

TABLE OF CONTENTS

CHAPTER 1

Overview of Agency Jurisdiction

§ 1.01	In General	1-2
§ 1.02	Export Controls on Persons and Entities	1-4
	[1] Department of Commerce	1-4
	[a] Denied Persons List	1-4
	[b] Unverified List	1-4
	[c] Entity List	1-5
	[2] Department of State	1-5
	[a] Nonproliferation	1-5
	[b] Arms Export Control Act Debarred List	1-5
	[3] Department of the Treasury	1-6
§ 1.03	Export Controls on Items and Activities	1-7
	[1] Department of Commerce	1-7
	[2] Department of State	1-7
	[3] Department of the Treasury	1-8
	[4] Nuclear Regulatory Commission	1-9
	[5] Department of Energy	1-10
	[6] Department of the Interior	1-11
	[7] Food and Drug Administration	1-11
	[8] Patent and Trademark Office	1-12
	[9] Environmental Protection Agency	1-12
	[10] Department of Justice	1-13
	[a] Bureau of Alcohol, Tobacco, Firearms, and Explosives	1-13
	[b] Drug Enforcement Agency	1-14
	[11] Department of Agriculture	1-14
	[12] Department of Transportation	1-14
	[a] Federal Aviation Administration	1-14
	[b] Maritime Administration	1-14
	[13] Consumer Products Safety Commission	1-15
§ 1.04	Export Clearance	1-16
	[1] Census Bureau	1-16

U.S. EXPORT CONTROLS

	[2]	Customs and Border Protection	1-17
	[3]	Postal Service	1-18
§ 1.05		The National Export Initiative	1-20
	[1]	Single Controls List	1-21
		[a] Single Controls List for Persons	1-21
		[b] Single Controls List for Items and Activities	1-22
	[2]	Recent Activity	1-22
		[a] Aircraft	1-23
		[b] Gas Turbine Engines	1-24
		[c] Military Tanks	1-24
		[d] Surface Vessels and Naval Equipment	1-24
		[e] Submersible Vessels	1-25
		[f] Auxiliary Military Equipment	1-25
		[g] Protective Personnel Equipment and Shelters and Military Training Equipment	1-26
		[h] Launch Vehicles and Rockets	1-26
		[i] Military Explosives and Nuclear Weapons Related Articles	1-26
		[j] Spacecraft and Commercial Satellites	1-27
		[k] Military Electronics	1-27
		[l] Fire Control, Laser, Imaging and Guidance Equipment	1-28
		[m] Toxicological Agents and Directed Energy Weapons	1-28
		[n] Firearms, Artillery, and Ammunition	1-28
		[o] Definition Changes	1-29
		[p] Decision Tools	1-29
	[3]	Multi-Agency Enforcement Centers	1-30

CHAPTER 2**Treasury Office of Foreign Assets Control**

§ 2.01		Overview	2-6
§ 2.02		Common Elements of Sanctions	2-8
	[1]	Scope of Enforceability	2-8
	[2]	Specially Designated Nationals List	2-9
	[3]	Export	2-10
	[4]	Import	2-10

TABLE OF CONTENTS

	[5] Services	2-10
	[6] Investment	2-11
	[7] TSRA	2-11
	[8] Penalties	2-12
	[9] Licenses	2-13
	[10] Other Authorized Transactions	2-14
	[a] Telecommunications and Personal Communications	2-14
	[b] Gifts and Donations	2-15
	[c] Information and Information Materials (The Berman Amendment)	2-16
	[d] Transactions Incident to Travel	2-18
	[11] Blocking vs. Rejecting	2-18
	[12] Administrative Matters	2-19
	[a] Recordkeeping	2-19
	[b] Reporting	2-20
	[c] Penalties	2-21
	[13] Facilitation	2-22
§ 2.03	Comprehensive Sanctions Programs	2-25
	[1] Cuba	2-26
	[a] Background	2-26
	[b] Scope of Jurisdiction	2-26
	[c] Export Restrictions	2-27
	[i] License Exception SCP	2-28
	[ii] License Exception Consumer Communications Devices (CCD)	2-29
	[iii] License Exception Gift Parcels and Humanitarian Donations (GFT)	2-30
	[iv] Licensing Policy for Cuba	2-30
	[v] Restrictions on Transactions with the Cuban Military	2-30
	[d] Import Restrictions	2-31
	[e] Financial Transactions	2-31
	[f] Travel Restrictions	2-32
	[g] Remittances	2-33
	[h] Specific Licenses	2-34
	[i] Helms Burton Act Title III	2-34
	[2] Iran	2-35
	[a] The Negotiation and Partial Unwinding of the JCPOA	2-35
	[i] United Nations	2-35
	[ii] European Union	2-36

U.S. EXPORT CONTROLS

[iii]	United States.	2-36
[b]	U.S. Sanctions Targeting Iran	
	Regulations: Background	2-39
[c]	Energy Related Transactions	2-40
[d]	Financial Transactions	2-42
[e]	Import Restrictions.	2-43
[f]	Export Restrictions.	2-43
[g]	Exemptions and General Licenses	2-44
	[i] Authorization for U.S. employees and contractors of International Organizations.	2-44
	[ii] Authorization for Software Exports Incident to the Exchange of Personal Communications	2-44
	[iii] Authorization for Food Exports.	2-45
	[iv] Authorization for Exports of Medicine and Certain Medical Devices; Replacement Parts for Medical Devices	2-45
	[v] Authorization for Processing Transactions Relating to Official Business of Third Country Diplomatic or Consular Missions.	2-46
	[vi] Authorization for Personal Remittances	2-46
	[vii] Transactions ordinarily incident to licensed transactions.	2-46
	[viii] Journalistic Activities and establishment of a news bureau in Iran.	2-46
	[ix] Payment for overflights	2-46
	[x] Certain legal services.	2-47
	[xi] Transactions ordinarily incident to publishing	2-47
	[xii] Educational Activities	2-47
	[xiii] Certain conference-related activities.	2-47

