
LISTEN.
THINK.
SOLVE.®

ICPA
EXPORT
COMPLIANCE
CLASSIFICATION External

Janet Reuter, Director Global Trade
Compliance

Rockwell Automation At A Glance

Leading global provider of industrial automation control and information solutions

- Annual Sales: \$5 billion
- World Headquarters: Milwaukee, Wisconsin, USA
- Trading Symbol: ROK
- Employees: About 20,000
- Serving customers in 80+ countries



**Rockwell
Automation**

5 Pillars of Global Trade Compliance

Global Trade Compliance

Control Environment

Risk Assessment

Control Activities

Information & Communication

Monitoring

Export-
Customer
screening
Licenses-
defense &
commercial
Statistical
reporting

Customs
Entries
HTC
COO
Value

Classification
ECCN/USML
HTC
COO
Labeling

What are you exporting out of a country?

Promotional
Items



Product
you sell?



Tools for
Manufacturing
Site Offshore



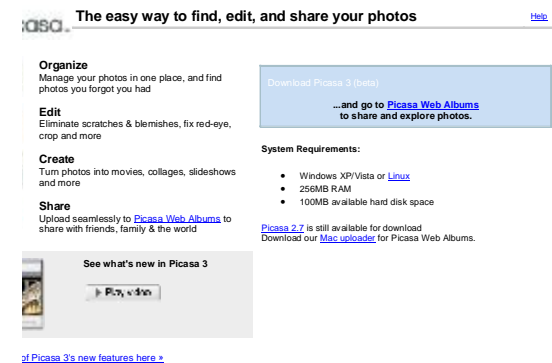
Technology



IT items to support
your
employees/business
offshore



Software
Downloads





Compliance Classification Process Issues

- What/when do I classify for Export -- anything that is being exported out of a country Sales
 - Manufacturing offshore
 - Capital/expensed
 - Components
 - Finished goods
 - Procured product
 - Repaired product
 - Hardware/Software/Technology
 - Any product you export that isn't your brand

Classification Requirements - Export

International Export Control Lists

- Commercial
 - Wassenaar
 - License Type
 - Unilateral Controls
 - Lists not equal
- Military
 - ITAR

Export Statistical Code

- Report Exports to Government
 - US - Schedule B versus HTC US-AES
 - EU – Intrastats
 - Other country stats

Country of Origin

- Reported as part of trade statistics data
- Based on Customs rules

Levels of Export Classification/Risk

Level 1

Use of Product,
Software,
Technology

- Military
- Nuclear
- Chemical
- Biological
- Types of license exceptions differ

Level 2

Controlled Product,
Software,
Technology

Level 3

Munitions List
Product, Software,
Technology

- ITAR - commercial product that gets caught by ITAR regulations

Risk of Non-Compliance/Fines/Penalties

Levels of Stats/Security Classification/Risk

Level 1

Filing Statistics

- Intrastats
- AES
- Other Country Stats
- Value
- COO
- HTC/Schedule B
- License Type

