
DEPARTMENT OF COMMERCE FUNCTIONS

By

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A. INTRODUCTION

The Department of Commerce (DoC) consults with the Department of Defense (DoD) and the Department of State (DoS) to decide which items to include on the Commodity Control List (CCL). The DoC then is responsible for issuing export licenses for all items on the CCL. The DoC is not involved directly in the preparation of the Munitions List or in issuing export licenses for items on the Munitions List.

This chapter addresses the authority for DoC preparation of the CCL and export licensing. The chapter continues with the export control guidelines issued by DoC, the types of licenses issued, and the procedures for applying for licenses. The chapter continues with a discussion of other necessary export documentation. The chapter ends with a discussion of sanctions that could be imposed by the U.S. government if Public Law is circumvented in processing or shipping export items. Figure IV-1 is a generalized flow chart depicting the procedures an exporter must follow to process an item for export.

B. AUTHORITY

The authority for DoC involvement in export control derives from the Export Administration Act of 1979. . . . The current legislation was to expire in October 1983; however, it has been extended indefinitely. Congress and the President are considering several versions of new Public Law that will amend the Export Administration Act.

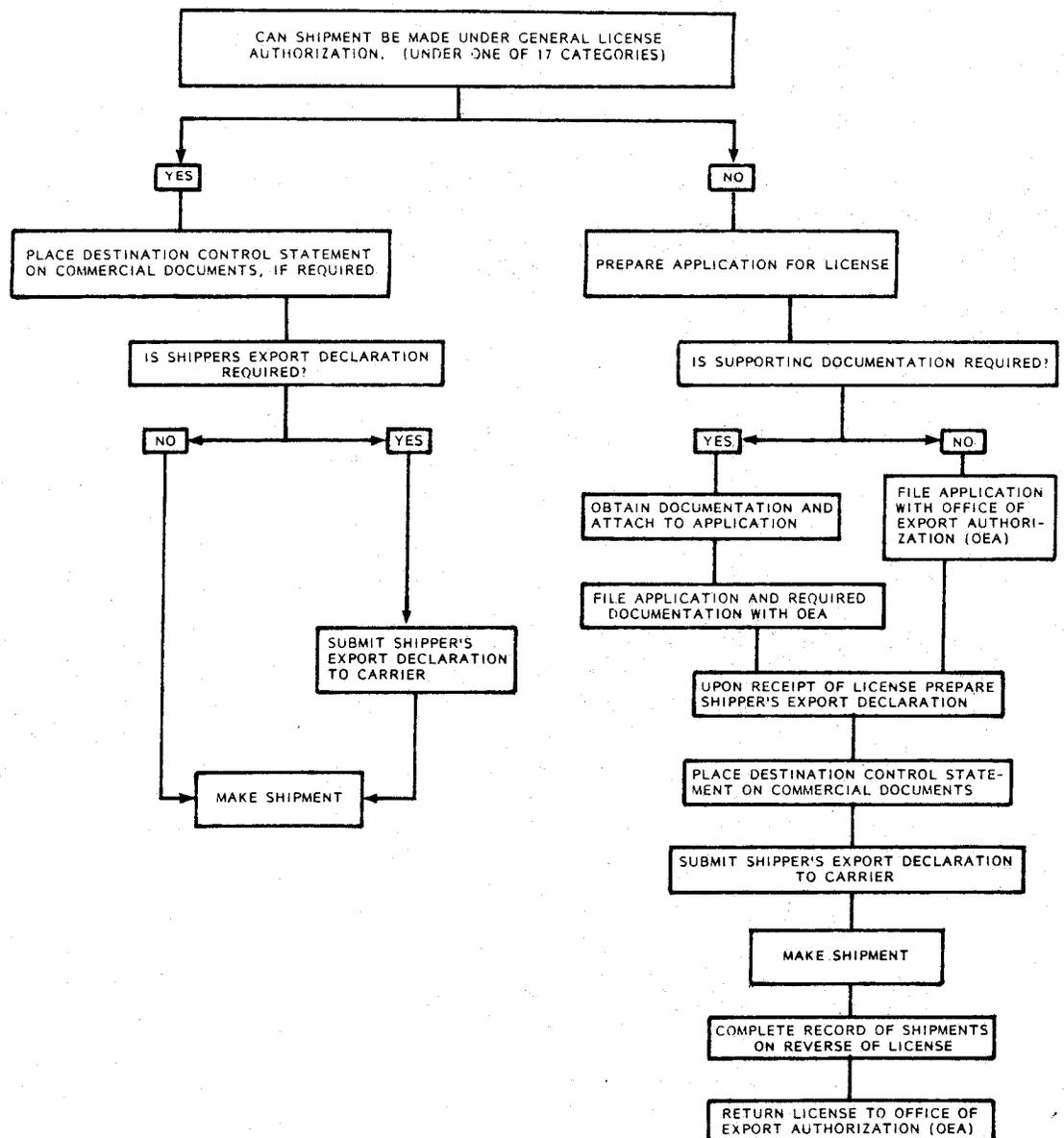
C. EXPORT CONTROL GUIDELINES

The Export Administration Regulations are issued by the Department of Commerce to enforce the Export Administration Act (EA Act) of 1979. In the EA Act, Congress listed three general policy guidelines for the use of export controls:

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- (1) Controls should be used on exports "which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States."
- (2) Controls should be used "where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations."
- (3) Controls should be used "where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand."

FIGURE IV-1. EXPORT CONTROL FLOW CHART



D. TYPES OF LICENSES

There are four main types of licenses:

- (1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.
- (2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.
- (3) A general license, authorizing exports, without application by the exporter.
- (4) Other licenses as required to assist in the effective and efficient implementation of the EA Act.

1. Validated License. A country usually would require a validated license to export the following:

a. A "strategic" commodity to any destination. In some cases a "strategic" commodity cannot be shipped to a destination to which exports are restricted for national security purposes, such as certain Communist countries. Generally speaking, a "strategic" commodity is one that the USG believes is capable of contributing significantly to the design, manufacture, or utilization of military hardware. The fact that the commodity also might have peaceful uses does not remove the "strategic" label.