TABLE OF CONTENTS

xvii

	[3] Sudan	2-47
	[a] Blocking	2-48
	[b] Export Restrictions	2-49
	[c] Import Restrictions	2-50
	[d] Transactions	2-51
	[e] General Licenses and Exemptions	2-52
	[f] Summary of 2017 Relaxations and 2018 Repeal	2-52
	[4] Syria	2-53
	[a] Blocking	2-54
	[b] Investment	2-54
	[c] Services; Prohibitions and Related General Licenses	2-54
	[d] Petroleum-Related Transactions	2-55
	[e] Telecommunications and Agriculture	2-55
	[f] Travel	2-56
	[g] General Licenses	2-56
	[5] Crimea Region of the Ukraine	2-57
	[6] North Korea	2-58
	[a] Full Embargo for U.S. Persons	2-59
	[b] Blocking	2-60
	[c] Import Restrictions	2-61
	[d] Restrictions Related to Vessels	2-62
	[e] Prohibition on Travel	2-62
	[f] Financial and Secondary Sanctions	2-63
§ 2.04	Limited Sanctions Programs	2-64
	[1] Balkans	2-64
	[a] Blocking	2-64
	[b] Licenses	2-64
	[2] Belarus	2-64
	[a] Blocking	2-65
	[b] Licenses	2-65
	[3] Burma (Myanmar)	2-65
	[3A] Burundi	2-66
	[a] Blocking	2-66
	[3B] Central African Republic	2-67
	[a] Blocking	2-67
	[4] Côte d’Ivoire	2-67
	[5] Counter Narcotics Trafficking	2-67
	[a] Narcotics Trafficking Sanctions Regulations	2-68
	[b] Foreign Narcotics Kingpin Sanctions Regulations	2-68
	[c] Penalties	2-69

U.S. EXPORT CONTROLS

	[d] Legal Challenges	2-69
[6]	Counter Terrorism	2-69
[a]	Specially Designated Terrorists.	2-70
	[b] Foreign Terrorist Organizations.	2-70
	[c] Specially Designated Global Terrorists.	2-71
	[d] State Sponsors of Terrorism	2-71
[7]	Internet and Cyber-Related Sanctions.	2-72
	[a] Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology	2-72
	[b] Malicious Cyber-Enabled Activity.	2-73
[8]	Democratic Republic of the Congo	2-75
	[a] Blocking	2-75
	[b] Transactions	2-75
[8A]	Global Magnitsky Sanctions	2-75
[8B]	Hong-Kong Related Sanctions	2-76
[8C]	International Criminal Court Related Sanctions	2-77
[9]	Diamond Trading	2-78
	[a] Import/Export	2-78
[10]	Foreign Interference in a United States Election	2-79
[11]	Iraq	2-79
	[a] Blocking	2-80
	[b] Transactions	2-80
[12]	Lebanon	2-80
	[a] Blocking	2-80
	[b] Hezbollah-Related Transactions.	2-81
[13]	Former Liberian Regime of Charles Taylor.	2-81
[14]	Libya.	2-81
	[a] Blocking	2-82
	[b] Licenses	2-82
[15]	Mali.	2-84
[16]	Nicaragua	2-84
[17]	Non-Proliferation	2-84
	[a] Weapons of Mass Destruction Trade Control Regulations	2-84
	[b] Highly Enriched Uranium Assets Control Regulations	2-85
	[c] Weapons of Mass Destruction Proliferators Sanctions Regulations	2-85

TABLE OF CONTENTS

xix

	[d] Scope of Enforcement	2-86
[18]	[Reserved].	2-86
[19]	Somalia	2-86
	[a] Blocking	2-87
	[b] Humanitarian Assistance	2-87
[20]	South Sudan	2-87
[21]	Taliban (Afghanistan).	2-88
[22]	Transnational Criminal Organizations	2-88
	[a] Blocking	2-88
[23]	Ukraine-Related	2-89
[24]	Venezuela	2-90
	[a] Blocking	2-91
	[b] General Licenses	2-92
	[c] Debt and Financing Restrictions	2-92
	[d] PdVSA and the Government of Venezuela	2-94
[25]	Yemen	2-97
	[a] Blocking	2-97
[26]	Weapons of Mass Destruction.	2-98
	[a] Blocking	2-98
	[b] Import Restrictions.	2-98
[27]	Federal Republic of Yugoslavia and Republic of Bosnia and Herzegovina	2-98
[28]	Zimbabwe	2-100
	[a] Blocking	2-100
	[b] General Licenses	2-100
§ 2.05	Sectoral Sanctions.	2-101
	[1] Background: EO 13662	2-101
	[2] Directive 1: Financial Sector.	2-102
	[3] Directive 2: Energy Sector	2-103
	[4] Directive 3: Defense and Related Materiel Sectors	2-104
	[5] Directive 4: Russian Energy Sector	2-104
	[6] General Licenses	2-106
	[7] Countering America’s Adversaries Through Sanctions Act	2-106
	[8] Non-Ruble Denominated Bond Transactions	2-108
§ 2.06	FOIA Requests	2-109
§ 2.07	Conflicting Foreign Laws	2-110
§ 2.08	Screening for Specially Designated Nationals	2-112

