

Export Compliance Basics for the Unmanned Vehicle Industry

Restrictions on the export and international sale of unmanned vehicle systems, components and parts, software, and technical data/technology ("know how") are strict and growing increasingly complex. Senior U.S. export licensing officials have expressed doubts that the industry is sufficiently aware of existing rules and upcoming export control law reforms. The following is a very basic summary of key elements of U.S. export control laws to assist AUVSI members in identifying export control issues that face every company in the industry.

Product and Technology Classification

ITAR: Items specifically designed, modified, or prepared for military end use are generally controlled under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC) at the State Department. Under current law, if an ITAR-controlled item is incorporated into a new item, that entire new item is generally subject to the ITAR. A license is required before exporting ITAR items (including services, software and know how) to virtually any country.

EAR: Nearly everything else¹ is considered "dual use" and controlled under the Export Administration Regulations (EAR), administered by the Bureau of Industry (BIS) at the Commerce Department. Licenses are required before exporting certain dual use items listed on the Commerce Control List (CCL) to specified destinations. The level of licensing control depends on the item's Export Control Classification Number (ECCN) and the reason for control listed on the CCL. Associated production equipment, materials, software, and technology (production, development and use know how) are also controlled and collectively referred to as "items."

Basic Compliance Steps:

- Mandatory registration as a manufacturer, broker, or exporter of defense items (even if the company does not export), if the company handles defense articles.
- Classify all items owned or controlled by the company under the correct sections of the ITAR US Munitions List (USML) and the CCL. It is impossible to comply with export rules without performing a classification review.
- Implement procedures to control unauthorized releases of ITAR- and EAR-controlled items (including technical data and technology stored on computer systems).
- Obtain licenses from DDTC or BIS or properly utilize a license exception before exporting controlled items.

Sanctions, Embargos, and Denied Parties

Sanctions and Embargos: The U.S. maintains comprehensive economic sanctions against Cuba, Iran, North Korea, Syria, and Sudan. More limited sanctions are in effect for other countries. Transactions by U.S. persons or companies with these countries or their nationals are generally prohibited or severely limited. Foreign affiliates may not ship U.S.-origin items or foreign-made items incorporating more than a minimal value of U.S. content to these destinations. These rules change frequently. Non-U.S. sanctions may also apply.

Denied Parties: The U.S. government maintains lists of individuals and entities, collectively known as "denied parties," with whom you cannot transact business. The lists can change almost daily.

Basic Compliance Steps:

- Implement a company policy regarding sanctioned countries and denied parties
- Screen all transactions for red flags indicating possible sanctioned country or denied party involvement or diversion attempts
- Regularly screen your customer base for denied parties
- Monitor sanctions programs, including applicable non-U.S. rules, for changes

¹ Excluding certain publicly-available information and items subject to the sole regulatory jurisdiction of other U.S. government agencies. Certain items made outside the U.S. with specified low levels of U.S.-origin content may not be subject to the EAR.

- Monitor the activities of foreign affiliates, distributors, and agents and allocate risk in agreements with these parties
- If your company's foreign affiliates withdraw from sanctioned country business, avoid violations of U.S. regulations as part of that process

End Use Controls

UAVs: Under the EAR, U.S. companies and persons are prohibited from exporting *any item* to Israel, China, or much of the Middle East if they know that the item will be used in the development, production, or use of certain unmanned aerial vehicles and missile systems without obtaining prior approval from BIS. This ban is comprehensive and does not depend on an item's classification. Read this paragraph twice.

Weapons Activities: There are also prohibitions against exporting any item when the exporter knows that the item will be used in certain weapons activities, including nuclear, chemical, and biological weapons activities. Exports of certain dual use items to China for use in military applications must be examined very carefully for licensing requirements prior to export.

Basic Compliance Steps:

- Screen all transactions for indications of a prohibited end use
- Train employees
- Decline any transaction involving a prohibited end use or seek a license

Things to Consider

Reform: A major export compliance reform effort is underway. Many items, including certain UAV parts and components, may be transitioned from the ITAR to the EAR. These changes will bring benefits and risks to the industry. New business opportunities will develop, but the proposed classification and licensing regime would be complex. Violations of the dual use regulations are likely to be subject to enhanced Commerce Department enforcement scrutiny and they would likely generate more frequent and larger monetary penalties than exist today for unintentional errors that are voluntarily disclosed to the government.

Basic Compliance Steps:

- Monitor export control reform
- Assess the opportunities and risks for your business
- Be prepared to implement updates to your compliance system before changes are finalized

There's More Out There: Anti-bribery (FCPA), anti-boycott, customs, free trade, Buy America and non-U.S. trade laws may apply to your company's activities.

Basic Compliance Steps:

- Conduct a risk assessment – Is there a realistic risk of company or individual criminal or civil penalties?
- Train employees
- Conduct internal reviews and acquisition due diligence
- Implement or update an export control or international trade compliance system

It's a System: Successful compliance depends on the implementation of a solid, simple compliance system. That system should include an initial and ongoing risk analysis, a formal and sustained commitment to compliance from management in a policy statement, a written program manual with effective controls and procedures, an ongoing export classification effort, employee training, adequate recordkeeping, internal auditing, and other elements. Such a system will help you avoid potentially significant penalties.

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Export Compliance Practice Description:

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