverified List, Entity List, Military End User List

# EAR:

## *Exceptions and Exceptions to Exceptions*

### License Exceptions

- Temporary exports of tools of trade (TMP)
  - Tools, equipment, or other items that are used for the manufacture, servicing, or production of commodities, Will be returned as soon as practicable
  - Items must remain under the "effective control" of the exporter at all times.
- Gifts (GFT)
  - Gifts and humanitarian donations. The items also must not be controlled for certain reasons, such as missile technology or nuclear nonproliferation.
- Baggage (BAG)
  - Personal baggage the items that they would ordinarily use in their employment, for a temporary period. The items must be used personally by the individual.

### Public Domain Complexities

- If printed material or software contains proprietary, classified, or controlled technical data, it may still fall under the jurisdiction of the EAR or ITAR and could require a license to export *even if it's in the public domain.*

# INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (“ITAR”)

## Licenses and Agreements

### **Licenses:**

Used for:

- Permanent/Temporary export
- Temporary import

Of:

- Defense Articles
- Defense Services
- Technical Data

### **Agreements:**

Used for a U.S. person to provide:

- Defense service to a foreign person
- Authorization to a foreign company to manufacture defense articles abroad
- Authorization to a foreign company to establish a distribution point abroad for defense articles of U.S. origin for subsequent distribution to foreign persons

# ITAR DEFINITIONS

- **Defense Articles-** §120.31
  - Item or technical data designated in the USML (§ 121.1)
  - Technical data recorded or stored in any physical form, items that reveal tech data, etc.
  - Unfinished products that have reached a stage where they are identifiable as Defense Articles

NOTE: Does not include basic marketing information on function or purpose or general system descriptions.
- **Defense Services-** §120.32
  - Furnishing assistance/training to foreign persons (in the U.S. or abroad) in design, development, engineering, manufacturing, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles.
  - Furnishing of technical data to foreign person (in U.S. or abroad)
  - Military training of foreign units and forces
- **Technical Data-** §120.33
  - Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. Includes blueprints, drawings, photographs, plans, instructions, documentation.
  - Classified information relating to defense articles and services on the USML/600-series items on the CCL
  - Information covered on invention secrecy order
  - Software described in 120.40(g) directly related to defense articles.