CHAPTER 3

**Export Administration Regulations,
Commerce Department, Bureau of
Industry, and Security**

§ 3.01	Basic Concepts	3-2
	[1] Scope of Discussion	3-2
	[2] The Bureau of Industry and Security	3-4
	[3] The Export Administration Regulations (EAR)	3-6
	[4] What Is an “Export”?	3-7
	[a] Deemed Exports/Reexports	3-9
	[5] “Subject to the EAR”	3-10
	[6] “Public Domain”	3-10
	[7] “ <i>De Minimis</i> ”	3-11
	[8] The Ten General Prohibitions	3-12
	[9] The Country Chart	3-14
	[10] Responsible Parties	3-14
	[11] Classification	3-19
	[12] Marketing	3-22
	[13] Reducing Administrative Costs	3-24
	[14] Advisory Opinions	3-24
	[15] Order	3-25
§ 3.02	Export Licenses and License Applications	3-26
	[1] How to Apply	3-26
	[2] Supplementary Documents	3-28
	[3] License Processing	3-30
	[a] Interagency Review	3-30
	[b] Escalation of Review	3-30
	[c] Riders and Conditions	3-31
	[d] Deadlines	3-31
	[e] Determining Case Status	3-33
	[f] Emergency Processing	3-33
	[g] Intent to Deny, Denial, and Appeals	3-33
	[h] Validity	3-35
	[i] Changes Requiring New Application	3-35
	[j] Changes by Amendment	3-35
	[k] Changes Without Amendment	3-35
	[l] Duplicate License	3-36
§ 3.03	Export Clearance	3-37
	[1] Role of Export License	3-37
	[2] Shipper’s Export Declarations	3-37
	[3] Bill of Lading	3-38

TABLE OF CONTENTS

xxi

[4]	Commercial Invoice	3-38
[5]	Destination Control Statement	3-38
[6]	Shipping	3-39
	[a] Shipping Tolerances	3-39
	[b] Port of Export	3-39
	[c] Delayed Shipment	3-40
	[d] Non-Arrival	3-40
§ 3.04	License Exceptions and Post-Shipment Responsibilities	3-41
	[1] License Exceptions	3-41
	[2] Delivery Verification	3-45
	[a] Disposition of License	3-45
	[b] Revocation or Suspension of License	3-46
	[3] Audits and Compliance	3-46
§ 3.05	Retention of Records	3-48
§ 3.06	Recent Developments: The Export Control Reform Initiative	3-49
	[1] Reforms Already Implemented	3-49
	[a] Transfers from the United States Munitions List (USML) to the Commerce Control List (CCL)	3-49
	[b] Transition of Items from the USML to the CCL	3-53
	[c] Definition of “Specially Designed”	3-54
	[2] Reforms Yet to Be Implemented	3-56

CHAPTER 4

International Traffic in Arms Regulations

§ 4.01	Introduction	4-5
	[1] General Overview	4-5
	[a] Summary	4-5
	[b] History	4-7
	[c] Export Control Reform	4-9
	[2] Six Simple Steps to ITAR Compliance	4-11
	[a] Step 1: Register with DDTC, Learn the Rules, and Keep Up to Date on Changes	4-11
	[b] Step 2: Classify the Item or Information to be Exported So You Know Which Rules Apply	4-12

U.S. EXPORT CONTROLS

	[c]	Step 3: Screen for Denied Names, Locations, and Uses	4-12
	[d]	Step 4: Get a License or Approved Agreement, or Qualify to Use an Exemption	4-13
	[e]	Step 5: Export: File AES/EEL, Do the Paperwork, and Comply with Provisos	4-13
	[f]	Step 6: Audit Frequently, Keep Records, and Make Required Reports	4-14
	[g]	Optional Step 7: File a Voluntary Disclosure	4-14
[3]		ITAR Structure and Definitions	4-14
	[a]	Part 120—Purpose and Definitions	4-15
	[b]	Part 121—United States Munitions List	4-15
	[c]	Part 122—Registration of Manufacturers and Exporters	4-17
	[d]	Part 123—Licenses for the Export and Temporary Import of Defense Articles	4-18
	[e]	Part 124—Agreements, Off-Shore Procurement, and Other Defense Services	4-19
	[f]	Part 125—Licenses for the Export of Technical Data and Classified Defense Articles	4-19
	[g]	Part 126—General Policies and Provisions	4-19
	[h]	Part 127—Violations and Penalties	4-20
	[i]	Part 128—Administrative Procedures	4-21
	[j]	Part 129—Registration and Licensing of Brokers	4-21
	[k]	Part 130—Political Contributions, Fees, and Commissions	4-22
[4]		ITAR Index	4-22
[5]		DDTC Organization	4-22
	[a]	Official Positions and Authority	4-22
	[b]	The Defense Trade Advisory Group	4-23
[6]		Relation to Regulations of Other Agencies	4-23

TABLE OF CONTENTS

xxiii

§ 4.02	What and Whom Does the ITAR Regulate?	4-26
	[1] What Does the ITAR Regulate?	4-26
	[a] Information in the Public Domain	4-26
	[b] University Research	4-28
	[c] Marketing Information	4-29
	[2] Persons, Parties, and Destinations	4-29
	[a] Personal Jurisdiction	4-30
	[b] U.S. Persons	4-31
	[c] Foreign Persons	4-32
	[i] Foreign Persons Defined	4-32
	[ii] U.S. Persons Representing Foreign Persons	4-33
	[d] Foreign National	4-33
	[e] Dual Nationals and Third-Country Nationals	4-34
	[f] Prohibited Persons and Destinations	4-34
	[i] Presumed Denial Countries	4-36
	[ii] Presumed Denial Countries Not Listed in ITAR	4-38
	[3] Transactions	4-40
	[a] Exports, Reexports, and Deemed Exports	4-42
	[i] Exports	4-44
	[ii] Reexports and Retransfers	4-47
	[iii] Deemed Exports	4-48
	[b] Temporary Imports	4-48
	[c] Defense Services	4-50
	[d] Brokering	4-51
	[e] Political Contributions, Fees, and Commissions	4-52
	[4] Defense Articles	4-53
	[a] General	4-53
	[i] U.S. Munitions List	4-58
	[ii] Missile Technology Control Regime	4-58
	[b] Significant Military Equipment	4-59
	[c] Major Defense Equipment	4-60
	[d] Technical Data and Software	4-61
	[e] Classified Information	4-62
	[f] Non-Defense USML Articles	4-63
§ 4.03	Before You Export	4-64
	[1] Register with DDTC	4-64
	[a] Who Must Register?	4-64
	[b] The Registration Process	4-65

