

# Table of Contents

## Volume 1

### Executive Legal Summaries

## CHAPTER 1. OVERVIEW OF EXPORT CONTROLS

- § 1:1      Introduction
- § 1:2      The Export Control Reform Act of 2018—History of the Export Control Reform Act of 2018
  - The EAR
  - § 1:4      —National security-related controls under the ECRA
  - § 1:5      —Foreign policy controls under the ECRA
  - § 1:6      —Short supply controls under the ECRA
  - § 1:7      —Jurisdiction
  - § 1:8      —CCL and Commerce Country Chart
  - § 1:9      ——CCL
  - § 1:10     ——Country chart
  - § 1:11     —General prohibitions
  - § 1:12     —License exceptions and special comprehensive licenses—License exceptions
    - Special comprehensive license
  - § 1:13     —Foreign boycotts under the EAR
  - § 1:14     —Treasury Department controls—Introduction
  - § 1:16     —The TWEA
  - § 1:17     —The IEEPA
  - § 1:18     Controls of the State Department
  - § 1:19     Nonproliferation export controls on WMD and related technologies—Introduction
    - The ECRA
    - § 1:21     —The AECA
    - § 1:22     —Multilateral control regimes
    - § 1:23     —Enforcement
    - § 1:24     —Conclusion
    - § 1:25     —Records retention requirements—Introduction
    - § 1:26     —Other export control laws—The TWEA and IEEPA
      - The AECA
      - § 1:28     —The Atomic Energy Act/Nuclear Nonproliferation Act
      - § 1:29     —Original records and reproduction of original records
      - § 1:30     —Recent Developments

§ 1:31 Conclusion

Appendix 1-A. Introduction to Commerce Department Export Controls

## CHAPTER 2. GUIDE TO THE EXPORT CONTROL REFORM ACT OF 2018

- § 2:1 Introduction
- § 2:2 Continuing saga of the export controls revision attempts
- § 2:3 National security-related controls under the ECRA
- § 2:4 Foreign policy controls under the ECRA
- § 2:5 Short supply controls under the ECRA
- § 2:6 Jurisdiction
- § 2:7 CCL and Commerce Country Chart
  - The CCL
  - The Country Chart
- § 2:10 General prohibitions
  - Product control prohibitions
  - Direct product rule
  - Activity-based prohibitions
- § 2:14 License exceptions and special comprehensive licenses—License exceptions
  - High-performance computer export controls
  - Encryption software export controls
  - Deemed exports
  - Special comprehensive license
  - Validated end-users
  - Foreign boycotts
  - Jurisdiction—*U.S. Person*
  - U.S. Commerce*
  - Intent
  - Prohibited actions
  - Exceptions available as defenses
  - Records retention requirements
  - Enforcement—Compliance and investigations
  - Penalties
  - Judicial review and DOC decisions
- § 2:30 Some guidelines for export compliance

## CHAPTER 3. EXPORT CONTROLS AND TRADE SANCTIONS

- § 3:1 Introduction
- § 3:2 Export controls—Controls of the Commerce Department—Export Administration Act

TABLE OF CONTENTS

- § 3:3 ——Bureau of Industry and Security
- § 3:4 ——Items subject to the Export Administration Regulations
- § 3:5 ——Exports and reexports
- § 3:6 ——Relevant facts
- § 3:7 ——General prohibitions and licenses
- § 3:8 ——License exceptions
- § 3:9 ——Export Administration Regulations “red flag indicators” of problems
- § 3:10 —Controls of the State and Defense Departments—Arms Control Act and International Traffic in Arms Regulations
- § 3:11 —Directorate of Defense Trade Controls
- § 3:12 —U.S. Munitions List
- § 3:13 —Commodity Jurisdiction Requests
- § 3:14 —Controls of other agencies
- § 3:15 —Penalties
- § 3:16 —Retroactive effects
- § 3:17 Trade sanctions—Controls of the Treasury Department—Trading with the enemy
- § 3:18 —Office of Foreign Assets Control
- § 3:19 —Types of sanctions
- § 3:20 —Countries currently subject to Office of Foreign Asset Controls
- § 3:21 —Terrorism sanctions
- § 3:22 —Specially designated nationals
- § 3:23 —Helms-Burton Law (Cuba)
- § 3:24 —Iran and Libya Sanctions Act
- § 3:25 Export compliance—Contract terms
- § 3:26 —Responsibility for export compliance
- § 3:27 —Compliance issues
- § 3:28 Examples of contract clauses for export compliance

