

International Traffic in Arms Regulations/ Export Administration Regulations

Nadcap
ITAR/EAR Information



What is ITAR & EAR?

- ☞ International Traffic in Arms Regulations
 - Code of Federal Regulations Parts 120 – 130

- ☞ EAR
 - Export Administration Regulations

Full text of the Federal Law available at
(<http://pmdtc.org/reference.htm>)



How Does this Impact You?

- ☞ Job audits and the auditors ability to review blueprints, specifications, or other documentation may be impacted by this law.
- ☞ U.S. Citizens, Registered Aliens, and valid Licensees are allowed to review this information, but then incur some responsibility under this law. These individuals are unrestricted.
- ☞ Non-U.S. Citizens (not qualified by above) are not allowed to review material covered by this law and are considered restricted.
- ☞ Nadcap follows the requirements in NIP-016.



What is the Impact?

- ☞ Many Nadcap participating prime contractors, are bound by this law and are required to assure control and relevant education
- ☞ As parts are audited you must be aware of the requirements of this law should you have any ITAR/EAR hardware.
- ☞ The law provides for penalties including fines, jail, and civil penalties under U.S. criminal statutes.



Technical Data is an Exportable Commodity

- ☞ Technical data is included as an export under the ITAR regulations (<http://pmdtc.org/reference.htm>)
 - Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, process specifications, photographs, plans, instructions, and documentation.



Export

- ☞ The definition of Export includes
 - Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person whether in the U.S. or abroad or
 - Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S., or abroad



Nadcap Supplier Responsibilities (NIP-016)

- ☞ Prior to and at the beginning of the audit, the Supplier shall identify specifications, processes, and drawings (referred to as “auditable material”) which are restricted under the ITAR and EAR. The Supplier shall contact the owner of any information for clarification when unsure about whether information is export controlled under ITAR or EAR.
- ☞ The Auditor should remind the Supplier of this obligation. The Auditor shall not be held liable for any unauthorized transfer of Restricted Data, unless such Auditor knew or should have known of the restricted nature of the data.
- ☞ In the event auditable material is under the ITAR and EAR, the supplier can either:
 - Request an Unrestricted Auditor, or;
 - Work with PRI Staff to provide and discuss appropriate auditable material, so that the PRI staff can provide appropriate direction to Restricted Auditors or;
 - Limit the audit to auditable material not restricted under the ITAR and EAR.



Nadcap Internal Procedure 016

- ☞ Auditable material restricted by ITAR/EAR shall not be posted on eAuditNet or removed from the supplier facility by the Auditor. Contact the Staff Engineer for direction if objective evidence is necessary to support the audit.



Recognizing ITAR/EAR Material

- ☞ May be identified as
 - ITAR/EAR Control
 - Export Control
- ☞ Identification may be on:
 - Face of drawing
 - First sheet of specification or embedded in text
 - Purchase Order
- ☞ May not be identified as such, but is on the covered Munitions List



Applicable at Non-U.S. Suppliers

- ☞ Suppliers located outside of the U.S. may be licensed under this legislation and may be processing ITAR/EAR material
- ☞ As Auditors for PRI and Nadcap, Restricted Auditors must be especially vigilant to comply with this U.S. law and avoid review of any ITAR/EAR material.



Overview of ITAR/EAR

- An overview of the ITAR/EAR Law follows. This overview was originally presented at the NASA Export Control Program website at <http://www.hq.nasa.gov/office/codei/nasaecp/> and has been modified for purposes of relation to Nadcap. While the examples given relate to NASA activities, all items on the U.S. Munitions List are covered by this law.



U.S. EXPORT CONTROL LAWS AND REGULATIONS

This material is intended only as an overview tool and does not provide all substantive information needed to make a responsible export decision. Please contact your Center Export Administrator or Counsel for assistance in interpreting and applying U.S. export control laws and regulations to your specific export or import requirement.

Bob Tucker

Director, Assessments and Technology Division,
Office of External Relations
and NASA Export Administrator



INTRODUCTION

Just What Is An Export Anyway?

☞ **A Simplified Definition**

- The transfer of anything to a “FOREIGN PERSON” by any means, anywhere, anytime, or the knowledge that what you are transferring to a “U.S. PERSON”, will be further transferred to a “FOREIGN PERSON”.