U.S. EXPORT CONTROLS

	[c]	Notification of Changes in Information Furnished by Registrants	4-67
	[2]	System for Recordkeeping.	4-68
	[3]	System for Classifying Products and Services	4-68
	[4]	Commodity Jurisdiction Requests and Advisory Opinions	4-68
	[5]	Staffing	4-70
	[6]	Empowered Officials	4-70
	[7]	Training	4-72
	[8]	System for Screening Names of Denied Parties and Destinations	4-73
	[9]	Export Contracts, Subcontracts, Purchase Orders, and Joint Ventures	4-73
	[10]	Export/Import Boilerplate Clauses	4-74
	[11]	Shipping	4-74
	[a]	Marking	4-74
	[b]	Shipments by U.S. Postal Service.	4-75
	[c]	Automated Export System	4-76
§ 4.04		Obtaining Written Authorization for Exports and Temporary Imports	4-77
	[1]	Export/Import Licenses, Certificates, and Applications.	4-77
	[a]	Electronic Application Methods	4-77
	[i]	DECCS	4-77
	[ii]	Enrolling in DECCS	4-78
	[b]	Types of Licenses for Exports and Temporary Imports.	4-78
	[i]	DSP-5 and DSP-6: Permanent Unclassified Export License	4-78
	[ii]	DSP-61 and DSP-62: Temporary Unclassified Import	4-79
	[iii]	DSP-73 and DSP-74: Temporary Unclassified Export	4-79
	[iv]	DSP-83: Non-transfer and Use Certificate	4-80
	[v]	DSP-85: Permanent and Temporary Classified Export or Import.	4-81
	[vi]	DSP-94: Foreign Military Sales Exports	4-81
	[2]	Agreements.	4-82

TABLE OF CONTENTS

	[a]	Manufacturing License Agreement . . .	4-82
	[b]	Technical Assistance Agreement	4-82
	[c]	Foreign Distribution or Warehouse Agreement	4-82
	[d]	Offshore Procurement Agreement . . .	4-83
	[3]	Other ITAR Authorization—Exceptions and Waivers	4-84
§ 4.05		Exemptions	4-85
	[1]	General	4-85
		[a] Limitations on Exemptions	4-85
		[b] Recordkeeping for Exemptions	4-86
		[c] Filing and Notice Requirements	4-86
	[2]	Discussion of Selected ITAR Exemptions	4-87
		[a] ITAR § 123.4—Temporary Import License Exemptions	4-87
		[b] ITAR § 123.17(f)-(k)—Temporary Exports of Body Armor and Chemical Agent Protective Gear	4-90
		[c] ITAR § 125.4(b)—Exemptions for Technical Data	4-94
		[i] § 125.4(b)(2)—Data in Furtherance of an Agreement	4-95
		[ii] § 125.4(b)(4)—Data Previously Authorized for Export	4-95
		[iii] § 125.4(b)(5)—Basic Operations and Maintenance	4-95
		[iv] § 125.4(b)(9)—Technical Data, Including Classified Information, Regardless of Media or Format, Exported, Reexported, or Retransferred by or to a U.S. Person, or a Foreign Person Employee of a U.S. Person Travelling or on Temporary Assignment Abroad	4-96
	[d]	ITAR § 126.4(a)—Transfers by or for the United States Government	4-98

U.S. EXPORT CONTROLS

	[e]	ITAR § 126.5—Canadian Exemptions	4-106
	[f]	ITAR § 126.6—Foreign-Owned Military Aircraft and Naval Vessels, and the Foreign Military Sales Program	4-106
§ 4.06		ITAR Appendix	4-107
	[1]	ITAR Amendments Since 2007	4-107
	[2]	Key Cases	4-110
	[3]	Sample Clauses for Contracts and Subcontracts	4-111

CHAPTER 5**Enforcement of Export Controls**

§ 5.01		Introduction and Scope of Discussion	5-3
	[1]	Defense Trade Controls	5-3
		[a] Violations in General	5-4
		[b] Misrepresentation and Omission of Facts	5-4
		[c] Penalties for Violations	5-5
		[d] Debarment, Suspension, and Appeals	5-6
		[e] Past Violations	5-7
	[2]	Dual-Use (Commercial) Export Controls	5-8
		[a] Legislative Authority	5-8
		[b] Effect of Non-Renewal of the EAA	5-8
		[c] Structure of EAR Enforcement Provisions	5-11
		[d] Violations vs. Prohibitions	5-12
		[e] Violations vs. Requirements	5-13
		[f] Penalties for Violations	5-13
		[g] Criminal Sanctions	5-14
		[h] Administrative Sanctions	5-16
		[i] Inadvertent Violations	5-17
	[3]	International Emergency Economic Powers Act	5-18
	[4]	Trading With the Enemy Act (TWEA)	5-19
	[5]	Economic Sanctions Enforcement Guidelines	5-19
	[6]	Census Controls	5-20