**CHAPTER 4. *[Reserved]***

**CHAPTER 5. *[Reserved]***

**CHAPTER 6. *[Reserved]***

**CHAPTER 7. THE TRADING WITH THE ENEMY ACT**

- § 7:1 Introduction
- § 7:2 —Intent under the TWEA
- § 7:3 —“Enemy” versus “nonenemy” interests

- § 7:4 —Frozen versus seized assets and judicial review
- § 7:5 —Unconstitutional taking and the TWEA
- § 7:6 The Foreign Assets Control Regulations
- § 7:7 The Transaction Control Regulations
- § 7:8 The Cuban Assets Control Regulations
- § 7:9 Conclusion and recommendations

Appendix 7-A. Text of § 5 of the TWEA, 50 U.S.C. Appendix  
§ 5

## **CHAPTER 8. THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT AND RELATED TRADE CONTROL REGULATION**

- § 8:1 Introduction
- § 8:2 Comparison of the regulations
- § 8:3 Additional sanctions regulations—The terrorism sanctions regulations
- § 8:4 —The transnational criminal organizations regulations
- § 8:5 —Narcotics trafficking sanctions regulations
- § 8:6 —Global terrorism sanctions regulations
- § 8:7 —Weapons of mass destruction trade control regulations
- § 8:8 —Blocking property of certain persons associated with the International Criminal Court
- § 8:9 —Addressing threat from securities investments that finance Communist Chinese military companies
- § 8:10 —Hong Kong normalization
- § 8:11 —Sanctions in the event of foreign interference in a United States election
- § 8:12 —Russian Harmful Foreign Activities Sanctions
- § 8:13 Countries currently subject to sanctions—Burundi
- § 8:14 —The Iranian Assets Control Regulations—Comprehensive Iran Sanctions, Accountability, and Divestment Act
- § 8:15 —The ITR
- § 8:16 —The Iraqi Sanctions Regulations
- § 8:17 —Cyber-enabled activities
- § 8:18 —North Korean sanctions
- § 8:19 —Sudanese and South Sudanese sanctions
- § 8:20 —Syrian sanctions
- § 8:21 —Zimbabwe
- § 8:22 —Belarus
- § 8:23 —Somalia
- § 8:24 —Venezuela

## TABLE OF CONTENTS

- § 8:25 —Lebanon
- § 8:26 —Libya
- § 8:27 —Yemen
- § 8:28 —Magnitsky sanctions
- § 8:29 —Ukraine
- § 8:30 —Central African Republic
- § 8:31 —Nicaragua
- § 8:32 —Mali
- § 8:33 —Burma
- § 8:34 Countries formerly subject to sanctions
- § 8:35 Reporting, procedures and penalties regulations

Appendix 8A. Table of Sanctions Programs

## CHAPTER 9. NONPROLIFERATION EXPORT CONTROLS ON WEAPONS OF MASS DESTRUCTION AND RELATED TECHNOLOGIES

- § 9:1 Introduction
- § 9:2 U.S. export control regime
- § 9:3 —The Export Administration Act
- § 9:4 ——National security controls
- § 9:5 ——Foreign policy controls
- § 9:6 ——Short supply controls
- § 9:7 —Arms Export Control Act
- § 9:8 —Weapons of Mass Destruction Trade Control Regulations
- § 9:9 Multilateral control regimes
- § 9:10 —Wassenaar Arrangement: Conventional arms and dual-use items and technologies
- § 9:11 —Australia Group: Chemical and biological weapons, precursors, and technology
- § 9:12 ——Australia Group
- § 9:13 ——Chemical Weapons Convention
- § 9:14 ——Biological Weapons Convention
- § 9:15 —Missile Technology Control Regime: Missiles and missile technology
- § 9:16 —Nuclear Suppliers Group: Nuclear weapons and related technology
- § 9:17 Enhanced proliferation control initiative
- § 9:18 Enforcement
- § 9:19 Conclusion

