

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	1-4
	[d] Military End-User List	1-5
	[e] Military Intelligence End-User List	1-5
	[2] Department of State	1-6
	[a] Nonproliferation	1-6
	[b] Arms Export Control Act Debarred List	1-6
	[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

U.S. EXPORT CONTROLS

§ 1.04	Export Clearance	1-16
	[1] Census Bureau	1-16
	[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

TABLE OF CONTENTS

	[4] Import	2-10
	[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)	2-15
	[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	2-27
	[c] Export Restrictions	2-27
	[i] License Exception SCP	2-28
	[ii] License Exception Consumer Communications Devices (CCD)	2-30
	[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	2-31
	[d] Import Restrictions	2-31
	[e] Financial Transactions	2-32
	[f] Travel Restrictions	2-32
	[g] Remittances	2-34
	[h] Specific Licenses	2-35
	[i] Helms Burton Act Title III	2-35
	[2] Iran	2-36
	[a] The Negotiation and Partial Unwinding of the JCPOA	2-36
	[i] United Nations	2-37

U.S. EXPORT CONTROLS

	[ii]	European Union	2-37
	[iii]	United States.	2-37
[b]		U.S. Sanctions Targeting Iran	
		Regulations: Background	2-40
[c]		Energy Related Transactions	2-41
[d]		Financial Transactions	2-43
[e]		Import Restrictions.	2-44
[f]		Export Restrictions.	2-45
[g]		Exemptions and General Licenses.	2-45
	[i]	Authorization for U.S. employees and contractors of International Organizations.	2-46
	[ii]	Authorization for Software Exports Incident to the Exchange of Personal Communications	2-46
	[iii]	Authorization for Food Exports.	2-46.1
	[iv]	Authorization for Exports of Medicine and Certain Medical Devices; Replacement Parts for Medical Devices	2-46.1
	[v]	Authorization for Processing Transactions Relating to Official Business of Third Country Diplomatic or Consular Missions.	2-46.2
	[vi]	Authorization for Personal Remittances	2-46.2
	[vii]	Transactions ordinarily incident to licensed transactions	2-46.2
	[viii]	Journalistic Activities and establishment of a news bureau in Iran	2-47
	[ix]	Payment for overflights	2-47
	[x]	Certain legal services.	2-47
	[xi]	Transactions ordinarily incident to publishing	2-47
	[xii]	Educational Activities	2-47
	[xiii]	Certain conference-related activities.	2-48
[3]		Sudan	2-48

TABLE OF CONTENTS

xvii

	[a]	Blocking	2-49
	[b]	Export Restrictions	2-49
	[c]	Import Restrictions	2-51
	[d]	Transactions	2-52
	[e]	General Licenses and Exemptions	2-52
	[f]	Summary of 2017 Relaxations and 2018 Repeal	2-52
[4]		Syria	2-53
	[a]	Blocking	2-55
	[b]	Investment	2-55
	[c]	Services; Prohibitions and Related General Licenses	2-55
	[d]	Petroleum-Related Transactions	2-55
	[e]	Telecommunications and Agriculture	2-56
	[f]	Travel	2-56
	[g]	General Licenses	2-56
[5]		Embargoed Regions of Ukraine	2-58
[6]		North Korea	2-60
	[a]	Full Embargo for U.S. Persons	2-61
	[b]	Blocking	2-61
	[c]	Import Restrictions	2-63
	[d]	Restrictions Related to Vessels	2-63
	[e]	Prohibition on Travel	2-63
	[f]	Financial and Secondary Sanctions	2-64
§ 2.04		Limited Sanctions Programs	2-66
	[1]	Balkans	2-66
		[a] Blocking	2-66
		[b] Licenses	2-66
	[2]	Belarus	2-67
		[a] Blocking	2-67
		[b] Licenses	2-68
	[3]	Burma (Myanmar)	2-69
		[a] Blocking	2-70
		[b] Licenses	2-70
	[3A]	Burundi	2-70
		[a] Blocking	2-71
	[3B]	Central African Republic	2-71
		[a] Blocking	2-71
	[4]	Côte d’Ivoire	2-71
	[5]	Counter Narcotics Trafficking	2-72
		[a] Narcotics Trafficking Sanctions Regulations	2-72