TABLE OF CONTENTS

xxvii

	[a]	Violations	5-21
	[b]	Penalties	5-21
§ 5.02		Extraterritorial Sanctions	5-22
	[1]	COCOM-Related Sanctions.....	5-22
		[a] Exceptions.....	5-23
		[b] Effects on United States Persons ...	5-23
		[c] Effect of COCOM’s Demise	5-23
	[2]	Missile-Related Extraterritorial Sanctions.....	5-24
		[a] Exceptions.....	5-25
		[b] Effects on United States Persons ...	5-25
	[3]	Chemical and Biological Weapons-Related Sanctions.....	5-29
		[a] Exceptions.....	5-30
		[b] Effects on United States Persons ...	5-30
	[4]	Nuclear Proliferation Prevention Act	5-30
		[a] Exceptions.....	5-34
		[b] Effects on United States Persons ...	5-34
§ 5.03		Issues and Concepts Common to Export Enforcement Activities	5-36
	[1]	Vicarious Liability for Acts of Employees	5-37
	[2]	Vicarious Liability for Acts of Companies	5-37
	[3]	Being Put on Notice	5-38
	[4]	Reporting Obligations	5-39
	[5]	Role of Immigration and Customs Enforcement (ICE)	5-41
	[6]	Violation Charged	5-42
	[7]	Administrative Proceedings.....	5-43
		[a] Form of Charge	5-43
		[b] Publicizing Administrative Proceedings.....	5-44
		[c] Opportunity to Defend.....	5-44
		[d] Settlement.....	5-44
		[e] Discovery	5-45
		[f] Limitations on Defense	5-45
		[g] Appeal.....	5-50
§ 5.04		Denied Parties.....	5-51
	[1]	Temporary Denial Orders	5-51
	[2]	Standard Denial Orders.....	5-52
§ 5.05		Voluntary Disclosures.....	5-53
	[1]	Voluntary Disclosures at DTC/C.....	5-53
	[2]	Voluntary Disclosures at OEE.....	5-54
		[a] The “Piling-On” Problem	5-58

U.S. EXPORT CONTROLS

	[3] Voluntary Disclosures at the Census Bureau	5-61
	[a] Violations	5-62
	[b] Penalties	5-62
	[c] Procedures	5-63
	[d] Jurisdiction	5-63
§ 5.06	Appendix: Enforcement—United States Export Controls	5-64

CHAPTER 6

Encryption

§ 6.01	Introduction	6-3
§ 6.02	Classification	6-4
	[1] Information Security	6-5
	[2] Exclusion for Medical Items	6-5
	[3] Exclusion for Ancillary Encryption	6-6
	[4] Limited Use Cryptography	6-7
	[5] Mass Market Cryptography	6-9
	[6] Weak Cryptography	6-11
	[7] <i>De Minimis</i>	6-11
§ 6.03	License Exception: Encryption Commodities, Software, and Technology	6-13
	[1] Procedure	6-14
	[a] Review	6-14
	[b] Waiting Period	6-15
	[c] Annual Self-Classification Reporting	6-15
	[d] Semi-Annual Post-Export Reporting	6-15
	[e] Key Length Increase Reporting	6-16
	[2] Restricted Items	6-16
	[3] Unrestricted Items	6-18
	[4] Self-Classifiable Items	6-20
	[5] Items for Internal Development, Transfers, and Foreign Items	6-20
§ 6.04	Other License Exceptions	6-22
	[1] Additional Permissive Reexports	6-22
	[2] Baggage	6-22
	[3] Consumer Communications Devices	6-23
	[4] Gifts, Parcels, and Humanitarian Donations	6-23

TABLE OF CONTENTS

xxix

	[5]	Governments, International Organizations, International Inspections Under the Chemical Weapons Convention, and International Space Station	6-24
	[6]	Shipments of Limited Value	6-24
	[7]	Servicing and Replacement of Parts and Equipment	6-24
	[8]	Temporary Imports, Exports, and Reexports	6-25
	[9]	Technology and Software-Unrestricted.	6-28
§ 6.05		Licensing	6-29
	[1]	Individual	6-29
	[2]	Encryption Licensing Arrangement	6-29
	[3]	Deemed Export to Foreign Nationals	6-30
	[4]	Outsourcing and Offshore Manufacturing.	6-30
		[a] Exporting to a Foreign Entity	6-30
		[b] Exporting Foreign-Produced Items	6-31
§ 6.06		Special Subjects	6-33
	[1]	Source Code	6-33
		[a] Publicly Available Encryption Source Code	6-33
		[b] Proprietary Encryption Source Code	6-34
		[c] Public and Proprietary Hybrid Source Code	6-34
	[2]	Crypto-with-a-Hole	6-35
	[3]	Java	6-35
§ 6.07		Terrorist-Supporting Countries	6-37
	[1]	Cuba	6-37
	[2]	Iran	6-37
	[3]	North Korea	6-40
	[4]	Sudan	6-40
	[5]	Syria	6-40
§ 6.08		Wassenaar	6-42
	[1]	Wassenaar 2010 Changes.	6-42
	[2]	Wassenaar 2011 Changes.	6-43
	[3]	Wassenaar 2012 Changes.	6-44
		[a] Mass Market Treatment for Components	6-44
		[b] Reverse Engineering of Cryptographic Components	6-44
		[c] Information Security Equipment Evaluation Results	6-45

U.S. EXPORT CONTROLS

	[d] Wireless Personal Area Network Exclusion	6-45
	[4] Wassenaar 2013 Changes	6-45
	[a] Information Security	6-46
	[b] Cybersecurity	6-46
§ 6.09	Conclusion	6-48
	[1] The Haystack Incident	6-48
	[2] Open Source	6-49
	[3] Obama Administration Reforms	6-50
	[4] 2016 Changes	6-52
	[5] Edward Snowden	6-52

CHAPTER 7**Hazardous Substances**

§ 7.01	Environmental Protection Agency	7-1
	[1] Hazardous Waste	7-2
	[2] Toxic Substances	7-4
	[3] Pesticides	7-5
§ 7.02	Consumer Product Safety Commission	7-9
	[1] Exemptions	7-11
	[2] Export Prohibition Policy	7-11
§ 7.03	Food and Drug Administration	7-12
§ 7.04	Drug Enforcement Agency	7-15
	[1] Narcotic and Related Non-Narcotic Substances	7-15
	[2] Precursor Chemicals	7-16
§ 7.05	Federal Aviation Administration	7-18
	[1] Requirements	7-18
	[2] Penalties	7-18

