

Export Compliance: Ask Yourself What, Where and To Whom

Increasing attention is being directed toward export compliance, both from the federal government and from private industry. Companies have become painfully aware of the dire consequences that attend an export compliance misstep—like an unpleasant encounter with an investigator or a prosecutor. Some companies and organizations have had robust export compliance systems in place for years; others are scrambling to put a rudimentary system in place. This export compliance white paper is intended to offer some general guidelines to private companies and other organizations as they undertake export compliance efforts.

Start with Classification: Ask yourself “what am I exporting?”

QUESTION ONE: IS IT AN ITAR ITEM?

If you are exporting your product, technology, or service (collectively referred to as an “item”), then compliance begins with classification. You must know what it is you are exporting. To begin with, you must first determine if your item is governed by ITAR, the International Traffic in Arms Regulations. Administered by the State Department, ITAR governs and regulates munitions list items. These are items that are specifically designed or modified for military use. The Munitions List can be changed, or be clarified, from time to time by the State Department. For example, recently the State Department asserted its jurisdiction over the airframe of the C-130 military aircraft. Any item that is governed by ITAR requires a license, or a license exception, to be exported.

QUESTION TWO: IF NOT AN ITAR ITEM, THEN WHAT KIND OF CCL ITEM?

If an item does not fall under the jurisdiction of ITAR (i.e. it is not a munitions list item), then it falls under the jurisdiction of the Commerce Department and its classification is covered by the Commerce Control List (“CCL”). Although the Commerce Department restrictions might be less than those applicable to an ITAR item, the jurisdictional classification scheme of the CCL is much more complex. Each item must be assigned a specific ECCN number (the “export control classification number”). And there are hundreds of ECCN numbers and sub-numbers. Often the CCL classification analysis can be complex, with the ultimate determination being made by an engineer. It is also important to understand that parts or products have different classification numbers than technical data. The ECCN number is the key to making an export determination under the Commerce Department regulations. Proper ECCN classification and appropriate paperwork will help speed your item through customs.

A few other recommendations regarding export classification:

- Once an item has been classified as a munitions list item, and falls under the jurisdiction of ITAR, it stays that way. Even years later, it is still an ITAR item until specifically released by the State Department by official commodity jurisdiction.
- A company can submit items to the State Department for a Commodity Jurisdiction (also know as a “CJ”) or to the Commerce Department. This process can take time and may require the help of an expert.
- A company can also self-classify certain items, but you must be careful. Classification can be very complex—and sometimes the result is not intuitive.
- Don’t forget that technical data must also be classified before being exported.

In summary, begin by asking “what” you are exporting. The proper classification of your item will then inform the rest of the analysis regarding export compliance. Once you know the classification of your item, you can move on to the next questions: where am I exporting the item? to whom am I exporting the item?

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