

AirBorn, Inc.

Export Control Awareness for
AirBorn Distributors

EAR vs. ITAR

- Commerce Dept's Bureau of Industry and Security (BIS) controls "dual-use" items – **EAR (Export Administration Regulations)**. For AirBorn, these would be catalog items or items developed for commercial applications. The export class code for AirBorn connectors are EAR99 which means the parts and data can be exported without a license except to embargoed countries; persons or companies on the Denied Parties List; or specific end uses.
- State Dept's Directorate of Defense Trade Controls (DDTC) controls defense articles, defense services, and related technical data (including most space related articles) – **ITAR (International Traffic In Arms Regulations)**. Export class code is determined from the United States Munitions List.

DDTC controls exports of hardware, technical data and defense services specifically designed, developed, configured, adapted, or modified for military applications.

Trading Internationally or with Foreign Persons, you must ask:

- Are we allowed to do business with these persons?
 - What is their citizenship status?
 - Have we screened for sanctioned country, name of restricted entity?
 - Are there any **RED FLAGS**? (What is the end use? Who are the end users?)
- Are we exporting something?
 - Exporting includes assisting or giving technical data to certain persons inside or outside the U.S.

Trading Internationally or with Foreign Persons, you must ask:

- Which regulations apply? EAR, ITAR, OFAC, Customs?
 - This is usually determined by destination and classifying of articles and technology.
- Do we need to get permission to export?
 - In the form of a license, written authorization, exemption or exception?
- What records and reports are required?
- What should we do if we violate the regulations?

“Red Flags”

- Cash offers or insistence on cash payments.
- Payments in excess of market value.
- Reluctance to provide item end use info.
- Product incompatible with stated end use.
- Customer unfamiliar with product.
- Product does not fit with customer’s line of business.
- No apparent connection between consignee & purchaser.
- Inappropriate packaging and labels.
- Shipping divergent from product destination.
- Freight Forwarder listed as ultimate consignee.
- Transaction does not make sense.

Export Control Laws . . . Summarized

“You need permission to export controlled technology or articles, or provide technical or defense services to Foreign Persons (unless you qualify for an exemption) and you must keep records and make reports.”

Four Primary U. S. Agencies Control Exports

- Commerce Dept's Bureau of Industry and Security (BIS) controls "dual-use" items – EAR.
- State Dept's Directorate of Defense Trade Controls (DDTC) controls defense articles, defense services, and related technical data (including most space related articles) – ITAR.
- Homeland Security Dept's U.S. Customs and Border Protection enforces all exports at U.S. borders (CBP/ICE).
- Treasury Dept's Office of Foreign Assets Control (OFAC) oversees embargo and sanction lists – OFAC regulation.

Seven Simple Steps to Export Compliance

- 1) Learn the rules.
- 2) Classify all your technology and commodities.
- 3) Screen names and locations of end users, intermediaries, and review end use of the item.
- 4) Get permission to export or qualify for an exemption.
- 5) Export – Do the paperwork to ship the item, transfer the info, or perform the service, within the limits and provisos of the export authorization.
- 6) Keep good records and make required reports.
- 7) Prevent violations with a good Export Compliance Program and report any violations.

ITAR or EAR?

- The philosophy of the State Department's International Traffic in Arms Regulation (ITAR):
 - If you manufacture or export defense articles, furnish defense services, or broker their sales, you must register with DDTC and you need a license to export them unless you qualify for an exemption.
- The philosophy of the Commerce Department's Export Administration Regulation (EAR):
 - You don't have to register and only the items listed in the Commerce Control List in the EAR require an export license under certain conditions.

ITAR Terms

- United States – Consists of the states; District of Columbia; Puerto Rico; any territory or possession over which the US exercises any powers of administration, legislation, and jurisdiction.
- Person – Natural person; corporation; Business association or Partnership; Society, trust, or any other entity, organization or group, including government entities.
- U.S. Person – Lawful permanent resident; Protected individuals (some aliens within the U.S.); Corporations incorporated in the U.S., partnerships, etc.; The U.S. government, and state and local government entities.
- Foreign Person – Anyone not a U.S. person.
- Empowered Official – A U.S. person employed by the applicant who is responsible for license applications and compliance.

What is an Export?