CHAPTER 8**Foreign Corrupt Practices Act and Export Controls**

§ 8.01	Introduction	8-2
§ 8.02	The Foreign Corrupt Practices Act	8-4
	[1] Background	8-4
	[2] FCPA Anti-Bribery Provisions	8-5
	[3] FCPA Accounting Provisions	8-6
	[a] Recordkeeping	8-7
	[b] Internal Controls	8-7
	[4] Affirmative Defenses	8-8
	[5] FCPA Sanctions	8-9

TABLE OF CONTENTS

xxxi

	[a] Criminal Sanctions	8-9
	[b] Civil Sanctions	8-9
	[c] Private Cause of Action	8-11
§ 8.03	The FCPA and the Export Regulations	8-12
	[1] Political Contributions, Fees, and Commissions	8-12
	[2] Recordkeeping	8-14
	[a] ITAR Recordkeeping Provisions	8-14
	[b] EAR Recordkeeping Provisions	8-15
	[c] OFAC Recordkeeping Provisions	8-16
	[3] Intersections Between the FCPA and Export Control Recordkeeping Requirements	8-17
	[4] Implications of Overlapping Regulatory Schemes in Investigation and Imposition of Penalties	8-19
	[5] Clauses in Government Contracts Trigger Compliance Obligations	8-22
	[a] DFARS Rule Regarding Export Compliance	8-22
	[b] Restriction on Contingent Fees for Foreign Military Sales/Foreign Military Financing	8-23
§ 8.04	Implementing Comprehensive Compliance Programs	8-25
	[1] Conducting a Proper Risk Assessment	8-25
	[2] Reporting and Review Procedures	8-25
	[3] Training and Audit Schedules	8-26
	[4] Audit Procedure/Checklist	8-26
	[5] Annual Compliance Questionnaire (Sample)	8-27
	[6] Briefing Acknowledgement Form (Sample)	8-28
	[7] Employee Audit Questionnaire	8-28
§ 8.05	Summary of DoJ's and SEC's 2012 FCPA Guidance	8-31
	[1] Expansive Jurisdiction of the FCPA	8-31
	[2] Definition of "Foreign Official"	8-32
	[3] Permissible Gifts, Entertainment and Travel	8-33
	[4] Risk of Vicarious Liability	8-34
	[5] Successor Liability	8-34
	[6] Accounting Provisions	8-34
	[7] Compliance Programs	8-35

[8]	Declined Enforcement Actions	8-35
-----	--	------

CHAPTER 9

Commerce Anti-Boycott Restrictions

§ 9.01	Overview	9-2
§ 9.02	The Arab League Boycott of Israel	9-4
	[1] Arab League Members' Participation	9-5
	[2] Primary, Secondary, and Tertiary Boycotts	9-10
§ 9.03	The Blacklisting of Firms	9-13
§ 9.04	Application of the Boycott	9-14
§ 9.05	United States Anti-Boycott Legislation	9-15
	[1] Export Administration Act (EAA)	9-15
	[2] Ribicoff Amendment to the Tax Reform Act of 1976	9-16
	[3] State Anti-Boycott and Preemption	9-16
§ 9.06	Export-Related Anti-Boycott Legislation	9-18
	[1] The Purpose of Anti-Boycott Restrictions	9-18
	[2] Jurisdictional and Threshold Requirements	9-18
	[a] "United States Person"	9-18
	[i] Definition of "United States Person"	9-18
	[ii] Foreign Subsidiaries	9-20
	[iii] "Controlled in Fact"	9-20
	[iv] Shareholder Accountability	9-21
	[v] Successor Liability	9-22
	[b] Interstate or Foreign Commerce	9-22
	[c] Intent	9-25
	[3] Prohibited Conduct	9-26
	[a] Refusal to Do Business	9-27
	[b] Discriminatory Actions	9-28
	[c] Furnishing Personal Information	9-29
	[d] Business Relationships with Boycotted Countries or Blacklisted Persons	9-30
	[e] Associations with Charitable and Fraternal Organizations	9-32
	[f] Letters of Credit	9-32
	[4] Exception to Prohibited Conduct	9-34
	[a] Import Requirements	9-34

TABLE OF CONTENTS

- [b] Import and Shipping Document Requirements 9-35
- [c] Compliance with Unilateral Selection 9-36
- [d] Requirements on Exports from Boycotting Countries 9-36
- [e] Compliance with Visa Requirements 9-37
- [f] Compliance with Local Law 9-37
- [5] Reporting and Recordkeeping 9-38
 - [a] Reporting Requirements 9-38
 - [i] General Rule 9-39
 - [ii] Exceptions 9-40
 - [b] Recordkeeping Requirements 9-40
- [6] Evasion and Penalties 9-40
 - [a] Evasion Provisions 9-40
 - [b] Penalties 9-42
- [7] Private Right of Action 9-42
- [8] Application of Rules—Case Example 9-43
- § 9.07 Tax-Related Anti-Boycott Legislation 9-46
 - [1] Reporting Requirements 9-46
 - [2] Boycott Participation and Cooperation 9-47
 - [3] Penalties 9-49
- § 9.08 Differences Between Export-Related and Tax-Related Anti-Boycott Legislation 9-51
- § 9.09 Requests For Boycott-Related Action Under the United States Anti-Boycott Regulations 9-53