U.S. Export Laws and Regulations

☞ **AECA and ITAR (USML) - 22 CFR 120**

- covers items such as Space Launch Vehicles (e.g., the Space Shuttle), rocket engines, certain spacecraft (including all remote sensing satellite systems), missile tracking systems, etc. (both the hardware and the technology)

☞ **EAA and EAR (CCL) - 15 CFR 730**

- covers what is commonly referred to as “dual-use” items, including the Space Station (the hardware and certain technology)



U.S. GOVERNMENT PLAYERS

➔ **STATE**

➔ **COMMERCE**

- Bureau of Export Affairs

➔ **DEFENSE**

- Defense Threat Reduction
- Joint Chiefs of Staff (JCS)
- Others

➔ **Arms Control &
Disarmament Agency**

➔ **TREASURY**

- Customs
- Office of Foreign Assets Control

➔ **WHITE HOUSE**

- Office of Science & Technology Policy
- National Security Council
- U.S. Trade Representative

➔ **IC**

➔ **TRANSPORTATION**

- Federal Aviation Administration

➔ **JUSTICE**

- Federal Bureau of Investigation

➔ **ENERGY**



U.S. Export Laws and Regulations

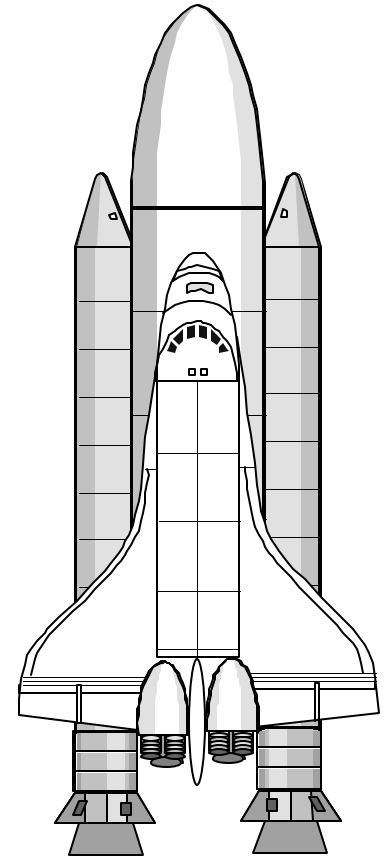
☞ **Examples of Other U.S. Government Players, Laws & Regulations**

- Drug Enforcement Administration (21 CFR 1311)
- Food and Drug Administration (21 USC 301)
- Department of Interior (50 CFR 17.21,22,31,32)
- Department of Treasury (31 CFR 500)
- Department of Energy (10 CFR 205.300, 10 CFR 110 & 810)
- Others



Reasons Certain Exports are Controlled

- **National Security (NS)**
- **Foreign Policy (FP)**
- **Proliferation (MT, NP, CB)**
- **Short Supply (SS)**
- **Anti-Terrorism (AT)**
- **Crime Control (CC)**
- **High Performance Computer (XP)**
- **Regional Stability (RS)**
- **UN Sanctions (UN)**



The International Traffic in Arms Regulations (ITAR)

22 CFR 120-130

- ☞ Administered by the Department of State (Office of Defense Trade Controls)
- ☞ **The United States Munitions List (USML)**
 - 21 categories of “Defense Articles/Services”
 - If an item is listed, it is subject to the ITAR
 - ◆ Example: Category IV - Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
 - ◆ Example: Category XV - Spacecraft and Associated Equipment



The United States Munitions List

(USML)

- ☞ I - Firearms
- ☞ II - Artillery Projectors
- ☞ III - Ammunition
- ☞ *IV - Launch Vehicles, etc.
- ☞ *V - Explosives, Propellants, Incendiary Agents and Their Constituents
- ☞ VI - Vessels of War and Special Naval Equipment
- ☞ VII - Tanks and Military Vehicles
- ☞ VIII - Aircraft and Associated Equipment
- ☞ IX - Military Training Equipment
- ☞ X - Protective Personnel Equipment
- ☞ XI - Military Electronics
- ☞ *XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment
- ☞ *XIII - Auxiliary Military Equipment
- ☞ XIV - Toxicological Agents and Equipment and Radiological Equipment
- ☞ *XV - Spacecraft Systems and Associated Equipment
- ☞ XVI - Nuclear Weapons Design and Related Equipment
- ☞ XVII - Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- ☞ XVIII - Reserved
- ☞ XIX - Reserved
- ☞ XX - Submersible Vessels, Oceanographic and Associated Equipment
- ☞ XXI - Miscellaneous Articles



ITAR DEFINITIONS- Defense Article

☞ Important ITAR Definitions

- **“Defense Article”** - any item on the USML, including **“technical data”**.



