

U.S. Export Control Requirements

Stringent Compliance Protocols for Most Sensitive Products

Preventing U.S.-manufactured defense products and sensitive technology from ending up in the wrong hands is a top priority for the U.S. government—but so is enabling a robust export market for U.S. defense and technology manufacturers among key allies in the global marketplace. Striking the right balance has become increasingly challenging as terrorism threats have escalated and foreign manufacturers have become increasingly competitive.

The U.S. government currently administers three major export regulatory codes:

International Traffic in Arms Regulations (ITAR)

Administered by the Department of State's Directorate of Defense Trade Controls (DDTC), ITAR regulates the export of any material with a precise military purpose. Specifically, this includes any "defense article" or "defense service" as listed on the [U.S. Munitions List](#). The U.S. Munitions List is maintained by the DDTC and includes all items designed or modified for military application.

- **Registration.** Any U.S. business or person involved in the export of defense articles or services must register with DDTC and pay a registration fee. This is a necessary first step before an export license application can be submitted.
- **Licensing.** Once a business receives its DDTC registration number, it may apply for a license, which is necessary to export or temporarily import any defense article, defense service, or technical data listed on the U.S. Munitions List.
- **Compliance.** DDTC suggests that businesses develop a compliance [manual](#) to detail the company's policies and outline procedures for dealing with all ITAR matters.
- **Penalties.** ITAR may impose either civil or criminal penalties, depending on the severity of the case.
 - Civil penalties may be imposed as high as \$500,000 per violation.
 - Criminal penalties may be assessed as high as \$1 million and imprisonment for up to 20 years for each violation.
 - A business may also be suspended from future trade activities or required to implement internal compliance protocols and face regular audits.



U.S. exporters face strict regulatory protocols for goods remotely related to national security.

Export Administration Regulations (EAR)

[EAR](#) is maintained by the Bureau of Industry Security (BIS), located within the U.S. Department of Commerce, and oversees the export of commercial goods and products with "dual-purposes" as listed on the Commerce Control List. A dual-purpose product is an item that has a use both for civilian purposes and for military purposes as well.

- **Licensing.** Every product listed on the Commerce Control List is assigned a specific Export Control Classification Number (ECCN). The ECCN describes a particular item and lists all necessary licensing requirements. Once an ECCN is identified, a determination will need to be made with regard to whether or not licensing is necessary.

- **Compliance.** The BIS has issued a guide for businesses, "[Compliance Guidelines: How to Develop an Effective Management and Compliance Program and Manual.](#)" Among the key considerations of a well-developed compliance program:
 - Clearly articulated and written guidance
 - Statement of support from senior management
 - Organizational overview/assignment of responsibilities
 - Recordkeeping
 - "Cradle-to-Grave" security and screening
 - Identification of pain points
 - Penalties
- **Penalties.** The BIS has authority to impose a range of penalties, both criminal and civil, on any person or business that willfully violates the EAR. A civil penalty may include a fine of up to \$250,000 per violation or twice the value of the transaction. Other penalties may include denial of export privileges, placement of individuals and entities on lists that restrict or prohibit involvement in export transactions, or a requirement to hire an external auditor or upgrade its compliance policies. Criminal penalties may include 20 years imprisonment and \$1 million in penalties per violation.

Office of Foreign Assets Control (OFAC)

Administered by the U.S. Treasury Department, OFAC oversees the proper implementation of economic sanctions against countries and groups of individuals, such as terrorists and narcotics traffickers.

OFAC does this in two primary ways:

SDN List. The agency maintains a list, called the Specially Designated Nationals and Blocked Persons list, which includes more than 6,000 names of companies and individuals with whom U.S. individuals and businesses are prohibited from interacting.

Sanctions. OFAC also maintains and enforces the Treasury Department's [Sanctions Programs and Country Information](#), which delineates U.S. sanctions programs on targeted countries.

- **Penalties.** Because of the seriousness of U.S. sanctions and prohibitions, any violation of U.S. policy can result in significant penalties. According to [OFAC](#), criminal penalties for willful violations can be as much as \$20 million and imprisonment for as long as 30 years. Civil violations may be assessed based on a schedule that ranges from \$1,000 to \$250,000 per violation.

Export Control Reform (ECR)

In 2009, the Obama Administration announced an "export control reform" initiative (ECR), to remove outdated regulations and align export regulations with current threats to U.S. national security. To accomplish this, the Administration set four main goals:

- Create a single export licensing agency for both dual-use and munitions exports
- Adopt a single, unified control list (by combining ITAR's Munitions List and EAR's Commerce Control List)
- Establish a single enforcement agency
- Use a single database of sanctioned and denied parties

Exporters can expect significant changes in export control regulatory processes in the coming months and years. The government has indicated that a "transition period" will be allowed to provide exporters with time to familiarize themselves with the changes and ensure compliance.

To learn more about these and other supply chain innovations, visit www.purolatorinternational.com/whitepapers to download Purolator International's white paper: *Export Control Laws: Understanding Compliance Obligations for Your Most Sensitive Shipments.*