CHAPTER 10

Chemical Weapons Convention

- § 10.01 General Obligations 10-2
- § 10.02 Organization for the Prohibition of Chemical Weapons 10-4
- § 10.03 Verification System 10-5
- § 10.04 Chemical Weapons Convention Implementation Act 10-6
- § 10.05 Chemical Weapons Convention Regulations 10-7
 - [1] Schedule 1 Chemicals 10-8
 - [a] Declarations 10-9
 - [b] Reports 10-9
 - [c] Inspections 10-9
 - [d] Export Controls 10-10
 - [2] Schedule 2 Chemicals 10-10

U.S. EXPORT CONTROLS

	[a]	Declarations	10-11
	[b]	Reporting	10-12
	[c]	Inspections	10-12
	[d]	Export Controls	10-13
[3]		Schedule 3 Chemicals	10-13
	[a]	Declarations	10-14
	[b]	Reports	10-14
	[c]	Inspections	10-14
	[d]	Export Controls	10-15
[4]		Unscheduled Discrete Organic Chemicals	10-15
	[a]	Declarations	10-16
	[b]	Inspections	10-16
	[c]	Export Controls	10-16
[5]		Challenge Inspections	10-16
[6]		Penalties	10-17
§ 10.06		Fourth Amendment Jurisprudence.....	10-19
§ 10.07		Disclosure of Confidential Business Information	10-21

CHAPTER 11**Foreign Trade Regulations and
Automated Export System**

§ 11.01		Understanding the U.S. Foreign Trade Regulations	11-5
	[1]	Overview of the Foreign Trade Regulations	11-6
	[2]	Updates to the Foreign Trade Regulations and the Use of AES.....	11-8
	[a]	Transition of AES to ACE.....	11-8
	[b]	Other Changes	11-8
§ 11.02		When Is Filing Electronic Export Information Required?	11-9
	[1]	In General.....	11-9
	[2]	Exports of Software.....	11-10
	[3]	EEI Exclusions.....	11-10
	[4]	EEI Filing Exemptions.....	11-11
	[a]	Low Value and Other Miscellaneous Exemptions.....	11-11
	[b]	Shipments to Canada.....	11-12
	[c]	Shipments to Members of U.S. Armed Services and U.S. Government Agencies	11-13

TABLE OF CONTENTS

xxxv

	[d]	Baggage and Personal Effects— Partial Reporting Requirements . . .	11-14
§ 11.03		Responsibility for EEI Filing	11-15
	[1]	Role of Parties to the Export Transaction	11-15
	[a]	Principal Parties to the Export Transaction	11-15
		[i] The U.S. Principal Party in Interest (USPPI)	11-16
		[ii] The Foreign Principal Party in Interest (FPPI).	11-16
		[iii] Intermediate Consignee	11-16
	[b]	Domestic Transactions	11-16
	[c]	Drop-Shipments	11-17
	[d]	Other Circumstances	11-17
	[2]	General Responsibilities of the USPPI	11-17
	[3]	Use of Agents for EEI Filing	11-18
	[4]	Understanding Routed Export Transactions	11-19
	[a]	Responsibility of USPPI in Routed Export Transactions	11-20
	[b]	Responsibilities of the Authorized Agent in Routed Export Transactions	11-20
	[c]	Transfer of Liability for Export Compliance	11-21
	[d]	Routed Exports and the Export of ITAR Goods.	11-22
§ 11.04		Export Information Reporting	11-23
	[1]	AES Trade Interface Requirements (AESTIR)	11-23
	[2]	Mandatory Data Elements	11-24
	[a]	USPPI Information	11-24
	[b]	Date of Export	11-25
	[c]	Ultimate Consignee	11-25
	[d]	U.S. State of Origin	11-25
	[e]	Country of Ultimate Destination	11-26
		[i] Shipments Under Export License or License Exception/Exemption	11-26
		[ii] Shipments Not Moving Under Export License	11-26
		[iii] Goods Sold en Route	11-26
	[f]	Method of Transportation	11-26

U.S. EXPORT CONTROLS

[g]	Conveyance Name; Carrier Name and Carrier Identification	11-26
[h]	Port of Export and Vessel and Air Exports Involving Several Ports of Exportation	11-27
[i]	Related Party Indicator	11-28
[j]	Indicator of Domestic or Foreign Origin	11-28
	[i] Domestic Origin Goods	11-28
	[ii] Foreign Origin Goods	11-28
[k]	Commodity Classification Number (CCN)	11-28
[l]	Commodity Description	11-29
[m]	Primary Unit of Measure	11-29
[n]	Primary Quantity	11-29
[o]	Shipping Weight	11-30
[p]	Export Reporting Value	11-30
	[i] Selling Price	11-30
	[ii] Adjustments to Make the AES Value	11-31
	[iii] Exclusions from AES Value	11-31
[q]	Export Information Code	11-32
[r]	Shipment Reference Number	11-32
[s]	Line Number	11-32
[t]	Hazardous Material Indicator	11-32
[u]	In-bond Code	11-32
[v]	License Code/License Exemption Code	11-32
[w]	Routed Export Transaction Indicator	11-33
[x]	Shipment Filing Action Request Indicator	11-33
[y]	Line Item Filing Action Request Indicator	11-33
[z]	Filing Option Indicator	11-33
[3]	Conditional Data Elements	11-33
	[a] Use of an Authorized Agent for Filing	11-33
	[b] Intermediate Consignee	11-34
	[c] FTZ Identifier	11-34
	[d] Foreign Port of Unlading	11-34
	[e] Export License Number/CFR Citation/KPC Number	11-34
	[f] Export Control Classification Number (ECCN)	11-35

