

10 CFR 205.300 through 205.379 and part 590.

Nuclear Materials and Equipment

*Nuclear Regulatory Commission, Office of International Programs, Tel. (301) 415-2344, Fax: (301) 415-2395.
10 CFR part 110.

Nuclear Technology: Technical Data for Nuclear Weapons/Special Nuclear Materials

*Department of Energy, Office of Arms Control and Non Proliferation, Export Control Division, Tel. (202) 586-2112, Fax: (202) 586-6977.
10 CFR part 810.

Ocean Freight Forwarders

Federal Maritime Commission, Office of Freight Forwarders, Tel. (202) 523-5843, Fax: (202) 523-5830.
46 CFR part 510.

Patent Filing Data Sent Abroad

*Department of Commerce, Patent and Trademark Office, Licensing and Review; Tel. (703) 308-1722, Fax: (703) 305-3603, 3604.
37 CFR part 5.

U.S. Flagged or U.S. Manufactured Vessels Over 1,000 Gross Tons

U.S. Maritime Administration, Division of Vessel Transfer and Disposal, Tel. (202) 366-5821, Fax: (202) 366-3889.
46 CFR part 221.

[61 FR 12734, Mar. 25, 1996, as amended at 65 FR 38149, June 19, 2000]

PART 732—STEPS FOR USING THE EAR

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SUPPLEMENT NO. 1 TO PART 732—DECISION TREE

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SUPPLEMENT NO. 3 TO PART 732—BIS'S "KNOW YOUR CUSTOMER" GUIDANCE AND RED FLAGS

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 USC 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

SOURCE: 61 FR 12740, Mar. 25, 1996, unless otherwise noted.

§ 732.1 Steps overview.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part is intended to help you determine your obligations under the EAR by listing logical steps in § 732.2 through § 732.5 of this part that you can take in reviewing these regulations. A flow chart describing these steps is contained in Supplement No. 1 to part 732. By cross-references to the relevant provisions of the EAR, this part describes the suggested steps for you to determine applicability of the following:

(i) The scope of the EAR (part 734 of the EAR);

(ii) Each of the general prohibitions (part 736 of the EAR);

(iii) The License Exceptions (part 740 of the EAR); and

(iv) Other requirements such as clearing your export with the U.S. Customs Service, keeping records, and completing and documenting license applications.

(2) These steps describe the organization of the EAR, the relationship among the provisions of the EAR, and the appropriate order for you to consider the various provisions of the EAR.

(b) *Facts about your transaction.* The following five types of facts determine your obligations under the EAR and will be of help to you in reviewing these steps:

(1) *What is it?* What an item is, for export control purposes, depends on its *classification*, which is its place on the Commerce Control List (see part 774 of the EAR).

(2) *Where is it going?* The *country of ultimate destination* for an export or re-export also determines licensing requirements (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List).

(3) *Who will receive it?* The *ultimate end-user* of your item cannot be a bad end-user. See General Prohibition Four (Denial Orders) in § 736.2(b)(4) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with.

(4) *What will they do with it?* The ultimate end-use of your item cannot be a bad end-use. See General Prohibition Five (End-Use End-User) in § 736.2(b)(5) and part 744 of the EAR for general end-use and end-user restrictions.

(5) *What else do they do? Conduct* such as contracting, financing, and freight forwarding in support of a proliferation project (as described in § 744.6 of the EAR) may prevent you from dealing with someone.

(c) *Are your items and activities subject to the EAR?* You should first determine whether your commodity, software, or technology is subject to the EAR (see part 734 of the EAR concerning scope), and Steps 1 through 6 help you do that. For exports from the United States, only Steps 1 and 2 are relevant. If you already know that your item or activity is subject to the EAR, you should go on to consider the ten general prohibitions in part 736 of the EAR. If your item or activity is not subject to the EAR, you have no obligations under the EAR and may skip the remaining steps.

(d) *Does your item or activity require a license under one or more of the ten general prohibitions?* (1) *Brief summary of the ten general prohibitions.* The general prohibitions are found in part 736 of the EAR and referred to in these steps. They consist, very briefly, of the following:

(i) General Prohibition One (Exports and Reexports): Export and reexport of controlled items to listed countries.

(ii) General Prohibition Two (Parts and Components Reexports): Reexport and export from abroad of foreign-made items incorporating more than a *de minimis* amount of controlled U.S. content.

(iii) General Prohibition Three (Foreign-produced Direct Product Reexports): Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software.

(iv) General Prohibition Four (Denial Orders): Engaging in actions prohibited by a denial order.

(v) General Prohibition Five (End-Use End-User): Export or reexport to prohibited end-user or end-users.