Level 2

Security Programs

- CTPAT – US
- PIP – Canada
- AEO - EU

- SES – NZ
- Australia
- Singapore
- Japan
- Jordan

Level 3

Expansion of Security Data

- US 10+2

Fines/Penalties/Publicity

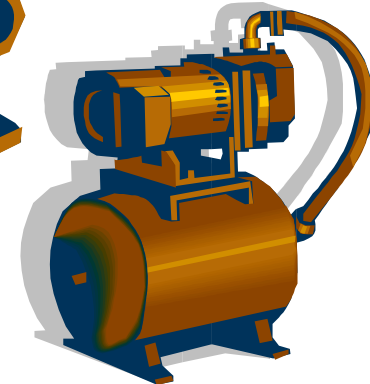
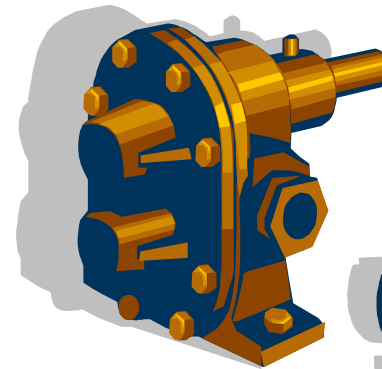
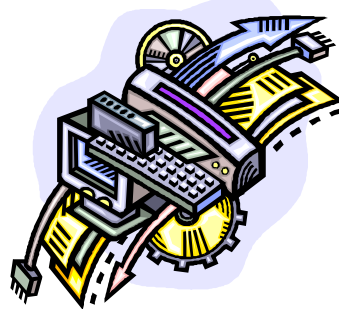
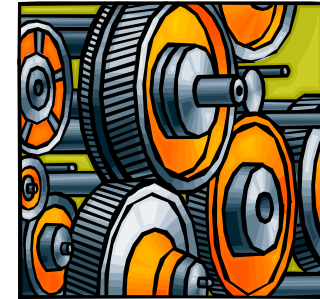
Why do we need to classify products?

- Classifying the product, software, technology allows the exporter to determine license requirements for the item to any country in the world.



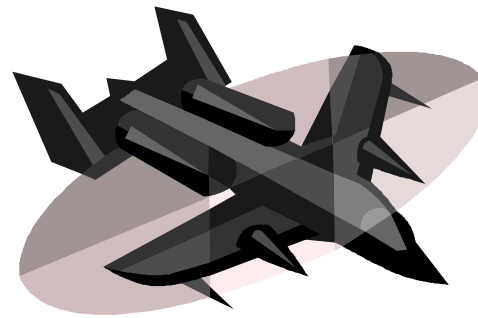
Step 1 Know your product

-- Must know technical parameters



Step 2 Who Controls: Commerce or State?

- State controls items specifically designed or modified for a defense application
- End use/end user does not determine jurisdiction.



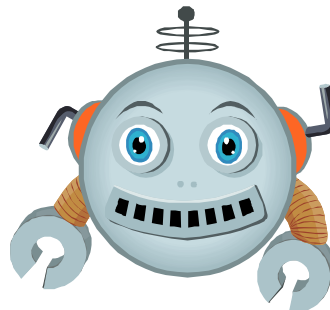
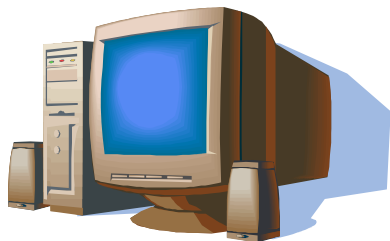
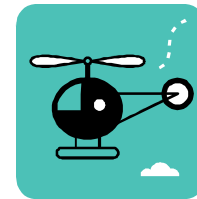
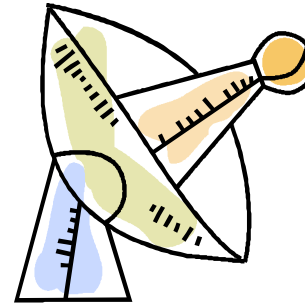
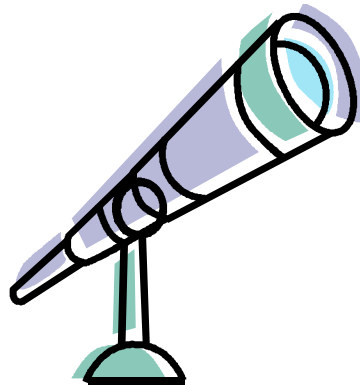
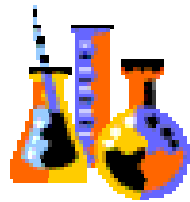


Step 3 Is product “Subject to the EAR”?

- Those commodities, software, technology, and activities over which the Bureau of Industry and Security (BIS) has regulatory jurisdiction under the Export Administration Regulations (EAR)

Step 4 Is Product on the Commerce Control List (CCL)?

A list of items under the export control jurisdiction of the Department of Commerce.



What is an Export Control Classification Number (ECCN)?

- The ECCN is different from a Schedule B number, which is used by Census to collect trade statistics.
- The ECCN is different from the Harmonized Tariff System Nomenclature, which is used to determine import duties.
- The ECCN consists of a set of digits and a letter.