TABLE OF CONTENTS

xxxvii

	[g]	Secondary Unit of Measure	11-35
	[h]	Secondary Quantity	11-35
	[i]	Information Required for Exporting Used Vehicles	11-35
	[j]	Import Entry Number	11-35
	[k]	Transportation Reference Number (TRN)	11-36
	[l]	Kimberley Process Certificate (KPC) Number	11-36
	[m]	Export License Value	11-36
	[4]	Optional Data Report Elements	11-37
	[5]	Department of State Requirements EEI Filing Requirements	11-37
§ 11.05		Proof of Filing Citations and Exemption Legends on Export Documents	11-39
	[1]	Internal Transaction Number (ITN)	11-39
	[2]	Proof of Filing Citation	11-40
§ 11.06		Electronic Export Information Filing Procedures, Deadlines, and Certification Statements	11-42
	[1]	Pre- and Post-Departure Filing Requirements	11-42
	[2]	Pre-Departure Filing for EEI and Pre-Departure Filing Deadlines	11-42
	[3]	Post-Departure Filing Procedures	11-44
	[4]	Use of AES Downtime Citations	11-45
	[5]	EEI Filing For ITAR-Controlled Shipments	11-45
§ 11.07		Transmitting and Correcting Electronic Export Information	11-46
	[1]	General	11-46
	[2]	AES Messages: Fatal Errors, Warning Messages, Verification Messages, and Compliance Alerts	11-46
	[a]	Fatal Condition	11-46
	[b]	Warning Condition	11-46
	[c]	Verification Condition	11-46.1
	[d]	Compliance Alert Condition	11-46.1
	[e]	Informational Condition	11-46.1
§ 11.08		Consequences of FTR Violations; Voluntary Disclosures	11-47
	[1]	General Penalty Provisions	11-47
	[2]	Criminal Penalties	11-47
	[a]	Failure to File: False or Misleading Information	11-47

U.S. EXPORT CONTROLS

	[b]	Furtherance of Illegal Activities	11-47
[3]		Civil Penalties	11-47
	[a]	Failure to File or Delayed Filing Violations	11-47
	[b]	Filing False or Misleading Information, Furtherance of Illegal Activities, and Penalties for Other Violations	11-48
	[c]	Forfeiture Penalties	11-48
[4]		Customs and Border Protection Guidelines on Assessment of FTR Penalties and Mitigation Guidelines	11-49
[5]		Voluntary Self-Disclosure (VSD) of FTR Violations	11-50
§ 11.09		Miscellaneous Rules and Other Important Considerations	11-53
	[1]	Imports of Goods Returned for Repair . . .	11-53
	[2]	Retention of Export Information and the Authority to Require Production of Documents	11-53
	[a]	Production of Documents	11-54
	[b]	Other Records	11-54
	[3]	General Carrier and Manifest Reporting Requirements	11-54
	[4]	Split Shipments	11-55
	[5]	Confidentiality of Information	11-57
§ 11.10		Compliance Programs and Best Practices	11-58
	[1]	Element One: Foster an Atmosphere of Compliance	11-58
	[2]	Element Two: Establish Clear Lines of Responsibility	11-58
	[3]	Element Three: Conduct a Risk Assessment	11-58
	[4]	Element Four: Create a Product/Licensing Matrix	11-59
	[5]	Element Five: Document Compliance Procedures	11-59
	[6]	Element Six: Ongoing Compliance Training and Awareness Programs	11-59
	[7]	Element Seven: Establish a Recordkeeping Program	11-60
	[8]	Element Eight: Establish Internal and External Compliance Monitoring Programs and Periodic Audits	11-60

TABLE OF CONTENTS

xxxix

[9]	Element Nine: Establish an Internal Program for Handling Compliance Issues.	11-60
[10]	Element Ten: Create U.S. Agent Standard Operating Procedures (SOP).	11-60
§ 11.11	Learning More about Export Reporting and the FTR.	11-61

CHAPTER 12

**DoJ Controls Over Certain Temporary Imports;
ATF Regulations***

§ 12.01	Overview.	12-2
§ 12.02	Is the Defense Article or Commodity a “Firearm” Under the National Firearms Act?	12-5
§ 12.03	Import Restrictions Imposed Under the National Firearms Act and the Gun Control Act.	12-7
[1]	Methods of Control	12-7
[a]	Registration.	12-7
[b]	Special (Occupational) Tax	12-7
[c]	Making or Transfer Tax.	12-8
[d]	Machineguns Subject to Additional Controls.	12-8
[2]	Prohibitions.	12-8
[3]	Method of Compliance	12-8
[a]	ATF Ruling 2004-2	12-9
[b]	When the NFA Firearm Must Be Replaced	12-11
§ 12.04	Export	12-14
§ 12.05	Recordkeeping.	12-15
§ 12.06	Compliance Checklist.	12-16
[1]	Pre-Import	12-16
[2]	Post-Import.	12-16

CHAPTER 13

Cloud Computing, Export Controls

§ 13.01	Introduction.	13-1
§ 13.02	Cloud Computing: Definition.	13-4

U.S. EXPORT CONTROLS

§ 13.03	Export Controls Generally	13-5
§ 13.04	Cloud Computing Under State Department Regulations	13-7
§ 13.05	Cloud Computing Under Treasury Department Regulations	13-9
§ 13.06	Cloud Computing Under Commerce Department Regulations	13-12
§ 13.07	When Do Users of Cloud Services Become Exporters?	13-15
§ 13.08	Recommendations for Users of Cloud Services	13-19
§ 13.09	A Methodology for Evaluating Cloud Computing Service Providers' Regulatory Obligations Under the EAR and OFAC Sanctions Programs	13-21

CHAPTER 14

Effective Compliance

§ 14.01	Introduction	14-1
§ 14.02	The Most Important Issue in Export Compliance	14-3
§ 14.03	Key Components of an Effective Compliance Program	14-7
§ 14.04	Automation of Compliance Processes	14-22
§ 14.05	Maturity Levels of an Export Compliance Program	14-24
§ 14.06	Export Compliance Audits	14-27

TABLE OF ABBREVIATIONS	TA-1
---	------

INDEX	I-1
------------------------	-----