U.S. EXPORT CONTROLS

	[b] Foreign Narcotics Kingpin Sanctions Regulations	2-72
	[c] Penalties	2-72.1
	[d] Legal Challenges	2-73
[6]	Counter Terrorism	2-73
	[a] Specially Designated Terrorists	2-74
	[b] Foreign Terrorist Organizations	2-74
	[c] Specially Designated Global Terrorists	2-75
	[d] State Sponsors of Terrorism	2-75
[7]	Internet and Cyber-Related Sanctions	2-76
	[a] Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology	2-76
	[b] Malicious Cyber-Enabled Activity	2-77
[8]	Democratic Republic of the Congo	2-78
	[a] Blocking	2-79
	[b] Transactions	2-79
[8A]	Global Magnitsky Sanctions	2-79
[8B]	Hong-Kong Related Sanctions	2-80
[8C]	Ethiopia-Related Sanctions	2-81
[8D]	Hostages and Wrongfully Detained U.S. Nation-als Sanctions	2-82
[8E]	International Criminal Court Related Sanctions	2-82
[9]	Diamond Trading	2-82
	[a] Import/Export	2-83
[10]	Foreign Interference in a United States Election	2-83
[11]	Iraq	2-84
	[a] Blocking	2-84
	[b] Transactions	2-84
[12]	Lebanon	2-85
	[a] Blocking	2-85
	[b] Hezbollah-Related Transactions	2-85
[13]	Former Liberian Regime of Charles Taylor	2-86
[14]	Libya	2-86
	[a] Blocking	2-86
	[b] Licenses	2-86
[15]	Mali	2-88
[16]	Nicaragua	2-88
[17]	Non-Proliferation	2-89

TABLE OF CONTENTS

xix

	[a]	Weapons of Mass Destruction Trade Control Regulations	2-89
	[b]	Highly Enriched Uranium Assets Control Regulations	2-89
	[c]	Weapons of Mass Destruction Proliferators Sanctions Regulations	2-90
	[d]	Scope of Enforcement	2-90
[18]		Russian Harmful Foreign Activities Sanctions	2-91
[19]		Somalia	2-93
	[a]	Blocking	2-93
	[b]	Humanitarian Assistance	2-93
[20]		South Sudan	2-93
[21]		Taliban (Afghanistan)	2-94
[22]		Transnational Criminal Organizations	2-94
	[a]	Blocking	2-95
[23]		Ukraine-Related	2-95
[24]		Venezuela	2-97
	[a]	Blocking	2-97
	[b]	General Licenses	2-99
	[c]	Debt and Financing Restrictions	2-99
	[d]	PdVSA and the Government of Venezuela	2-100
[25]		Yemen	2-104
	[a]	Blocking	2-104
[26]		Weapons of Mass Destruction	2-104
	[a]	Blocking	2-105
	[b]	Import Restrictions	2-105
[27]		Federal Republic of Yugoslavia and Republic of Bosnia and Herzegovina	2-105
[28]		Zimbabwe	2-107
	[a]	Blocking	2-107
	[b]	General Licenses	2-107
§ 2.05		Sectoral Sanctions	2-108
	[1]	Background: EO 13662	2-108
	[2]	Directive 1: Under EO 13,662 Financial Sector	2-109
	[3]	Directive 2: Under EO 13,662 Energy Sector	2-110
	[4]	Directive 3: Under EO 13,662 Defense and Related Materiel Sectors	2-111
	[5]	Directive 4: Under EO 13,662 Russian Energy Sector	2-111

U.S. EXPORT CONTROLS

[6]	General Licenses for Sectoral Sanctions Under EO 13,662	2-113
[7]	Countering America’s Adversaries Through Sanctions Act	2-113
[8]	Sectoral Sanctions Under Executive Order 14,024	2-114
[a]	Directive 1A Under Executive Order 14,024	2-115
[b]	Directive 2 Under Executive Order 14,024	2-115
[c]	Directive 3 Under Executive Order 14,024	2-116
§ 2.06	FOIA Requests	2-117
§ 2.07	Conflicting Foreign Laws	2-118
§ 2.08	Screening for Specially Designated Nationals . . .	2-120