(vi) General Prohibition Six (Embargo): Export or reexport to embargoed destinations.

(vii) General Prohibition Seven (U.S. Person Proliferation Activity): Support of proliferation activities.

(viii) General Prohibition Eight (In-Transit): In-transit shipments and items to be unladen from vessels and aircraft.

(ix) General Prohibition Nine (Orders, Terms and Conditions): Violation of any orders, terms, or conditions.

(x) General Prohibition Ten (Knowledge Violation to Occur): Proceeding with transactions with knowledge that a violation has occurred or is about to occur.

(2) *Controls on items on the Commerce Control List (CCL).* If your item or activity is subject to the EAR, you should determine whether any one or more of the ten general prohibitions require a license for your export, reexport, or activity. Steps 7 through 11 refer to classification of your item on the Commerce Control List (CCL) (part 774 of the EAR) and how to use the Country Chart (Supplement No. 1 to part 738 of the EAR) to determine whether a license is required based upon the classification of your item. These steps refer to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) for all countries except: Cuba, Iran, Iraq, and Libya. For these countries, you may skip Steps 7 through 11 and go directly to Step 12.

(3) *Controls on activities.* Steps 12 through 18 refer to General Prohibitions Four through Ten. Those general prohibitions apply to all items subject to the EAR, not merely those items listed on the CCL in part 774 of the EAR. For example, they refer to the general prohibitions for persons denied export privileges, prohibited end-uses and end-users, embargoed countries (e.g., Cuba, Iran, Iraq, and Libya), prohibited activities of U.S. persons in support of proliferation of weapons of mass destruction, prohibited unloading of shipments, compliance with orders, terms and conditions, and activities when a violation has occurred or is about to occur.

(4) *General prohibitions.* If none of the ten general prohibitions applies, you should skip the steps concerning License Exceptions and for exports from the United States, review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

(e) *Is a License Exception available to overcome the license requirement?* If you decide by reviewing the CCL in combination with the Country Chart that a license is required for your destination, you should determine whether a License Exception will exempt you from that requirement. Steps 20 through 24 help you determine whether a License Exception is available. Note that generally License Exceptions are not available to overcome General Prohibitions Four through Ten. However, selected License Exceptions for embargoed destinations are specified in part 746 of the EAR and License Exceptions for short supply controls are specified in part 754 of the EAR. If a License Exception is available and the export is from the United States, you should review Steps 26 through 28 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents and recordkeeping requirements. If a License Exception is not available, go on to Steps 25 through 29.

(f) *How do you apply for a license?* If you must file a license application, you should review the requirements of part 748 of the EAR as suggested by Step 26. Then you should review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

[61 FR 12740, Mar. 25, 1996, as amended at 62 FR 25453, May 9, 1997; 65 FR 38150, June 19, 2000]

§ 732.2 Steps regarding scope of the EAR.

Steps 1 through 6 are designed to aid you in determining the scope of the EAR. A flow chart describing these

steps is contained in Supplement No. 2 to part 732.

(a) *Step 1: Items subject to the exclusive jurisdiction of another Federal agency.* This step is relevant for both exports and reexports. Determine whether your item is subject to the exclusive jurisdiction of another Federal Agency as provided in § 734.3 of the EAR.

(1) If your item is subject to the exclusive jurisdiction of another Federal agency, comply with the regulations of that agency. You need not comply with the EAR and may skip the remaining steps.

(2) If your item is not subject to the exclusive jurisdiction of another federal agency, then proceed to Step 2 in paragraph (b) of this section.

(b) *Step 2: Publicly available technology and software.* This step is relevant for both exports and reexports. Determine if your technology or software is publicly available as defined and explained at part 734 of the EAR. Supplement No. 1 to part 734 of the EAR contains several practical examples describing publicly available technology and software that is outside the scope of the EAR. The examples are illustrative, not comprehensive. Note that encryption software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to part 774 of the EAR) shall be subject to the EAR even if publicly available. Accordingly, the provisions of the EAR concerning the public availability of items are not applicable to encryption items controlled for "EI" reasons under ECCN 5D002.

(1) If your technology or software is publicly available, and therefore outside the scope of the EAR, you may proceed with the export or reexport if you are not a U.S. person subject to General Prohibition Seven. If you are a U.S. person, go to Step 15 at § 732.3(j) of this part. If you are a U.S. person and General Prohibition Seven concerning proliferation activity of U.S. persons does not apply, then you may proceed with the export or reexport of your publicly available technology or software. Note that all U.S. persons are subject to the provisions of General Prohibition Seven.