

# Export Compliance 101-102 for the Petroleum Industry



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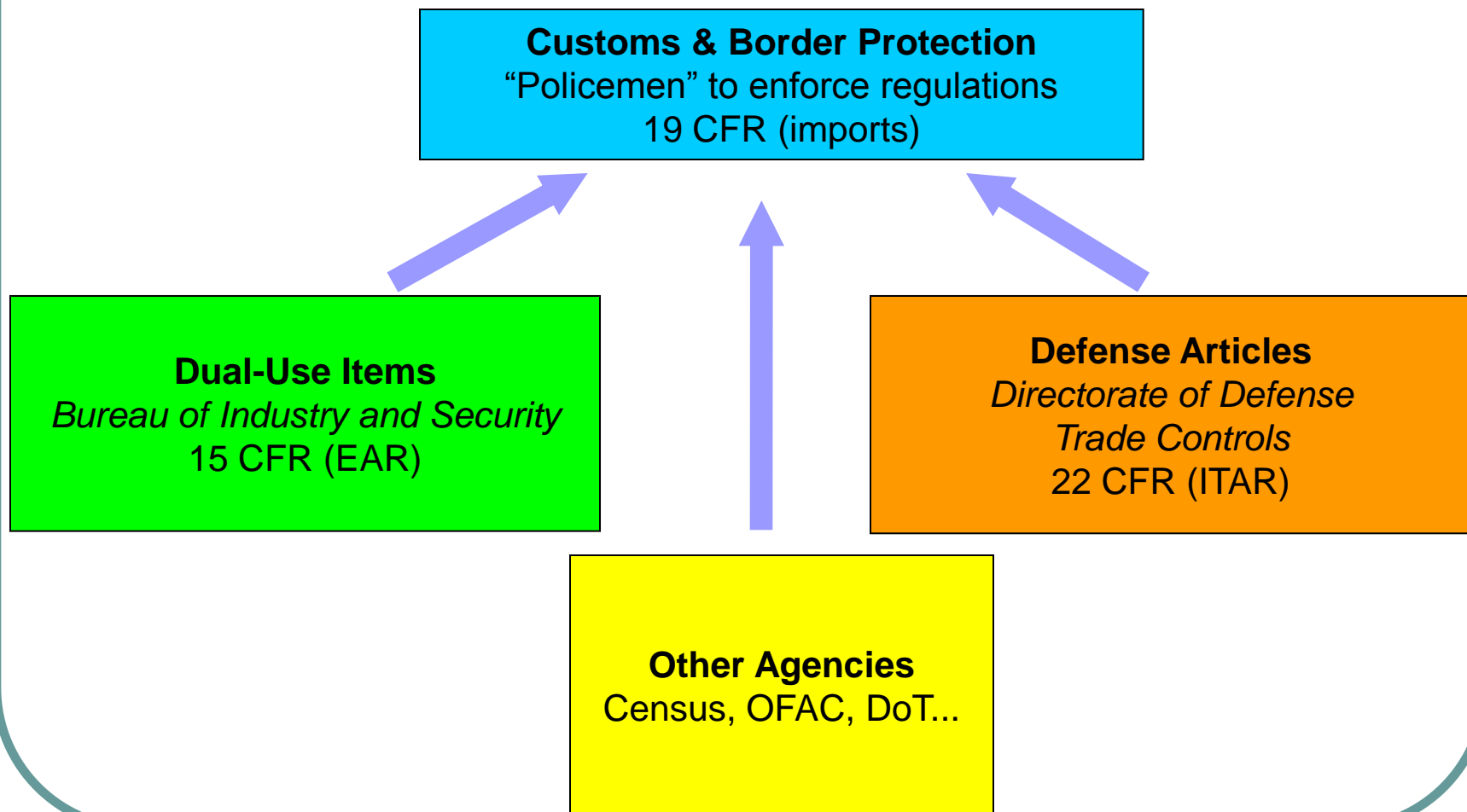
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# Agenda

- Government Agencies and Overlapping Jurisdiction
- What are Exports?
- The Classification Process
- Licensing Determinations
- Country Sanctions
- Compliance Tips