2A002



CCL Structure

- 0-Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1-Materials, Chemicals, "Microorganisms," and Toxins
- 2-Materials Processing
- 3-Electronics
- 4-Computers
- 5-Telecommunications and Information Security
- 6-Lasers and Sensors
- 7-Navigation and Avionics
- 8-Marine
- 9-Propulsion Systems, Space Vehicles and Related Equipment



Groups

- A-Equipment, Assemblies and Components
- B-Test, Inspection and Production Equipment
- C-Materials
- D-Software
- E-Technology



Sample CCL entry

- 2A000: Entry heading.
- LICENSE REQUIREMENTS:
 - Reason for Control:* NS, NP, AT
 - Control(s) Country Chart*
 - NS applies to entire entry NS Column 2
 - NP applies to 2A000.b NP Column 1
 - AT applies to entire entry AT Column 1
- LICENSE EXCEPTIONS:
 - LVS: \$5,000
 - GBS: Yes
 - CIV: N/A
- LIST OF ITEMS CONTROLLED:
 - Unit:* Number
 - Related Definition:* N/A
 - Related Controls:* N/A
 - Items:*
 - a. Having x.
 - b. Having z.

Commerce Country Chart

Commerce Country Chart

Reason for Control

Countries	Reason for Control										
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech		Regional Stability	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	
Afghanistan	X	X	X	X		X	X	X	X	X	
Albania	X	X		X		X	X	X	X	X	
Algeria	X	X		X		X	X	X	X	X	

Step 5 Classify your product

- Review of the general characteristics of your item.
- Review the index to the Commerce Control List (CCL) (Supplement 1 to Part 774 of the Export Administration Regulations (EAR)). The index will give an ECCN for each item listed. –not an exhaustive list
- Look in the corresponding CCL category to determine if your item is described by that ECCN. Match the particular characteristics and functions of your item.

What is EAR99?

- EAR99 is a different type of classification. It is a "basket" designation for items that are subject to the EAR, but are not specified on the Commerce Control List.
- EAR99 items can be shipped without a license to most destinations under most circumstances. Exceptions include embargoed destinations, denied parties, certain end uses.



Step 6 Document Classification Process

- Document Classification Process.
- Commodity Classification Request– if you are unable to classify



Summary

Step 1: Know your product

Step 2: Commerce or State?

Step 3: "Subject to the EAR"

Step 4: Commerce Control List (CCL)

Step 5: Determine classification

Step 6: Document process

Step 7: Commodity Classification Request



Consider Global Classification

- Not everything is EAR99
- Keep up with changes – when facts (product or regulations) change, reevaluate.
- EAR99 is not a viable number on other country lists
- You might find that two countries interpret the classification of your product differently – result could be you need an export license when shipping from another country even if you don't need one when exporting from the U.S.
- Based on above in other countries if you need a license it may be easy to get one with less processing times
- Regulations versus interpretation and implementation in countries can be different

US Export Administration Regulations Recordkeeping Requirements

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November 14, 2008
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EAR Recordkeeping Requirements

What is subject to EAR Part 762 Recordkeeping provisions?

- Transactions involving restrictive trade practices of boycotts.
- Exports of commodities, software, or technology from the United States and any known re-exports, transshipments, or diversions of items exported from the United States.
- Exports to Canada.
- Any other transaction subject to the EAR.



What is exempt?

Freight Forwarder vessel logs, Inspection, warranty & guarantee certificate, Financial release forms, Financial status reports, Commission payment worksheets, back-up and payable control, etc. Complete list found in 762.3(1).

Recordkeeping, cont.

The following records must be retained:

- 1) Export control documents as defined in part 772 of the EAR;
- 2) Memoranda;
- 3) Notes;
- 4) Correspondence;
- 5) Contracts;
- 6) Invitations to bid;
- 7) Books of account;
- 8) Financial records;
- 9) Restrictive trade practices or boycott documents and reports; and
- 10) Other records (there are other sections in the EAR which require retention of records or contain recordkeeping provisions). These include, but are not limited to 740.7 Humanitarian donations (NEED), 746.3 Iraq, 748.9 Support documents for license applications, 750.10 transfer of licenses, 764.5 Voluntary self-disclosures etc. Complete list can be found at EAR762.2 (10)(b).