# TECHNICAL DATA

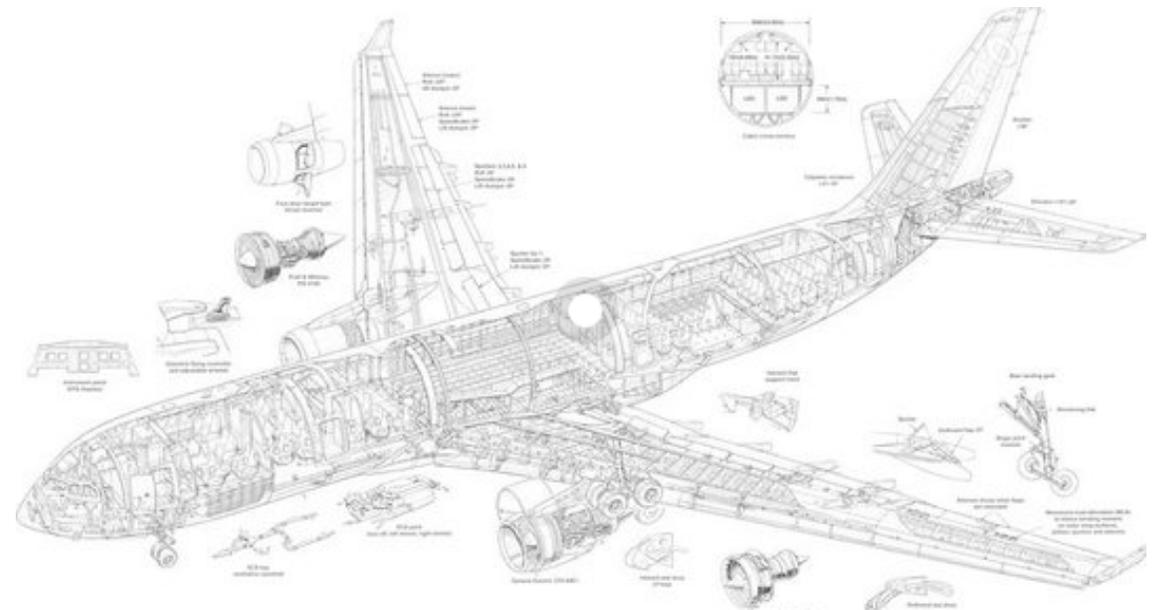
## *TAA or License?*

### **Defense Services vs. Technical Data**

- Defense Services – ITAR §124.1 – Export of Defense Services require a TAA
- Technical Data – ITAR § 125.2(a) – Export of unclassified technical data by DSP-5 License

### **Definition of Defense Services**

- Providing technical data is a Defense Service



# DEFENSE ARTICLES

## United States Munitions List (USML)

I. Firearms, Close Assault Weapons & Combat Shotguns	XIII. Materials & Misc. Articles
II. Guns & Armament	XIV. Toxicological Agents, Incl. Chemical Agents, Biological Agents and Associated Equipment
III. Ammunition/Ordnance	XV. Spacecraft & Related Articles
IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs & Mines	XVI. Nuclear Weapons Related Articles
V. Explosives & Energetic Materials, Propellants, Incendiary Agents & Their Constituents	XVII. Classified Articles . . . Not Otherwise Enumerated
VI. Surface Vessels of War & Special Naval Equipment	XVIII. Directed Energy Weapons
VII. Ground Vehicles	XIX. Gas Turbine Engines
VIII. Aircraft & Related Articles	XX. Submersible Vessels & Related Articles
IX. Military Training Equipment & Training	XXI. Articles/Services Not Otherwise Enumerated
X. Personal Protective Equipment	
XI. Military Electronics	
XII. Fire Control, Range Finder, Optical & Guidance and Control Equipment	

# DEFENSE EXPORT CONTROL & COMPLIANCE SYSTEM (DECCS)

- **DECCS is the system for**
  - Commodity Jurisdiction (CJ)
  - Advisory Opinions (AOs)
  - Registration
  - Licensing
  - NOTE: Per DECCS Industry Service Portal – *“In the coming months, the Disclosures application will also be available.”*
- **DDTC analyzes and processes approximately 38,000 defense export license applications from industry each year (per website).**



DECCS Industry Service Portal MENU

## DECCS - Defense Export Control and Compliance System

**Welcome to the Directorate of Defense Trade Controls (DDTC)** new online system, the Defense Export Control and Compliance System (DECCS). DECCS replaces DETRA, DTRADE, EFS, ELLIE, and MARY, providing users access to several DDTC business applications through a single, cloud-based portal. Currently, the Registration, Licensing, Advisory Opinions and Commodity Jurisdictions applications are live in the DECCS Portal. In the coming months, the Disclosures application will also be available. Provide Feedback

### Sign up for a DECCS User Account

A DECCS account is required to access Registration, Licensing, and other DDTC online applications. Don't have an account yet? Select enroll below to get started. If you have completed an ITAR registration with DDTC before, have your Registration Code handy.