ITAR DEFINITIONS - Public Domain

☞ Important ITAR Definitions

- **Public Domain** - information which is published and which is generally accessible or available to the public:
 - ◆ through sales at news stands and bookstores;
 - ◆ through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
 - ◆ through second class mailing privileges granted by the U.S. government



ITAR DEFINITIONS - Public Domain

☞ Important ITAR Definitions

– Public Domain (cont'd)

- ◆ at libraries open to the public or from which the public can obtain documents;
- ◆ through patents available at any patent office
- ◆ through unlimited distribution at a conference, meeting, seminar, trade show or exhibition,, generally accessible to the public, in the United States;



ITAR DEFINITIONS - Public Domain

☞ Important ITAR Definitions

– Public Domain (cont'd)

- ◆ through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency.
- ◆ through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.



ITAR DEFINITIONS - Public Domain

☞ Important ITAR Definitions

– Public Domain (cont'd)

- ◆ Fundamental research is defined to mean basic and applied research in science and engineering **where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. government access and dissemination controls.**



ITAR DEFINITIONS - Public Domain

☞ Important ITAR Definitions

– Public Domain (cont'd)

◆ University research will not be considered “fundamental research” if:

- the University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
- the research is funded by the U.S. government and specific access and dissemination controls protecting information resulting from the research are applicable.



ITAR DEFINITIONS - Technical Data

☞ Important ITAR Definitions

- **Technical Data** - information which is **required** for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of **“defense articles”**; classified information related to “defense articles”; information covered by an invention secrecy order; software directly related to “defense articles”.



ITAR DEFINITIONS - Technical Data

☞ Important ITAR Definitions

- **Technical Data** (cont'd) - **does not include** information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the “**public domain**”. It also **does not include** basic marketing information on function or purpose or general system descriptions of “**defense articles**”.



ITAR DEFINITIONS - U.S. Person

☞ Important ITAR Definitions

- **U.S. Person** - a natural person who is a lawful permanent resident as defined in 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the U.S. It also includes any governmental (federal, state or local), entity.



ITAR DEFINITIONS - Foreign Person, Export

☞ Important ITAR Definitions

- **Foreign Person** - opposite of U.S. Person.
- **Export** - sending or taking a “**defense article**” out of the U.S. in any manner, except by mere travel outside of the U.S. by a person whose personal knowledge includes “**technical data**”; or transferring registration, control, or ownership to a “**foreign person**” of any aircraft, vessel, or satellite covered by the **USML**, whether in the U.S. or abroad; or



Particular
note for
Nadcap

ITAR DEFINITIONS - Export

Export (cont'd) - disclosing (including oral or visual disclosure) or transferring in the United States any “**defense article**” to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or disclosing (including oral or visual disclosure) or transferring “**technical data**” to a “**foreign person**”, whether in the U.S. or abroad; or performing a “**defense service**” on behalf of, or for the benefit of, a “**foreign person**”, whether in the U.S. or abroad.³⁰⁻



ITAR PROSCRIBED COUNTRIES

☞ Proscribed Countries - 22 CFR 126.1

- If a country appears on this list, it is (generally) U.S. policy to deny licenses, or other approvals, associated with exports and imports of defense articles and defense services, destined for or originating in that country.
- **ITAR** License Exemptions are trumped if a “**foreign person**” from any of these countries is involved; i.e., a license must be applied for.



ITAR - PROSCRIBED COUNTRIES LIST (22 CFR 126.1)

- ☞ **AFGHANISTAN**
- ☞ **ANGOLA**
- ☞ **ARMENIA**
- ☞ **AZERBAIJAN**
- ☞ **BELARUS**
- ☞ **BURMA**
- ☞ **CHINA (PRC)**
- ☞ **CYPRUS**
- ☞ **CUBA**
- ☞ **HAITI**
- ☞ **INDIA**
- ☞ **IRAN**
- ☞ **IRAQ**
- ☞ **LIBERIA**

- ☞ **LIBYA**
- ☞ **NIGERIA**
- ☞ **NORTH KOREA**
- ☞ **PAKISTAN**
- ☞ **RWANDA**
- ☞ **SOMALIA**
- ☞ **SUDAN**
- ☞ **SYRIA**
- ☞ **TAJIKISTAN**
- ☞ **VIETNAM**
- ☞ **YEMAN**
- ☞ **FEDERAL REPUBLIC OF YUGOSLAVIA**
 - **SERBIA**
 - **MONTENEGO**
- ☞ **ZAIRE**