1. Sending or taking an article out of the U.S.
2. Disclosing or transferring within the U.S. to an agency of a foreign government.
3. Disclosing or transferring technical data to a foreign person, whether in the U.S. or abroad.
4. Performing a defense service or transferring technical data for the benefit of a foreign person, whether in the U.S. or abroad.

Examples of Exports

- Physical Shipments across U.S. border
- Email, fax, telephone calls to foreign persons (also to U.S. persons outside the U.S.)
- Paper or laptops taken out of the country containing technology
- Demonstrations, meetings, and training of foreign persons in U.S. or abroad
- Performing controlled services for foreign persons or on foreign military items in U.S. or abroad

Defense Article & Defense Service - ITAR

- Defense Article – Hardware, technical data, and defense services covered under 121.1 of the ITAR specifically designed, developed, configured, adapted, or modified for military application.
- Defense Service – Furnishing of assistance to foreign persons related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, de militarization, destruction, processing, or use of defense articles whether in the U.S. or abroad.

United States Munitions List (USML) - ITAR

- The USML designates articles, services, and related technical data as defense articles and defense services subject to Department of State export approval. The USML has 21 categories. AirBorn connectors are classified under the categories in red below:

I – Firearms, Close Assault Weapons and Combat Shotguns

II – Guns and Armament

III – Ammunition

IV – Launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines

V – Explosives and Energetic Materials, Propellants, incendiary Agents and their Constituents

VI – Vessels of war and special Naval equipment

VII – Tanks and Military Vehicles

VIII – Aircraft and associated equipment

IX – Military Training Equipment and Training

X – Protective Personnel Equipment and Shelters

XI – Military Electronics

XII – Fire control, range finder, optical, and guidance and control equipment

XIII – Auxiliary Military Equipment

XIV – Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

XV - Spacecraft systems and associated equipment

XVI – Nuclear Weapons, Design and Testing Related Items

XVII – Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

XVIII – Directed Energy Weapons

XIX - RESERVED

XX – Submersible vessels, Oceanographic and associated equipment

XXI – Miscellaneous Articles

Diversion Clause for Shipments

For ITAR shipments a Diversion Clause should be on the bill of lading and commercial invoice. It states:

These commodities are authorized by the U.S. Government for export only to (country of ultimate destination) for use by (end user). They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.

For EAR shipments a Diversion Clause should be on the bill of lading and commercial invoice. It states:

This document contains technical data whose export is governed by the U.S. Export Administration Regulations (EAR). Diversion contrary to U.S. law is prohibited.

AirBorn Drawings and Technical Data

- AirBorn's policy is to have a diversion statement on every drawing or technical data that leaves our facility for both ITAR and EAR product. Information taken off of the web page does not need a diversion statement.
- The appropriate diversion statement also needs to be in the body of the email that is sent inside or outside the company.
- **The EAR Diversion Statement:**

This document contains technical data whose export is governed by the U.S. Export Administration Regulations (EAR). Diversion contrary to U.S. law is prohibited.
- **The ITAR Diversion Statement:**

WARNING: TECHNICAL DATA SUBJECT TO AECA AND ITAR CONTROLS. The technical data in this document is restricted by the Arms Export Control Act (Title 22, USC, Sec 2751, et seq.), and the International Traffic in Arms Regulations (22 CFR Pt 120, et seq.), as amended and shall not be exported, released or disclosed to foreign persons (i.e., foreign companies, persons who are not U.S. citizens or permanent resident aliens ["green card" holders]) inside or outside the United States, without first obtaining an export license. Violations of these export laws are subject to severe civil, criminal and administrative penalties.

Export Clearance - AES

- Mandatory filing of export information via the Automated Export System (AES)
- ITAR shipments must be entered into AES regardless of value of the shipment. Information to be included:
 - DDTC Registration Number
 - Certification that all parties in transaction are eligible
 - USML Category of item shipped
 - Quantity and unit of measure per license
 - ITAR Exemption used (if applicable)
- EAR orders valued at \$2500 or more must be entered into AES.

General Policies and Procedures

- Penalties for Violations

\$1,000,000 maximum fine

10 years in prison

Or both

- Other Penalties: Seizure and forfeiture of goods, debarment (generally 3 years), Interim Suspension
- Voluntary Disclosure – May be considered a mitigating factor.