b. A "short supply" commodity to any destination. A "short supply" commodity is one that is in short supply in the United States. If a "short supply commodity" is permitted to be exported without restriction, there would be an excessive drain on US supplies and a serious inflationary impact on the US economy.

c. "Unpublished" technical data to certain destinations. The term "unpublished" technical data means technical information, generally related to the design, production, or use of a product, that is not available to the public. "Unpublished" data is not described in detail in books, magazines, or pamphlets nor is it taught in colleges or universities. "Unpublished" data is know-how that a person or company will not release to another person or company without charge.

d. Any other commodity to a destination for which the USG has foreign policy concerns. The commodity Control List would indicate if the commodity to be exported is classified as a "strategic" or a "short supply" commodity or whether it falls in the "any other" category.

2. Qualified General License. A Qualified General License (QGL) authorizes multiple exports:

- a. of certain commodities,
- b. to certain destinations,
- c. to certain end-users,
- d. for certain approved end-uses.

Commodities, end-users, and end-uses must be approved in advance by the Office of Export Administration (OEA). Subject to any conditions applicable to a particular license, the QGL will authorize the license holder to export

commodities from the United States or to re-export US-origin commodities from foreign countries. The export of technical data under a QGL is not authorized unless it is associated with equipment licensed under a QGL and is the type of technical data which is available to all destinations. Technical data associated with an equipment licensed under a QGL may not be exported if the technical data is under restriction.

3. General License. A "general license" is established to permit export of noncontroversial items under the provisions of the Export Administration Regulations. No application is required by the exporter for use of a general license and no document is issued. A general license is not applicable to the export of commodities or technical data under the licensing jurisdiction of agencies other than the US Department of Commerce.

There are 17 different categories of general licenses. Six examples are:

- a. G-DEST: Shipments of commodities to destinations not requiring a validated license.
- b. GLV: Shipments of limited value.
- c. GTF-US: Goods imported for display at US exhibitions or trade fairs.
- d. GLR: Return or replacement of certain commodities.
- e. GIFT: Shipments of gift parcels.
- f. GTDA and GTDR: Technical data.