[Enroll](#)

# LICENSURE FORMS

- **DSP-5:** License for Permanent Export of Unclassified Defense Articles, Related Technical Data, and Defense Services
- **DSP-73:** License for Temporary Export of Unclassified Defense Articles
- **DSP-61:** License for Temporary Import of Unclassified Defense Articles
- **DSP-85:** Classified License for the Export of Defense Articles and Services – this form is used to apply for a license to export a defense article or service that is classified

# PRIOR TO COMPLETING YOUR APPLICATION

## **Ensure you have done the following:**

- Registered your company with DDTC
- Identified your ITAR Empowered Official
- Compiled all required documentation
- Confirmed eligibility requirements for export / import
- Confirmed USML category for defense articles and services
- Completed all blocks on your applications for licenses
- Followed all General Instructions provided by DDTC in its Guidelines for Applications
- Submitted Classified information under separate cover



# NON-TRANSFER AND USE CERTIFICATES (DSP-83)

**Certification that foreign consignee and foreign end user will NOT reexport, resell, or otherwise dispose of the SME outside the country named as the location of the foreign end-use to any other person without authorization.**

**A DSP-83 is required for export of:**

- Significant Military Equipment
- Classified Articles
- Classified Technical data
- Other defense articles, technical data, defense services as required by DDTC.

**Must be executed by**

- Foreign consignee
- Foreign end user
- Applicant

www.22

U.S. Department of State  
UNITED STATES OF AMERICA  
**NONTRANSFER AND USE CERTIFICATE**

This certificate is submitted in connection with export application.

OMB No. 1450-0047  
EXPIRATION DATE: 05-31-2018  
HEAVY METALS: 1 Year  
Instruction Page

1. Name of United States applicant  
2. Name of foreign end-user  
3. Country of ultimate destination

4. Articles/data  
We certify that we have placed an order with the person named in item 2 for the following articles/data in the quantity and value shown below:

QUANTITY	ARTICLES/DATA DESCRIPTION	VALUE (U.S. \$)

5. Certification of foreign consignee  
We certify that we are importing the articles/data listed in item 5 for delivery to the end-user in item 3. Except as specifically authorized by prior written approval of the U.S. Department of State, we will not re-export, resell, or otherwise dispose of any of those articles/data (1) outside the country in item 4 above, or (2) to any person, including the end-user, if there is reason to believe that it will result, directly or indirectly, in disposition of the articles/data contrary to the representations made in this certificate by any party. We further certify that all of the facts contained in this certificate are true and correct to the best of our knowledge and belief and we do not know of any additional facts that are inconsistent with this certificate. We will promptly send a supplemental certificate to the U.S. applicant in item 2 disclosing any change of facts or intentions set forth in this statement.

Sign here in ink \_\_\_\_\_  
Signature of Official, Foreign Consignee \_\_\_\_\_ Date Signed (mm-dd-yyyy) \_\_\_\_\_  
Type or print \_\_\_\_\_  
Name and Title of Signer \_\_\_\_\_ Seal \_\_\_\_\_

6. Certification of foreign end-user  
We certify that we are the end-user of the articles/data in item 5. Except as specifically authorized by prior written approval of the U.S. Department of State, we will not re-export, resell, or otherwise dispose of any of those articles/data (1) outside the country in item 4 above, or (2) to any other person. If the end-user is a foreign government, we certify that we will observe the assurances contained in item 8. We further certify that all of the facts contained in this certificate are true and correct to the best of our knowledge and belief and we do not know of any additional facts that are inconsistent with this certificate.

Sign here in ink \_\_\_\_\_  
Signature of Official, End-User \_\_\_\_\_ Date Signed (mm-dd-yyyy) \_\_\_\_\_  
Type or print \_\_\_\_\_  
Name and Title of Signer \_\_\_\_\_ Seal \_\_\_\_\_

7. Certification of foreign government  
We certify that we will not authorize the re-export, resale or other disposition of the articles/data authorized in item 5 outside the country in item 4 without prior written approval of the U.S. Government. If the articles/data are for use by our "armed forces" (i.e., army, navy, marine, air force, coast guard, national guard, national police, and any military unit or military personnel organized under or assigned to an international organization), we certify that we will use the authorized articles/data only: (a) for the purposes specified in the Mutual Defense Assistance Agreement, if any, between the U.S. Government and this government; (b) for the purposes specified in any bilateral or regional defense treaty to which the U.S. Government and this government are both parties, if subparagraph (a) is inapplicable; or (c) for internal security, individual self-defense, and/or civic action, if subparagraphs (a) and (b) are inapplicable.