CHAPTER 3

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

§ 3.01	Introduction	3-2
§ 3.01A	Basic Concepts	3-5
[1]	Scope of Discussion	3-5
[2]	The Bureau of Industry and Security	3-6
[3]	The Export Administration Regulations (EAR)	3-8
[4]	What Is an “Export”?	3-9
[a]	Deemed Exports/Reexports	3-11
[b]	In-Country Transfers	3-12
[5]	“Subject to the EAR”	3-12
[6]	“Public Domain”	3-13
[7]	“ <i>De Minimis</i> ”	3-14
[8]	The Ten General Prohibitions	3-15
[9]	The Country Chart	3-16
[10]	Responsible Parties	3-16
[11]	Classification	3-21
[12]	Marketing	3-24
[13]	Reducing Administrative Costs	3-26
[14]	Advisory Opinions	3-27
[15]	Order	3-27
§ 3.02	Export Licenses and License Applications	3-28
[1]	How to Apply	3-28

TABLE OF CONTENTS

xxi

	[2] Supplementary Documents	3-30
	[3] License Processing	3-31
	[a] Interagency Review	3-32
	[b] Escalation of Review	3-32
	[c] Riders and Conditions	3-33
	[d] Deadlines	3-33
	[e] Determining Case Status	3-35
	[f] Emergency Processing	3-35
	[g] Intent to Deny, Denial, and Appeals	3-35
	[h] Validity	3-36.1
	[i] Changes Requiring New Application	3-36.1
	[j] Changes by Amendment	3-36.1
	[k] Changes Without Amendment	3-36.2
	[l] Duplicate License	3-36.2
§ 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
	[4] Commercial Invoice	3-38
	[5] Destination Control Statement	3-38
	[6] Shipping	3-39
	[a] Shipping Tolerances	3-39
	[b] Port of Export	3-40
	[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	3-46
	[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
-----	---	------

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 ...	4-10
	[a] Step 1: Register with DDTC, Learn the Rules, and Keep Up to Date on Changes	4-10
	[b] Step 2: Classify the Item or Information to be Exported So You Know Which Rules Apply ...	4-11
	[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	4-12
	[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	4-13
	[g] Optional Step 7: File a Voluntary Disclosure	4-13
	[3] ITAR Structure and Definitions	4-13
	[a] Part 120—Purpose and Definitions	4-14
	[b] Part 121—United States Munitions List	4-14
	[c] Part 122—Registration of Manufacturers and Exporters	4-16
	[d] Part 123—Licenses for the Export and Temporary Import of Defense Articles	4-17
	[e] Part 124—Agreements, Off-Shore Procurement, and Other Defense Services	4-18

TABLE OF CONTENTS

xxiii

	[f]	Part 125—Licenses for the Export of Technical Data and Classified Defense Articles	4-18
	[g]	Part 126—General Policies and Provisions	4-18
	[h]	Part 127—Violations and Penalties	4-19
	[i]	Part 128—Administrative Procedures	4-20
	[j]	Part 129—Registration and Licensing of Brokers	4-20
	[k]	Part 130—Political Contributions, Fees, and Commissions	4-21
	[4]	ITAR Index	4-21
	[5]	DDTC Organization	4-21
		[a] Official Positions and Authority	4-21
		[b] The Defense Trade Advisory Group	4-22
	[6]	Relation to Regulations of Other Agencies	4-22
§ 4.02		What and Whom Does the ITAR Regulate?	4-25
	[1]	What Does the ITAR Regulate?	4-25
		[a] Information in the Public Domain	4-25
		[b] University Research	4-27
		[c] Marketing Information	4-28
	[2]	Persons, Parties, and Destinations	4-28
		[a] Personal Jurisdiction	4-29
		[b] U.S. Persons	4-30
		[c] Foreign Persons	4-31
		[i] Foreign Persons Defined	4-31
		[ii] U.S. Persons Representing Foreign Persons	4-32
		[d] Foreign National	4-33
		[e] Dual Nationals and Third-Country Nationals	4-33
		[f] Prohibited Persons and Destinations	4-33
		[i] Presumed Denial Countries	4-35
		[ii] Presumed Denial Countries Not Listed in ITAR	4-37
	[3]	Transactions	4-38
		[a] Exports, Reexports, and Deemed Exports	4-41
		[i] Exports	4-43

