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# Export Compliance Regulation



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## EXPORT COMPLIANCE PRACTICE AREAS

There are three sets of export control regulations under U.S. law:

- **Export Administration Regulations (EAR)** administered by the U.S. Department of Commerce, Bureau of Industry and Security (BIS);
- **International Traffic in Arms Regulations (ITAR)** administered by the U.S. Department of State, Department of Defense Trade Controls (DDTC); and
- **Treasury Department Office of Foreign Assets Control (OFAC)** issues and administers sanction and embargo regulations.

### What is an Export?

In addition to goods that are shipped by truck, ship or plane to a foreign customer, exports are also broadly defined to include the transfer of any oral, written, electronic information or visual disclosure of commodities, technology, information, technical data, assistance or software codes to anyone outside the U.S., to a non-U.S. person wherever located in the world or to a foreign embassy or affiliate. An export can be accomplished by a click of a mouse, via a smart phone, a phone conversation or visual display at a trade show. A manufacturer that is involved in international commerce and does not appreciate the complex world of export compliance can easily run afoul of the U.S. export laws.

### EXPORT ADMINISTRATION REGULATIONS

The EAR controls the movement of many

items not controlled by ITAR. They regulate:

- The export and re-export of most commercial items, and
- Dual-use items, i.e. items that could have a military or civilian application such as lasers, aircraft components and certain types of rifles and scopes.

Once a product, technology or service is subject to the EAR, then the manufacturer must classify the items, identify any reasons for control, cross-reference the controls against the country chart, screen all parties to the transaction and then export using either the correct classification or a license obtained from Bureau of Industry and Security.

### INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

The purpose of ITAR is to regulate the export of defense articles, services or defense-related technical data. Anything related to a military purpose by design, fit or function is controlled by ITAR. ITAR requires all manufacturers of defense related products or components to register with the DDTC, even if not exported. This registration requirement applies even if you only export or ship domestically.

The ITAR regulations apply to any manufacturer that:

- Is a military component manufacturer,
- Receives drawings customers stamped "ITAR",

- Sends drawings involving defense jobs to foreign suppliers,
- Has engineers who communicate by telephone, e-mail or webinars with their counterparts in a foreign country,
- Makes components for foreign militaries,
- Ever has foreign visitors tour its plant,
- Has foreign workers in the plant, or
- Receives a questionnaire or certification requesting verification that the company is registered with the DDTC. If a company is not registered, it cannot receive any ITAR work. If a company is registered and wishes to export ITAR-controlled products, data, or services it must obtain a license from the DDTC for the export.

### ITAR Registration

A manufacturer that subcontracts for a defense contractor must be registered with the DDTC and comply with the ITAR regulations whether it exports or not.

### OFFICE OF FOREIGN ASSETS CONTROL

The OFAC controls are commonly encountered when complying with EAR or ITAR. They involve comparing the end-user to lists of prohibited parties and countries to make sure the export is not going to a person or country who is the subject of a U.S. embargo.

If you need help understanding EAR or ITAR, please contact Gerald F. Wahl at Bansbach Law P.C.