Sign here in ink \_\_\_\_\_  
Signature of Government Official \_\_\_\_\_ Date Signed (mm-dd-yyyy) \_\_\_\_\_  
Type or print \_\_\_\_\_  
Name and Title of Signer \_\_\_\_\_ Seal \_\_\_\_\_

8. We certify that no corrections, additions or alterations were made on this form by us after it was signed by the foreign consignee, foreign end-user or foreign government.

Sign here in ink \_\_\_\_\_  
Signature of Applicant \_\_\_\_\_ Date Signed (mm-dd-yyyy) \_\_\_\_\_  
Type or print \_\_\_\_\_  
Name and Title of Signer \_\_\_\_\_ Seal \_\_\_\_\_

DSP-83  
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# ITAR EXEMPTIONS

**ITAR §120.57(c) – “Exemption means a provision . . . that authorizes the export, reexport, retransfer, temporary import, or brokering of a specific defense article or defense service without a license or other written authorization.**

**Over 50 exemptions contained in the ITAR, including:**

- Temporary import for repair
- Temporary import for enhancement or upgrade
- Temporary imports for incorporation into other defense articles.
- Temporary Export to Public Exhibitions/Trade Shows
- Unclassified Defense Articles in furtherance of agreements
- Data in furtherance of agreements
- Training and military service
- Canadian exemption
- Body armor
- Foreign Trade Zones
- Data for bona fide and full-time regular employees of institutions of higher learning
- Technical data approved for public release
- FMS exemption

# EXEMPTIONS – GENERAL REQUIREMENTS

- **Valid registration with DDTC**
- **Must meet §120.16 requirements**
- **Most cannot be used to export to a §126.1 country**
- **Cannot be used retroactively (Plan ahead to avoid an ITAR violation!!)**
- **Cannot be used when Congressional Notification is required or for SME/MTCR exports**



# EXEMPTIONS – SPECIFIC REQUIREMENTS

## **Specific Requirements for the Exemption**

- Read the exemption requirements carefully
- Only one exemption per transaction
- Check other relevant ITAR sections

## **Recordkeeping**

- Only use exemptions if you can comply with the recordkeeping and reporting requirements
- For Technical Data, submit certification and maintain it for period of 5 years



# EXEMPTIONS – OTHER CONSIDERATIONS

- **Permanent/Temporary**
- **Export/Import**
- **Classified/Unclassified**
- **SME/Non-SME**
- **U.S. Origin/Foreign Origin**
- **Defense Articles/Defense Services/Technical Data**
- **Countries Involved**
- **End User**
- **USML Category**
- **Unique circumstances**
- **Government Approval**
- **Existing Agreement (MLA/TAA)?**
- **Applicable Provisos**

# VIOLATIONS

## **Potential Violations Associated with Licensing:**

- Failure to maintain copy of DSP-5 license
- Export of hardware/technical data to nationalities not authorized by license or agreement
- Export of hardware in excess of license value
- Incorrect value information on license application
- Failure to include purchase order in license application
- Improper use of exemptions



# TEMPORARY IMPORT VIOLATIONS

- **Increase in instances where foreign persons temporarily return defense articles for repair or replacement without U.S. Person's knowledge – Unauthorized Temporary imports**
- **Guidelines from DDTC**
  - Investigate to determine whether US person had any responsibility for the violation
  - If no responsibility- DSP-5 license application + detailed transmittal letter (See DDTC website)
  - If any responsibility – Voluntary Disclosure

# QUESTIONS?



Joseph Brubaker  
Kirton | McConkie  
+1 801 323 5974  
jbrubaker@kmclaw.com



Ammon Hansen  
Kirton | McConkie  
+1 208 370 3325  
ahansen@kmclaw.com



Theo Smith  
Kirton | McConkie  
+1 801 321 4825  
tsmith@kmclaw.com