Recordkeeping, cont.

- All records required to be kept by the EAR must be retained for 5 years from date of export.
- Original records must be maintained in the form in which they were received unless you meet all conditions to store records in another form; micrographic, automated archival storage or other process.
- You must be able to produce records, make them available for inspection and copying to BIS or any other US Agency, free of charge. *also applies to persons located outside the United States.
- Additional recordkeeping requirements exist under the US Census Foreign Trade Regulations.



Know Your Customer

Determine whether there are “Red Flags”



- ▶ The customer or its address is similar to one of the parties found on the BIS list of denied persons.
- ▶ The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- ▶ The product's capabilities do not fit the buyer's line of business such as an order for sophisticated computers for small bakery.
- ▶ Item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- ▶ The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- ▶ The customer has little or no business background.
- ▶ The customer is unfamiliar with the product's performance characteristics but still want the product.
- ▶ Routing installation, training, or maintenance services are declined by the customer.
- ▶ Delivery dates are vague, or deliveries are planned for out of the way destinations.
- ▶ A freight forwarding firm is listed as the product's final destination.
- ▶ The shipping route is abnormal for the product destination.
- ▶ Packaging is inconsistent with the stated method of shipment or destination.
- ▶ When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or re-export.

Screen Your Customers and Transactions

Lists to Check:

Denied Persons List -- A list of individuals and entities that have been denied export privileges.

Unverified List -- A list of parties where BIS has been unable to verify the end-user in prior transactions. The presence of a party on this list in a transaction is a "Red Flag" that should be resolved before proceeding with the transaction.

Entity List -- A list of parties whose presence in a transaction can trigger a license requirement in addition to any license requirements imposed on the transaction by other provisions of the EAR.

Specially Designated Nationals List -- Compiled by US Treasury, Office of Foreign Assets Control (OFAC). OFAC's regulations may prohibit a transaction if a party is on this list.

Debarred List -- List compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.

Non proliferations list -- Several lists compiled by the State Department of parties that have been sanctioned under various statutes. Sanctions are party specific, some of these sanctioned parties are subject to BIS's license application denial policy described in §744.19 of the EAR (15 CFR §744.19).





Export Control Trends

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Enforcement Trends



Enforcement Initiatives: Example

Ø October 11, 2007 announcement of new Multidepartment Counter-Proliferation Task Forces formed to combat illegal exports of military and dual-use technology

Ø Participation by:

- Department of Justice;
- U.S. Immigration and Customs Enforcement;
- National Security Administration;
- FBI Counterintelligence Division;
- Department of Commerce, Office of Export Enforcement;
- Defense Criminal Investigative Service; and
- State Department.

Enforcement Initiatives

Ø Details include:

- § approximately 15 task forces nationwide - placed in districts with concentrations of high-tech businesses and research facilities
- § Outreach to potential targets
- § Specialized training of agency personnel, especially U.S. prosecutors (more than 500 agents and prosecutors to date)
- § First national export control coordinator, based in the Counterespionage Section of the National Security Division, to implement and coordinate this initiative.
- § Greater coordination with the export licensing agencies

Enforcement Initiatives

Ø Results include:

- Nearly 150 cases brought in the fiscal year following the enactment of these teams
 - More than a 30% increase over the previous year
- Roughly 43 percent of these cases involving munitions or other restricted technology bound for Iran or China
- Followed by illegal weapons to Mexico

Ø Bottom line: risk of getting caught has gone up

Other Areas of Focus

∅ Technology Transfers/"Deemed" Exports

- Definition of "export" includes providing technology to a foreign person, wherever located
 - "Deemed" export is providing data to a foreign person in the U.S.
- Heavy focus of enforcement (see previous slides on enforcement initiatives)
 - Harder to control
 - More dangerous to teach someone how to make something than to sell them one
 - Focus also on deemed re-exports