# Overview: Who Regulates What?



# U.S. Jurisdiction

- U.S. agencies have overlapping jurisdiction
  - And don't always agree! Case Example: Census vs. Dept. of Transportation
- Both EAR and ITAR have *extra-territorial* jurisdiction.
  - They can reach U.S. goods and technology anywhere in the world.
    - Quioptiq Case
  - U.S. persons, wherever located



# What is an Export?

**Export:**  
anything sent  
from the U.S. to a foreign  
destination.

**Tangible Exports:**  
physical products sent  
through a U.S. port via  
air, ocean, truck, rail, mail  
etc.

**Intangible Exports:**  
Electronic transfers,  
Technical reports,  
drawings, etc., released  
to a foreign national,  
“deemed exports.”

**Re-Exports:**  
Shipments from one  
Foreign country to  
Another of U.S. origin  
Goods, or foreign made  
Goods containing  
Certain US materials.

# The Classification Process

- Export Control Classification Numbers (ECCNs)
  - Dual-Use Items under the Export Administration Regulations
- U.S. Munitions List (USML) items
  - Defense articles under the International Traffic in Arms Regulations (ITAR)
- Schedule B vs. Harmonized Tariff Codes (HTS)

# Reasons Behind Classification

- Dept. of Commerce/BIS - Export Administration Regulations (EAR)
  - Licensing of dual-use items and technology
- Dept. of State/DDTC - International Traffic in Arms Regulations (ITAR)
  - Licensing of military items and technology
- Dept. of Treasury/Census – Foreign Trade Regulations (FTR)
  - Gathering statistics
  - Not an enforcement agency per se

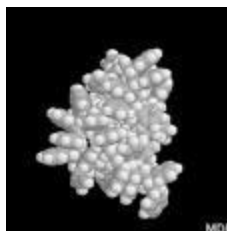
# Schedule B Classification

- Consult the Chemists!

- Petroleum Resin



- Polystyrene



- Crude



- Polyethylene



# Schedule B Example

- Mineral Fuels, Mineral Oils and Products of Their Distillation; Bituminous Substances; Mineral Waxes...
- 2713 Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals: Petroleum coke:
  - 2713110000 Not calcined . . . . .
  - 2713120000 **Calcined** . . . . .
  - 2713200000 Petroleum bitumen . . . . .
  - 2713900000 Other residues of petroleum oils or of oils obtained from bituminous minerals . . . . .



# Making an EAR Licensing Determination, Generally

- **Does your product have an Export Control Classification Number (ECCN)?**
  - If not, EAR99.
  - If so, is a license required per the Commerce Country Chart, Part 754, or another provision?
- **Are you exporting to a regulated end user?**
- **Are you exporting to a regulated end use?**

# Making an EAR Licensing Determination (cont.)

- **The Commerce Control List is divided into 10 categories.**

**0** = nuclear materials, facilities and equipment

**1** = Materials, **chemicals**, microorganisms and toxins

**2** = **Materials processing**

**3** = Electronics

**4** = Computers

**5** = Telecommunications and Information security

**6** = Sensors and Lasers

**7** = Navigation and Avionics

**8** = Marine

**9** = Propulsion Systems, Space Vehicles and Related Equipment

- **Each of the 10 categories is divided into five product groups.**

**A** = Systems, components and equipment

**B** = Test, inspection and production equipment

**C** = Material

**D** = Software

**E** = Technology

# The EAR's Commerce Control List

- An Export Control Classification Number (ECCN) includes those category markers, as well as the specific item number.



# EAR Commerce Control List (CCL)

- **Several options for determining if your product has an ECCN:**
  - (1) Classify the item on your own.
  - (2) Check with the manufacturer.
  - (3) Submit a classification request to have the BIS determine the ECCN for you (CCATS).
- **If your item doesn't have an ECCN, it is designated as "EAR99" and usually does not require a license.**

# The CCL (cont.)

- **Example**

- **ECCN 2A292:** Piping, fittings and valves made of, or lined with, stainless steel, copper nickel alloy or other alloy steel containing 10% or more nickel and/or chromium.
- **Under the heading for “License Requirements,” several “Reasons for Control” are listed, along with more specific notations:**
  - NP: applies to entire entry, NP column 2
  - AT: applies to entire entry, AP column 1
  - CB: CB column 2



# The Commerce Country Chart: Supp. 1 to Part 738

- Find your ECCN's "reason for control" columns on the Commerce Country Chart, and check against the destination country.