## CHAPTER 10. EXPORT LICENSING CHECKLIST

- § 10:1 Introduction

- § 10:2 Department of Commerce licensing
- § 10:3 —Steps regarding the ten general prohibitions (§ 732.3)
- § 10:4 —Steps regarding license exceptions (§ 732.4)
- § 10:5 State Department licensing
- § 10:6 —Licensing scheme
- § 10:7 —Directorate of defense trade controls procedures
- § 10:8 Treasury Department licensing—Introduction
- § 10:9 —Characteristics of Treasury Department licensing

## **CHAPTER 11. TACTICAL AND PRACTICAL CONSIDERATIONS IN DEFENDING EXPORT CONTROL ENFORCEMENT ACTIONS**

- § 11:1 Introduction
- § 11:2 Beginnings: The investigation phase
- § 11:3 —Origins
- § 11:4 ——Self-disclosures
- § 11:5 ——Detentions
- § 11:6 ——Audits
- § 11:7 ——Collateral enforcement actions
- § 11:8 ——Intelligence sources
- § 11:9 ——Disgruntled employees
- § 11:10 ——Competitors, subcontractors, and vendors
- § 11:11 ——Changes in regulatory conduct
- § 11:12 —First contacts
- § 11:13 ——Detentions, seizures, and forfeitures
- § 11:14 ——Audits
- § 11:15 ——Criminal investigations
- § 11:16 ——Common approaches
- § 11:17 Enforcement actions
- § 11:18 —Civil proceedings—Civil penalty proceedings
- § 11:19 ——Temporary denial orders and interim suspensions
- § 11:20 —Criminal proceedings
- § 11:21 Conclusion

## **CHAPTER 12. INTERNATIONAL BUSINESS COMPLIANCE PROGRAMS**

- § 12:1 Introduction to corporate compliance activities
- § 12:2 Scope of the international compliance program—  
Substantive laws covered
- § 12:3 —Parties covered under the program
- § 12:4 Relevant legal standard

TABLE OF CONTENTS

- § 12:5 Nine elements of the compliance program
- § 12:6 Compliance activities in international transactions
- § 12:7 Modern devices for corporate compliance programs
- § 12:8 New issues in international compliance
  - § 12:9 —Intangible exports
  - § 12:10 —Global computer networks
  - § 12:11 —Entity-based and person-based export restrictions
  - § 12:12 —Deemed exports
  - § 12:13 —End-use-based controls and services to support prohibited end uses
  - § 12:14 —Electronic commerce
- Appendix 12-A. U.S. Export Control Laws

**CHAPTER 13. *[Reserved]***

**CHAPTER 14. *[Reserved]***

**CHAPTER 15. *[Reserved]***

**CHAPTER 16. IMPLEMENTING INTERNAL CONTROL PROGRAMS—THINGS TO CONSIDER**

- § 16:1 Introduction
- § 16:2 Overview of ICP elements and things to consider
- § 16:3 —Management corporate policy statement
- § 16:4 —Delegation of authority
- § 16:5 —Product classification
- § 16:6 —Screening denied/restricted parties
- § 16:7 —Weapons proliferation screening
- § 16:8 —Country policies
- § 16:9 —Licenses
- § 16:10 —Educating and auditing
- § 16:11 —Export clearance
- § 16:12 —Order processing system and record keeping
- § 16:13 Conclusion

Appendix 16-A. Sample Corporate Policy Statement

Appendix 16-B. Reference Material

Appendix 16-C. Guidance for Complying with the “Deemed Export” Rule—Technology Transfer to Foreign Nationals in the United States

Appendix 16-D. E-commerce Compliance

## **CHAPTER 17. GUIDE TO RECORDS RETENTION UNDER EXPORT CONTROL LAWS**

- § 17:1 Introduction
- § 17:2 Export Control Reform Act of 2018
- § 17:3 Other export control laws—Trading with the Enemy Act and the International Emergency Economic Powers Act
  - Arms Export Control Act
  - Atomic Energy Act/Nuclear Nonproliferation Act
- § 17:6 Original records and reproduction of original records
- § 17:7 Enforcement procedures
- § 17:8 Conclusion

## **CHAPTER 18. SHIPPER'S EXPORT DECLARATIONS**

- § 18:1 Background
- § 18:2 —Law and policy
- § 18:3 —Regulations and agencies
- § 18:4 Filing requirements
- § 18:5 Penalties and enforcement
- § 18:6 Conclusion