The Export Administration Regulations (EAR)

- ☞ Administered by the Department of Commerce (Bureau of Export Administration)
- ☞ **The Commerce Control List (CCL)**
 - Divided into ten (10) categories (0 to 9)
 - Complete listing of items controlled by the **EAR**
 - ◆ Example: Category 9- Propulsion Systems, Space Vehicles and Related Equipment



The (New) Export Administration Regulations (EAR)

15 CFR 730-774

Category 0 - Nuclear Materials, Facilities and Equipment and Misc.

Category 1 - Materials, Chemicals, Microorganisms and Toxins

Category 2 - Materials Processing

Category 3 - Electronics

Category 4 - Computers

Category 5 - Communications, telecommunications

Category 6 - Optics, Cameras, Lasers, radar

Category 7 - Guidance, navigation, altimeters, avionics

Category 8 - Submersible systems, scuba, marine equipment

Category 9 - Propulsion Systems, space vehicles,



EAR DEFINITIONS - Export

☞ Important EAR Definitions

- **Export** - an actual shipment or transmission of items subject to the **EAR** out of the United States; or release of technology or software subject to the **EAR** to a foreign national in the U.S.



EAR DEFINITIONS - Controlled Technology

☞ Important EAR Definitions

- **Controlled Technology** - specific information required for the “development”, “production”, or “use” of a product which is itself “controlled”. The information takes the form of “**technical data**” or “**technical assistance**”.



EAR DEFINITIONS - Technical Data

☞ Important EAR Definitions

- **Technical Data** - May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories.
- **Technical Assistance** - may involve transfer of “technical data”



EAR DEFINITIONS - Reexport, Publicly Available Information

☞ **Important EAR Definitions**

- **Reexport** - shipment from one foreign country to another foreign country
- **Publicly Available Information** - information that is generally accessible to the interested public in any form and, therefore, not subject to the **EAR**



EAR DEFINITIONS - Publicly Available Technology and Software

☞ Important EAR Definitions

- Publicly Available Technology and Software**
 - that technology and software that are already published or will be published; arise during, or result from fundamental research; are educational; or are included in certain patent applications (see 15 CFR 734)



EAR DEFINITIONS - Items subject to the EAR

☞ Important EAR Definitions

- Items Subject to the EAR - items listed on the Commerce Control List (CCL) and those items designated as EAR 99**



EAR EXPORT CONTROL CLASSIFICATION NUMBER

☞ **Export Control Classification Number (ECCN) - a five character, Alpha-numeric symbol; e.g., 9A004**

- First Character (Digit)- identifies **CCL** category; e.g., 9 is Propulsion Systems, Space Vehicles and Related Equipment
- Second Character (Letter)- identifies which of five “groups” the item is associated with; e.g., A is Equipment, Assemblies and Components



EAR EXPORT CONTROL CLASSIFICATION NUMBER

☞ **Export Control Classification Number (ECCN) - a five character, alpha-numeric symbol; e.g., 9A004**

- Third through Fifth Characters (Digits)- identifies the type of control(s)



EAR CLASSIFICATION REQUESTS

☞ Classification Requests

- If an exporter is unable or uncomfortable in determining the “classification” of the item to be exported, a “classification” can be requested from BXA. BXA is obliged to “classify” an item or advise an exporter that an item is not subject to the **EAR** (and may be subject to the jurisdiction of another agency).
- Typically takes 10 working days from receipt at BXA



EAR LICENSE EXCEPTIONS

☞ License Exceptions - 15 CFR 740

– Examples

- ◆ **TMP** (use for certain temporary exports up to one year)
- ◆ **GOV** (U.S. gov't official use and use by gov't agencies of cooperating countries in their national territory)
- ◆ **BAG** (your right to take your personal belongings out of the country on a trip)

– **CAUTION - Use exceptions with care and read all conditions/provisions.**



ENHANCED PROLIFERATION CONTROL INITIATIVE (EPCI)

☞ **Scope**

- ☞ Foreign Policy controls requiring individual validated license (IVL) if U.S. exporter knows or is informed that Commodity is destined to a missile activity

☞ **Origin**

- ☞ Executive order 12735, Nov 16, 1990
- ☞ Interim rule announced, Aug 15, 1991