U.S. EXPORT CONTROLS

		[ii] Reexports and Retransfers	4-46
		[iii] Deemed Exports	4-47
		[b] Temporary Imports	4-47
		[c] Defense Services	4-49
		[d] Brokering	4-50
		[e] Political Contributions, Fees, and Commissions	4-50
	[4]	Defense Articles	4-52
		[a] General	4-52
		[i] U.S. Munitions List	4-57
		[ii] Missile Technology Control Regime	4-57
		[b] Significant Military Equipment	4-57
		[c] Major Defense Equipment	4-58
		[d] Technical Data and Software	4-59
		[e] Classified Information	4-60
		[f] Non-Defense USML Articles	4-61
§ 4.03		Before You Export	4-63
	[1]	Register with DDTC	4-63
		[a] Who Must Register?	4-63
		[b] The Registration Process	4-64
		[c] Notification of Changes in Information Furnished by Registrants	4-65
	[2]	System for Recordkeeping	4-66
	[3]	System for Classifying Products and Services	4-67
	[4]	Commodity Jurisdiction Requests and Advisory Opinions	4-67
	[5]	Staffing	4-68
	[6]	Empowered Officials	4-69
	[7]	Training	4-70
	[8]	System for Screening Names of Denied Parties and Destinations	4-72
	[9]	Export Contracts, Subcontracts, Purchase Orders, and Joint Ventures . . .	4-72
	[10]	Export/Import Boilerplate Clauses	4-73
	[11]	Shipping	4-73
		[a] Marking	4-73
		[b] Shipments by U.S. Postal Service . . .	4-74
		[c] Automated Export System	4-75
§ 4.04		Obtaining Written Authorization for Exports and Temporary Imports	4-76
	[1]	Export/Import Licenses, Certificates, and Applications	4-76
		[a] Electronic Application Methods	4-76

TABLE OF CONTENTS

xxv

	[i]	DECCS	4-76
	[ii]	Enrolling in DECCS.....	4-77
	[b]	Types of Licenses for Exports and Temporary Imports.....	4-77
	[i]	DSP-5 and DSP-6: Permanent Unclassified Export License	4-77
	[ii]	DSP-61 and DSP-62: Temporary Unclassified Import	4-78
	[iii]	DSP-73 and DSP-74: Temporary Unclassified Export	4-79
	[iv]	DSP-83: Non-transfer and Use Certificate.....	4-79
	[v]	DSP-85: Permanent and Temporary Classified Export or Import.....	4-80
	[vi]	DSP-94: Foreign Military Sales Exports.....	4-80
	[vii]	Open General Licenses	4-81
	[2]	Agreements.....	4-81
	[a]	Manufacturing License Agreement.....	4-82
	[b]	Technical Assistance Agreement....	4-82
	[c]	Foreign Distribution or Warehouse Agreement.....	4-82
	[d]	Offshore Procurement Agreement....	4-82
	[3]	Other ITAR Authorization—Exceptions and Waivers	4-83
§ 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	4-92

U.S. EXPORT CONTROLS

	[i]	123.22(b)(3)(ii)—Data in Furtherance of an Agreement	4-92
	[ii]	§ 125.4(b)(4)—Data Previously Authorized for Export	4-93
	[iii]	§ 125.4(b)(5)—Basic Operations and Maintenance	4-93
	[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	4-93
	[d]	ITAR § 126.4(a)—Transfers by or for the United States Government	4-96
	[e]	ITAR § 126.5—Canadian Exemptions	4-103
	[f]	ITAR § 126.6—Foreign-Owned Military Aircraft and Naval Vessels, and the Foreign Military Sales Program	4-103
§ 4.06		ITAR Appendix	4-104
	[1]	ITAR Amendments Since 2007	4-104
	[2]	Key Cases	4-108
	[3]	Sample Clauses for Contracts and Subcontracts	4-108

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

TABLE OF CONTENTS

xxvii

	[d]	Debarment, Suspension, and Appeals	5-6
	[e]	Past Violations	5-8
[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	5-18
[3]		International Emergency Economic Powers Act	5-18
[4]		Trading With the Enemy Act (TWEA)	5-19
[5]		Economic Sanctions Enforcement Guidelines	5-20
[6]		Census Controls	5-20
	[a]	Violations	5-21
	[b]	Penalties	5-21
§ 5.02		Extraterritorial Sanctions	5-22.1
[1]		COCOM-Related Sanctions	5-22.1
	[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

U.S. EXPORT CONTROLS

	[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	5-54
	[2]	Voluntary Disclosures at OEE	5-55
	[a]	The “Piling-On” Problem	5-59
	[3]	Voluntary Disclosures at the Census Bureau	5-62
	[a]	Violations	5-63
	[b]	Penalties	5-63
	[c]	Procedures	5-64
	[d]	Jurisdiction	5-64
§ 5.06		Appendix: Enforcement—United States Export Controls	5-64.1