§ Bottom line: Things that would likely have been overlooked in the past are now the focus of more scrutiny



Increased Penalties

∅ PATRIOT ACT/International Emergency Economic Powers Act

- Applicable to EAR, most OFAC sanctions
- Civil Penalties increased from \$50,000 to \$250,000 per violation
 - Potential retroactive application
- Criminal penalties increased from 10 years in prison and \$50,000 to 20 years in prison and \$1,000,000 per violation

Increased Penalties

- ∅ Foreign Trade Regulations – Census Bureau
 - Final Rules for Implementation of Mandatory AES published June 2, 2008
 - Increase from \$100 to \$1,100 per day for late/non-Files
 - Increase from maximum \$1,000 to \$10,000 per violation
 - Criminal penalties increased to \$10,000 per violation and/or 10 years' imprisonment
- ∅ But,... BIS has stated that enforcement of FTR is not a big priority



- ∅ Bottom line: if penalties are issued, they are likely to be higher

Voluntary Self-Disclosure

- ∅ **Changes to International Traffic in Arms Regulations include:**
 - Requirement that disclosure be filed “immediately” on discovery (formerly as soon as possible)
 - Harder deadlines for completion (perfection) of a disclosure after filing of initial notification
 - Voluntary disclosure can be modified to a “directed” disclosure if adequate progress is not made (in the determination of the agency)
 - Requirement that certain types of disclosures be signed by a senior officer

Voluntary Self-Disclosure

∅ Changes to DDTC practice include:

- Agency has been shifting disclosure to “directed” disclosures
- Including a requirement that parties hire an outside consultant, with whom they have not worked in the past, to do an audit and report to DDTC
 - Woe be to those who did not fully disclose
- Taking a hard stance with parties who claim attorney/client privilege

∅ Bottom line: There may still be significant benefits to disclosing, but they are not what they used to be.

Voluntary Self-Disclosure

∅ Other Changes:

→ Office of Antiboycott Compliance

- Filing of a required quarterly report may be considered “other information” that the agency can use to open an investigation, foreclosing possibility of voluntary disclosure
- Calling (or emailing) help desk for advice will not be considered “other information”

→ Foreign Trade Regulations

- Addition of Part H setting forth formal self-disclosure mechanism

Summary

- ∅ Enforcement is UP;
- ∅ Penalties are UP;
- ∅ Agencies are taking a harder look at, and line on, self disclosures.
- ∅ These increased risks need to be included in your cost/benefit analysis when reviewing your export compliance program

Compliance Program

- ∅ The best way to ensure compliance is to have an effective compliance program.
- ∅ The best way to mitigate damages when you fail to comply is to have a effective compliance program.

Attributes of Successful Compliance Programs

- ∅ Create a Compliance Culture
 - Communicate importance
 - Provide support and resources
 - Encourage communication and cooperation
- ∅ Raise Awareness and Require Training For All
- ∅ Create Clear Roles and Responsibilities For Offices and Individuals
- ∅ Capture the Program in a Written Export Controls and Trade Sanctions Management Plan
- ∅ Encourage Prompt Disclosure of Potential Violations to General Counsel's Office or Lead Compliance Office
- ∅ Periodically Self-Monitor/Outside Audit Effectiveness of Program and System
- ∅ Keep Records of Compliance Efforts, Steps to Assess Applicability of Controls and to Discover and Rectify Inadequacies

Does Your Compliance Program Include:

§ Management commitment letter or policy

→ Create a "Compliance Culture"

§ Responsible party(ies)

→ Create Clear Roles and Responsibilities For Offices, Functions and Individuals

§ Audits, Internal Reviews, and a Mechanism for identifying and raising potential violations

→ Voluntary self-disclosure may result in significant mitigation

§ Training and Education

→ Ranging from awareness education to task specific training

Does Your Compliance Program Include:

§ Product classification

- All other controls flow from classification
- You cannot comply unless you have completed this step

§ Screening

- Denied persons
- Diversion
- Prohibited end-uses
- Sanctioned/embargoed destinations
- Antiboycott compliance

§ License Determination

§ Recordkeeping Policy