Appendix 18-A. The Underlying Law: 13 U.S.C. §§ 301–307  
(Title 13—Census: Chapter 9—Collection and Publication of Foreign Commerce and Trade Statistics)

Appendix 18-B. Title 15—Commerce and Foreign Trade  
(Selected Parts of 15 C.F.R. §§ 30.1 et seq.—Foreign Trade Regulations)

## **CHAPTER 19. ENFORCEMENT TRENDS: THE OFFICE OF DEFENSE TRADE CONTROLS COMPLIANCE DIRECTORATE OF DEFENSE TRADE CONTROLS U.S. DEPARTMENT OF STATE**

- § 19:1 Introduction
- § 19:2 Registration
- § 19:3 End-use monitoring and watchlist management
- § 19:4 Voluntary disclosures
- § 19:5 Directed disclosures
- § 19:6 Civil enforcement
- § 19:7 Criminal enforcement support

TABLE OF CONTENTS

- § 19:8 Conclusion
- Appendix 19-A. DDTC Response Team
- Appendix 19-B. Compliance Program Guidelines

**CHAPTER 20. *[Reserved]***

**CHAPTER 21. *[Reserved]***

**CHAPTER 22. *[Reserved]***

**CHAPTER 23. FOREIGN NATIONAL EMPLOYEES, COMMERCIAL OFF-THE-SHELF TECHNOLOGY, AND MILITARY PROJECTS: COMMERCE OR STATE DEPARTMENT JURISDICTION?**

- § 23:1 Introduction
- § 23:2 Facts
- § 23:3 Discussion
- § 23:4 Conclusion

**CHAPTER 24. DEVELOPING EFFECTIVE EXPORT CONTROL COMPLIANCE GUIDELINES AND PROCEDURES**

- § 24:1 Compliance programs and manuals
- § 24:2 U.S. export control compliance policy
- § 24:3 Export control contract clauses—Responsibility for export licenses
  - Indemnification by seller
  - Representations of purchaser/licensee
  - Indemnification by buyer
  - Seller and buyer representations
  - Agent's representation regarding compliance with laws
  - Agent's acknowledgement that product is subject to export controls
  - Technical information
  - Seller's obligations conditioned upon export control compliance
  - Agreement subject to compliance with applicable laws
- § 24:13 Export sales transaction evaluation checklist

CORPORATE COUNSEL'S GUIDE TO EXPORT CONTROLS

Appendices 24-A. BIS publication—Export Compliance  
Guidelines: The Elements of an Effective  
Export Compliance Program

## APPENDICES

- Appendix A. Part 730. General Information
- Appendix B. Part 732. Steps for Using the Ear
- Appendix C. Part 734. Scope of the Export Administration  
Regulations
- Appendix D. Part 736. General Prohibitions
- Appendix E. Part 738. Commerce Control List Overview and  
the Country Chart
- Appendix F. Part 740. License Exceptions
- Appendix G. Part 742. Control Policy—CCL Based Controls
- Appendix H. Part 743. Special Reporting and Notification
- Appendix I. Part 744. Control Policy: End—User and End—  
Use Based

## Volume 2

- Appendix J. Part 745. Chemical Weapons Convention  
Requirements
- Appendix K. Part 746. Embargoes and Other Special Controls
- Appendix L. Part 747. Special Iraq Reconstruction License  
[Reserved]
- Appendix M. Part 748. Applications (Classification, Advisory,  
and License) and Documentation
- Appendix N. Part 750. Application Processing, Issuance, and  
Denial
- Appendix O. Part 752. [Reserved]
- Appendix P. Part 754. Short Supply Controls
- Appendix Q. Part 756. Appeals
- Appendix R. Part 758. Export Clearance Requirements
- Appendix S. Part 762. Recordkeeping
- Appendix T. Part 764. Enforcement and Protective Measures
- Appendix U. Part 766. Administrative Enforcement  
Proceedings
- Appendix V. Part 768. Foreign Availability Determination  
Procedures and Criteria

TABLE OF CONTENTS

Appendix W. Part 770. Interpretations

Appendix X. Part 772. Definitions of Terms

Appendix Y. Part 774. The Commerce Control List

**Bibliography**

**Table of Laws and Rules**

**Table of Cases**

**Index**