CHAPTER 6**Cryptography: A Case Study**

§ 6.01		Introduction to Cryptography	6-3
§ 6.02		Cryptography Controls Under the International Traffic in Arms Regulations	6-5
	[1]	Shifting Sands of Jurisdiction Over	6-5
	[2]	Legal Challenges to ITAR Controls on Source	6-6
	[3]	Legal Challenges to ITAR Controls on Source	6-7
§ 6.03		Cryptography Under the Export Administration Regulations	6-8

TABLE OF CONTENTS

xxix

[1]	Product Classification	6-8
	[a] Cryptography for Data Confidentiality.	6-8
	[b] Excluded Functions and Implementations	6-8
	[c] Excluded Items	6-10
	[d] Excluded Weak Cryptography.	6-11
	[e] Mass Market Items.	6-11
	[f] “Ancillary” Encryption	6-13
[2]	License Exception: Encryption Commodities, Software, and Technology	6-15
	[a] Procedure	6-15
	[i] Review	6-15
	[ii] Waiting Period	6-16
	[iii] Annual Self-Classification Reporting.	6-16
	[iv] Semi-Annual Post-Export Reporting.	6-17
	[v] Key Length Increase Reporting.	6-17
	[b] Restricted Items	6-17
	[c] Unrestricted Items Requiring Review.	6-21
	[d] Self-Classifiable Items	6-22
	[e] Items for Internal Development, Transfers, and Foreign Items	6-23
[3]	Other License Exceptions	6-24
	[a] Additional Permissive Reexports.	6-24
	[b] Baggage	6-24
	[c] Consumer Communications Devices	6-25
	[d] Gifts, Parcels, and Humanitarian Donations	6-25
	[e] Governments, International Organizations, International Inspections Under the Chemical Weapons Convention, and International Space Station	6-26
	[f] Shipments of Limited Value	6-26
	[g] Servicing and Replacement of Parts and Equipment	6-26
	[h] Temporary Imports, Exports, and Reexports	6-27

U.S. EXPORT CONTROLS

	[i]	Technology and Software- Unrestricted.	6-28
[4]		Licensing	6-29
	[a]	Individual	6-29
	[b]	Encryption Licensing Arrangement	6-29
	[c]	Deemed Export to Foreign Nationals	6-30
	[d]	Outsourcing and Offshore Manufacturing	6-31
		[i] Exporting to a Foreign Entity	6-31
		[ii] Exporting Foreign-Produced Items	6-32
[5]		Special Subjects	6-33
	[a]	Source Code	6-33
		[i] Publicly Available Encryption Source Code.	6-33
		[ii] Proprietary Encryption Source Code	6-33
		[iii] Public and Proprietary Hybrid Source Code	6-33
	[b]	<i>De Minimis</i>	6-34
	[c]	Crypto-with-a-Hole	6-35
§ 6.04		Cryptography Under the Office of Foreign Assets Controls	6-36
	[1]	Information or Informational Materials Exception	6-36
	[2]	Personal Communications Items	6-38
		[a] Cuba	6-39
		[b] Iran	6-41
		[c] North Korea	6-43
		[d] Syria	6-43
		[e] Russia and Belarus	6-44
§ 6.05		Conclusion	6-45

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

TABLE OF CONTENTS

xxxi

§ 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
	[a] Criminal Sanctions	8-9
	[b] Civil Sanctions	8-10
	[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	8-18
	[5] Clauses in Government Contracts Trigger Compliance Obligations	8-22
	[a] DFARS Rule Regarding Export Compliance	8-22

U.S. EXPORT CONTROLS

	[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	8-36

CHAPTER 9**Commerce Anti-Boycott Restrictions Regulations**

§ 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	9-11
§ 9.03	The Blacklisting of Firms	9-14
§ 9.04	Application of the Boycott	9-15
§ 9.05	United States Anti-Boycott Legislation	9-16
	[1] Export Administration Act (EAA)	9-16
	[2] Ribicoff Amendment to the Tax Reform Act of 1976	9-17
	[3] State Anti-Boycott and Preemption	9-17
§ 9.06	Export-Related Anti-Boycott Legislation	9-19