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti Terror
	CB	CB	CB	NP	NP	NS	NS	MT	RS	RS	FC	CC	CC	CC	AT
	1	2	3	1	2	1	2	1	1	2	1	1	2	3	1
Guyana	X	X		X		X	X	X	X	X	X	X		X	
Haiti	X	X		X		X	X	X	X	X	X	X		X	
Honduras	X	X		X		X	X	X	X	X	X	X		X	
Hong Kong	X	X		X		X		X	X	X		X		X	
Hungary	X					X		X	X						
Iceland	X			X		X		X	X						
India	X	X	X	X	X	X	X	X	X	X		X		X	
Indonesia	X	X		X		X	X	X	X	X		X		X	

# EAR Licensing Example

- **1C981.** Crude petroleum including reconstituted crude petroleum, tar sands & crude shale oil listed in Supplement No. 1 to Part 754 of the EAR.
  - Controlled for Short Supply, or “**SS.**”
  - See EAR Part 754
  - License required for the export of crude oil to **all** destinations, including Canada
    - Some exceptions, such as Strategic Petroleum Reserves, samples, Alaskan Pipeline Authorization Act
    - Some natural gases also require Dept. of Energy approval



# A Few Products Listed in Supp. 1 to Part 754 (SS Controlled)

- 2711.11.0000 Natural gas, methane and mixtures thereof (including liquefied natural gas and synthetic or substitute natural gas)
- 2711.14.0000 Ethane with a minimum purity of 95 liquid volume percent
- 2711.12.0000 Propane with a minimum purity of 90 liquid volume percent
- 2711.19.0000 Other natural gases (including mixtures), n.s.p.f. and manufactured gas
- 2710.00.1510 Gasoline, motor fuel (including aviation)
- 2710.00.1520 Jet fuel, naphtha-type

# A Few Products Listed in Supp. 1 to Part 754 (SS Controlled)

- 2710.00.1550 Other motor fuel (including tractor fuel and stationary turbine fuel)
- 2710.00.2500 Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel)
- 2710.00.5030 Mineral oil of medicinal grade derived from petroleum, shale oil or both
- 3819.00.0000 Hydraulic fluids, including automatic transmission fluids
- 2710.00.3010 Aviation engine lubricating oil, except jet engine lubricating oil

*and the list goes on...*

# End-User Screening

- Even if your item is **EAR99**, it may still require a license if you are exporting to a regulated end-user or country.
- There are **many lists** to check
  - Screening Software is available
  - BIS website:  
<http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>
- Due diligence
  - No self-blinding



# Restricted End-Uses

- Certain end-uses are either restricted (require a license) or prohibited.
- End-Use restrictions are contained in EAR part 744.
  - Nuclear
  - Chemical and biological weapons
  - Maritime nuclear propulsion



# Country Sanctions and Embargoes

- In addition to the Commerce Country Chart, end-user and end-use concerns, you must also ensure that your intended destination is not embargoed or subject to other special concerns.
- See EAR Part 746.



# Examples of Restricted Countries



**Rwanda**



**Cuba**



**Iraq**



**Iran**



**Syria**



**North Korea**

# OFAC Sanctions on Iran

- **OFAC imposes heavy sanctions on Iran, especially re: petroleum products**
  - **“IRANIAN PETROLEUM INDUSTRY - U.S. persons may not trade in Iranian oil or petroleum products refined in Iran, nor may they finance such trading. Similarly, U.S. persons may not perform services, including financing services, or supply goods or technology that would benefit the Iranian oil industry.”**
    - Note that “benefit” is a very broad term!

# Iran Petroleum Bill in Congress

- **Iran Refined Petroleum Sanctions Act**

- **Introduced in 2009**

- Passed the House, but awaiting Senate approval
- Bill would give the President broader authority to impose sanctions in Iran
  - Would direct the President to impose sanctions on any person that knowingly sells, leases, or provides goods, services, technology, information or support (or contracts to do so) that would allow Iran to maintain or expand its domestic production of refined petroleum resources, including any assistance in refinery construction, modernization or repair, whose value
    - (1) ***exceeds \$200,000***, or
    - (2) ***exceeds \$500,000*** in any 12-month period.

