

Export Compliance: The Second Step is to Ask Yourself “Where am I Exporting?”

THE QUESTION OF “WHERE” FOR MUNITIONS LIST ITEMS.

If you are exporting your product, technology, or service (collectively referred to as an “item”) and you have determined that your item is on the United States Munitions List “USML,” then the analysis is fairly simple. You cannot export a USML item outside of the United States without a license or a license exception. This is true even with simple items, as long as they are on the USML and fall under the jurisdiction of the State Department. You should also be aware that an item does not need to leave the borders of the United States to be exported. You can export an item by disclosing it to a foreign person or to an embassy, agency or subdivision of a foreign government within the United States. This type of export has received much attention lately. Also, USML technical data that is taken out of the country in electronic format (laptop, hard drive, removable drive) is an export, even if never shown to a foreign person.

THE QUESTION OF “WHERE” FOR CCL ITEMS.

If an item does not fall under the jurisdiction of the State Department and the ITAR (i.e. it is not a USML 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 may or may not be less than those applicable to a USML 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”). With that number you can then ask yourself “to where is the item being exported?” For Commerce items, you must determine the country to which the item will be exported. Once you have determined the country to which the item is being exported, then you consult the Country Chart, which is provided in the Commerce Regulations. With the Country Chart you can determine the exact restrictions for the proposed country of export and then, with that information, return to the CCL to find out if the item is restricted to the proposed country. This is a complex process that requires training and oversight to accomplish successfully. The regulations are not easily understood and there are numerous exceptions that apply to the CCL. There are various levels of control for different items—some highly restricted and some restricted to only a handful of countries. If you do not have experience in this area, you should seek assistance until you are comfortable with the process.

A few summary points and other recommendations regarding the question of “where” you are exporting:

- If your item is on the U.S. Munitions List then you need a license or license exception to export the item, anywhere in the world, and even if exported within the borders of the United States.
- If your item is controlled by Commerce, then consult the Country Chart and the CCL to find out if the proposed country of export is restricted (based on the ECCN) or if there is a license exception. If not, you must have a license.
- Disclosing an item to a “foreign person” is exactly the same as sending the item to the country where the foreign person has citizenship. In other words, you can export an item even if it never leaves the United States.
- Be especially careful when “foreign person” visitors come to your facility; if you do not carefully restrict access, you may unwittingly export your technology to their country during the visit.
- You must also carefully manage any “foreign person” employees to avoid the unintentional export of an item within your company.
- Don’t forget you must still ask yourself “to whom is the item being exported?”
- There are numerous lists and “red flag” indicators to be checked.

In summary, after you have determined “what” you are exporting, then ask yourself “where” you are exporting. ITAR and EAR have different levels of control, with some EAR items approved for export to certain countries. The final question is “to whom am I exporting the item?”

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