

## Article Information

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## Export Administration Regulations (EAR) - Fundamentals & Practice

**The United States’ Export Administration Regulations (EAR) is a US regulatory regime that regulates the export and re-export of US items that have both commercial and military applications, commonly referred to as ‘dual-use’ items.**

**We summarise below the fundamentals of the EAR and its general differences to the International Traffic in Arms Regulations (ITAR).**

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### What is the EAR?

The EAR is the ‘sister’ regime to the ITAR, regulating the export and re-export of United States’ origin dual-use items with both civil and military applications. This is in contrast to the ITAR which deals specifically with military items (see, for example, those items found in the US Munitions List). Items are either controlled by the EAR or the ITAR, *but not both*.

Dual use items can include goods and related technology, including “*technical data*” and “*technical assistance*”. Technical data can take a myriad of forms, such as plans, manuals, engineering designs and specifications, etc. Technical assistance can be instructions, training, consulting, and similar services.

The complete list of EAR-controlled items is published at 15 CFR §774, Supplement 1 of the EAR within the Commerce Control List (CCL). The CCL comprises 10 categories of dual-use articles and associated technical data, such as:

- Telecommunications and Information Security
- Lasers and Sensors;
- Marine; and
- Propulsion Systems, Space Vehicles and Related Equipment.

Items regulated by the EAR are assigned an alpha-numeric Export Control Classification Number (ECCN) in the CCL. This ECCN references any “*reasons for control*” which limit the export of the item to particular countries located in the Commerce Country Chart (CCC) at Supplement 1 to Part 738 of the EAR.

### Who is affected by the EAR?

EAR applies to all persons or organisations engaging with both US defence and commercial organisations.

EAR applies when US organisations want to “*export*” EAR controlled technology to foreign nations. The EAR continues to apply to the items even after they have left US territory, so maintaining accurate records to ensure re-exports are conducted in accordance with the regulations is essential.

### Authorisation

Authorisation to access and receive EAR controlled technology differs significantly from that of ITAR agreements and authorisations. The exporter must check the ECCN of the applicable item for any relevant “*reasons for control*” and review this against the CCC at Supplement 1 to Part 738 of the EAR. Particular destination countries require a licence or licence exception in order for an export of an EAR-controlled item to be permitted.

Typically, agreements are not necessary for the export of most EAR Controlled Technology to Australia, with a Licence Exception or No Licence Required determination made by the exporting party after an analysis of the ECCN. If a licence is required, the exporting entity can apply for a license from the Bureau of Industry and Security in the U.S. Department of Commerce.

This process is quite different from that of complex ITAR authorisations and require minimal interaction with government agencies. This autonomy is granted to exporters because EAR regulated goods and technologies are “*dual-use*”, with both civilian and military applications.

### **Common Breaches of EAR**

Even if all efforts are made to prevent them, EAR breaches unfortunately do happen. The most common form of breaches include:

1. Accidental disclosure (such as email or telephone conversation);
2. Intentional and flagrant violations, where a party intentionally breaches EAR requirements;
3. Omitting required labels or classifications from emails or physical transfers of the items.

### **Consequences of Non-Compliance**

Those who violate the EAR can be subject to both civil and criminal penalties. These penalties are similar to those found under ITAR; e.g. fines, imprisonment and ‘blacklisting’ from export privileges.

Criminal penalties can include up to 20 years imprisonment and up to \$1 million fines per violation. In the case of civil penalties fines can range up to \$300,000 per violation or twice the value of the violating transaction, whichever is greater<sup>[1]</sup>.

Piper Alderman can assist Australian defence industry organisations with EAR or ITAR related matters including:

1. Presentations on EAR and ITAR;
2. Reviewing agreements for EAR or ITAR legal compliance; and
3. Assisting in the event of a breach of EAR or ITAR.

For further information, please contact [Tim O’Callaghan](#), Partner, on 08 8205 3450 or [Travis Shueard](#), Senior Associate, on 08 8205 3433.

<sup>[1]</sup> Export Control Reform Act of 2018 (50 U.S.C. §§ 4801-4852)