Each of the 17 has its own code to enter on the Export Declaration. . . .

4. Other Licenses. The Qualified General License described in Section D.2. above is a special license. There are other special licenses such as Project Licenses, Distribution Licenses, Service Supply Procedure Licenses, or Aircraft and Visual Repair Station Procedures Licenses. These other special licenses are not discussed in this study.

E. LICENSING PROCEDURES

An application for an export license must be submitted by a person who is subject to the jurisdiction of the USG and who is authorized by the exporting organization to certify that the items will be exported to the stated user at the stated destination.

A seller who directly exports commodities to a foreign buyer would be in a position to assume responsibility for the export and would be a proper applicant. If the seller assumes full responsibility for effecting the export, then the seller would get the necessary export license.

If the seller intends to leave the export responsibility in the hands of the foreign importer or the country's forwarding or purchasing agent in the United States, the foreign importer should apply for the license in his own name if he is subject to the jurisdiction of the United States at the time of export. Otherwise, the importer's forwarding or purchasing agent shall appear as applicant and exporter. That agent shall disclose his role and the name of the person in the importing country the agent represents.

F. OTHER DOCUMENTATION

A destination control statement, a shipper's export declaration, and records of shipments are often required to document exports.

1. Destination Control Statement. The destination control statement specifies the country to which the material is being shipped. When required by Section 386.6(a) of the Export Administration Regulations, an appropriate destination control statement must be entered on all copies of the bill of lading, the air waybill, and the commercial invoice covering an export from the United States. The same statement must appear on all copies of all shipping documents that apply to the same shipment. At the discretion of the exporter or his agent, a destination control statement may be entered on the shipping documents for exports for which no destination control statement is required.

2. Shipper's Export Declaration. Under the Export Administration Regulations a Shipper's Export Declaration is a statement declaring that the exporter possesses a validated export license or permission for an export under an applicable general license. The export declaration may be used only by the exporter or his duly authorized forwarding agent. The export declaration is used for exporting, facilitating, or effecting the export of a commodity(ies) requiring a validated or general license under the Export Administration Regulations.

3. Records of Shipment. The exporter or his agent must maintain complete records of all shipments made against each validated license. The exporter must record the following data for each separate shipment on the reverse side of the license document:

- a. quantity shipped,
- b. description of commodities,
- c. dollar value,
- d. name of exporting carrier,
- e. port of export or post office of mailing,
- f. date of export, and
- g. initials of person making entry.

G. SANCTIONS

The USC can impose sanctions (penalties) for an export violating the EA Act. Sanctions can be criminal or administrative in nature. Some of the more significant penalties are described below:

1. Violations of Export Administration Act.

a. General. With few exceptions, whoever knowingly violates the Export Administration Act or any regulation, order, or license issued under the EA Act is punishable for each violation. The punishment can be a fine of not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisonment for not more than five years, or both a fine and imprisonment.

b. Willful Violations. Whoever willfully exports anything contrary to any provision of the EA Act or any regulation, order, or license issued under the EA Act, with the knowledge that such exports will be used for the benefit of any country to which exports are restricted, either for national security or foreign policy purposes, can be punished for each violation by a fine of not more than five times the value of the exports involved or \$100,000, whichever is greater, or by imprisonment for not more than five years, or both. Any person who is issued a validated license under the EA Act for the export of any goods or technology to a controlled country and who, with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, can be punished for each violation by a fine of not more than five times the value of the exports involved or \$100,000, whichever is greater, or by imprisonment for not more than five years, or both. A "controlled country" means any country described in Section 620(f) of the Foreign Assistance Act of 1961. The countries listed in Section 620(f) are North Korea, the People's Republic of China, Vietnam, and the USSR and its allies.

2. Violations of False Statements Act. The submission of false or misleading information or the concealment of material facts whether in connection with license applications, boycott reports, Shipper's Export Declarations, investigations, compliance proceedings, appeals, or otherwise, also is punishable by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both, for each violation.

3. Seizure. Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export Administration Act or any regulation, order, or license issued under the Act are subject to seizure and forfeiture, as are the vessels, vehicles, and aircraft carrying such commodities or technical data.

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