# OFAC Case Example: Burma

- Oilfield equipment case
- Sanctions on Burmese Government
- ...but OFAC approved the export!
  - Those particular sanctions were limited



# Successor Liability

- Company can be held liable for the export violations of another company it acquires.
- BIS enforcement case against Sigma Aldrich - purchasing corporation liable for export violations of acquired company.
- Export compliance should be part of due diligence



# Deemed Exports, Generally

- Release of controlled technology or source code to a foreign national, *even if the foreign national is physically present in the United States.*
  - Deemed to be an export to his/her home country
  - Applies to anyone who is not:
    - U.S. citizen
    - Legal Permanent Resident
    - Protected Person (e.g., asylee, refugee)

# Deemed Exports (cont.)

- For export licensing purposes, remember to classify any technology apart from the product itself!
  - If license required, report directly to the licensing agency – not via Automated Export System (AES)
  - Example: EAR Category 1C chemical corresponds with Category 1E technology for use, development of that chemical

# TOTAL Senior Management Commitment

- Management should be actively involved in the program, both in evaluating the program and ensuring effectiveness.
  - Case Example



# Export Compliance Personnel

- Export Compliance Department
  - Staff appropriate in number and quality for the volume of export transactions.
  - Staff properly trained to ensure competent performance.
  - Staff in a position to take action – ECM must have **authority** to stop a shipment, obtain export information, etc.



# Written Procedures

- Export Compliance Procedures should be written and available to all employees, and should contain:
  - The applicable laws and regulations
  - User-friendly diagrams and flow charts
  - Training, recordkeeping and audit resources
  - Helpful forms and templates
  - The manner and method for distribution and updates



# Export Compliance Training

- Training should be ongoing; the applicable laws and regulations are subject to change at any time.
- Introductory awareness training should be provided to all employees.
- Advanced training should be provided to key export personnel and senior management.
- Training records should be kept.



# Recordkeeping

- Know which records must be maintained, and for how long
  - 5 years
- Record maintenance procedures and locations
- Identify responsible parties



# Periodic Compliance Audits

- Focus on high risk areas, but still review all other areas
- Use experienced internal audit personnel
- Have periodic reviews by external audit personnel to validate internal audits
- Follow-up procedures
  - Audit reports with recommendations for corrective measures



# Handling Suspected Violations

- Internal reporting with no retribution
- Dealing with internal reports
- Appropriate discipline
- External reporting procedures
  - Considering voluntary disclosure



# Civil Penalty Case

- **EOTT Energy Operating**

- \$508,000 civil penalty for exporting crude petroleum to Canada in excess of the authorized quantities
- They voluntarily self-disclosed, but the Office of Export Enforcement (OEE) noted that this was their second violation, warranting the harsh penalty.
- <https://www.bis.doc.gov/news/2002/texasfirmpenalized073002.htm>



# Civil Penalty Case



- FMC Technologies, Inc.
  - 2009 – Paid **\$610,000** civil fine to settle charges of illegally exporting oil and gas industry service parts (Butterfly and Check Valves).
  - The fine was **after** FMC's voluntary self-disclosure of the violation.
  - [http://www.bis.doc.gov/news/2009/bis\\_press08132009.htm](http://www.bis.doc.gov/news/2009/bis_press08132009.htm)

# Government Investigations

- Key considerations for handling **government investigations**:
  - To whom should employees report the investigation?
  - Will Legal handle voluntary disclosure and/or other submissions?
  - What if a Special Agent calls?
  - What if ICE wants to pay a visit?
  - Should employees turn over documents?
  - Who is potentially liable?

# Limiting Liability Exposure

- Total Senior Management Commitment, “Top-Down”
- Export Compliance Program (ECP)
- Qualified and appropriate ECP staff
- Written Export Compliance Procedures
- Continuing Compliance Training
- System to Identify Deemed Exports
- RECORDKEEPING
- Periodic Compliance Audits and Corrective Actions
- Careful handling of suspected violations and investigations



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