

*The International
Trade Compliance
And Operations
Experts for
129 years!*

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THE IMPORTANCE OF THE EXPORT ADMINISTRATION REGULATIONS (EAR) FOR 2009

The Export Administration Regulations (EAR) is codified in Title 19 Code of Federal Regulations, Parts 700 through 774. It is promulgated by the Bureau of Industry and Security (BIS), an agency within the Department of Commerce. It is through this regulation that the U.S. Government exercises its control over dual-use goods and conventional arms exported from the U.S.

What exports does this regulation cover and what are dual-use goods? The scope of the EAR extends to exports of ALL commodities, technology and software with two exceptions. The first exception is technology or technical data that is in the public domain, is available free of charge or at only a nominal cost to reproduce. In other words, what one can find in a public library or on the Internet. Think technical data or marketing oriented literature that a company would gladly handout to anyone who would accept it. The second exception is commodities technology or software that falls under the exclusive jurisdiction of another federal agency of the U.S. Government. The best example here is items that have primarily or exclusively a military application. Such items fall under the exclusive jurisdiction of the Directorate of Defense Trade Controls who administers the International Traffic in Arms Regulations (ITAR).

Everything else then comes within the scope of the EAR because everything else is a dual-use good; having primarily a civilian application but possibly being employed for some military purpose. We need to emphasize that word **everything**. You certainly know that exporting #2 lead pencils to a customer in the U.K. would not require a license from the U.S. Government. However, if that customer was on the Denied Persons List you may have just violated U.S. export law and are subject to monetary penalties. U.S. export controls are all a matter of degree; how much control, over what, to whom, for what end-use.

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It is absolutely essential that every exporter of anything other than munitions, special nuclear materials and dangerous drugs have available and be familiar with the EAR. It governs virtually everything that is exported from the U.S. If you export from the U.S., understanding and applying the provisions of the EAR is not optional; it's a legal requirement.

Important to appreciate about the EAR is that it is a critical instrument of U.S. foreign policy and is applied aggressively in furtherance of that policy. The result is that the EAR changes very frequently; it is a dynamic document that changes not only with global relationships but with technology as well. Maintaining as current your reference to the EAR is essential due to the frequent changes that occur.

The changes to the EAR that directly affect exports are not a once per year occurrence. They are published and become effective throughout the year. In practical terms, one could almost say that the EAR doesn't have an annual edition but is a regulation that is subject to continual change and revision. This is all the more reason to have immediate access to the changes that occur. The government's position in respect of export control law is that "ignorance is not an acceptable excuse". An exporter's responsibility is to know what the law and regulation is at the moment in time that a shipment is tendered for movement from the U.S.

During 2008, the Commerce Control List (CCL) experienced two rounds of substantial changes based on agreements reached under the Wassenaar Arrangement. Commodities, technologies and software were both added to the list and removed from the list. Not being aware of these changes, an exporter could be excessively subjecting an item to control when it is no longer necessary or, worse, shipping an item that is now on the CCL that may not have been there before. Changes also came about as the result of the mandatory filing of export license applications and reexport authorizations through the BIS Simplified Network Application Processing – Revised (SNAP-R) on-line system. Paper communications are no longer acceptable.

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There was also a redefinition of the *de minimis* rule that permitted a single calculation for incorporated items and “bundled” software within foreign produced commodities. In 2008 the Unz & Co. EAR was updated more than 14 times. As a subscriber, you are always right up to date with the current revisions.

In 2009, look for changes to many more categories within the Commerce Control List implementing further Wassenaar Plenary Agreements resulting in changes in the Industrial List of dual-use goods and technologies (CCL). Forthcoming will be a new License Exception ICT covering BIS approved transfers of otherwise licensable items between related parties. This is but a brief list of known changes that will be forthcoming. The 14 updates in 2008 gives you a clear idea of the scope and frequency that can be expected in 2009.

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