TABLE OF CONTENTS

xxxiii

[1]	The Purpose of Anti-Boycott Restrictions	9-19
[2]	Jurisdictional and Threshold Requirements	9-19
	[a] “United States Person”	9-19
	[i] Definition of “United States Person”	9-19
	[ii] Foreign Subsidiaries	9-21
	[iii] “Controlled in Fact”	9-21
	[iv] Shareholder Accountability	9-22
	[v] Successor Liability	9-23
	[b] Interstate or Foreign Commerce	9-24
	[c] Intent	9-26
[3]	Prohibited Conduct	9-27
	[a] Refusal to Do Business	9-28
	[b] Discriminatory Actions	9-29
	[c] Furnishing Personal Information	9-30
	[d] Business Relationships with Boycotted Countries or Blacklisted Persons	9-31
	[e] Associations with Charitable and Fraternal Organizations	9-33
	[f] Letters of Credit	9-33
[4]	Exception to Prohibited Conduct	9-35
	[a] Import Requirements	9-35
	[b] Import and Shipping Document Requirements	9-36
	[c] Compliance with Unilateral Selection	9-37
	[d] Requirements on Exports from Boycotting Countries	9-37
	[e] Compliance with Visa Requirements	9-37
	[f] Compliance with Local Law	9-38
[5]	Reporting and Recordkeeping	9-39
	[a] Reporting Requirements	9-39
	[i] General Rule	9-40
	[ii] Exceptions	9-41
	[b] Recordkeeping Requirements	9-41
[6]	Evasion and Penalties	9-42
	[a] Evasion Provisions	9-42
	[b] Penalties	9-43
[7]	Private Right of Action	9-44
[8]	Application of Rules—Case Example	9-45

§ 9.07	Tax-Related Anti-Boycott Legislation	9-46.1
	[1] Reporting Requirements	9-46.1
	[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
	[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
§ 11.02	When Is Filing Electronic Export Information Required?	11-10
	[1] In General	11-10
	[2] Exports of Software	11-11
	[3] EEI Exclusions	11-11
	[4] EEI Filing Exemptions	11-12
	[a] Low Value and Other Miscellaneous Exemptions	11-12
	[b] Shipments to Canada	11-13
	[c] Shipments to Members of U.S. Armed Services and U.S. Government Agencies	11-14
	[d] Baggage and Personal Effects—Partial Reporting Requirements	11-15
§ 11.03	Responsibility for EEI Filing	11-16
	[1] Role of Parties to the Export Transaction	11-16
	[a] Principal Parties to the Export Transaction	11-16
	[i] The U.S. Principal Party in Interest (USPPI)	11-16.1
	[ii] The Foreign Principal Party in Interest (FPPI)	11-16.1
	[iii] Intermediate Consignee	11-16.1
	[b] Domestic Transactions	11-16.1
	[c] Drop-Shipment	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

U.S. EXPORT CONTROLS

	[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
	[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	11-27
	[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	11-31

TABLE OF CONTENTS

xxxvii

	[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
	[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

U.S. EXPORT CONTROLS

	[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
	[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

TABLE OF CONTENTS

xxxix

	[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
	[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

U.S. EXPORT CONTROLS

	[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
§ 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.....	14-3
§ 14.02	Overview of Export Compliance Programs.....	14-4
	[1] What Is an Export Compliance Program?.....	14-4

TABLE OF CONTENTS

xli

	[2]	Benefits of an Export Compliance Program.	14-5
		[a] Reduction of Civil Penalties for Export Violations	14-5
		[b] Reduction in Criminal Penalties	14-6
		[c] Reduction of Likelihood of Criminal Prosecution	14-6
		[d] Clear Instructions for Company Personnel on Legal Compliance	14-7
		[e] They Work	14-7
	[3]	Laws Covered Under the Compliance Program.	14-7
		[a] EAR, ITAR, U.S. Sanctions Laws	14-7
		[b] Department of Justice Criminal Export Enforcement	14-8
		[c] Anti-boycott Laws	14-8
		[d] Other Specialized U.S. Export Statutes	14-8
		[e] Foreign Country Export Laws.	14-8
		[f] Other International Business Laws	14-9
	[4]	Parties Covered Under the Compliance Program.	14-9
	[5]	Coordination With Company’s Code of Ethics and Other Compliance Activities.	14-10
§ 14.03		Agency Guidance and Other Sources of Law on the Contents of Export Compliance Programs	14-11
	[1]	Export Administration Regulations.	14-11
	[2]	U.S. Sanctions Laws	14-11
	[3]	International Traffic in Arms Regulations	14-12
	[4]	U.S. Sentencing Guidelines Manual	14-15
	[5]	DOJ Prosecutor’s Manual	14-16
	[6]	DOJ Guidance on the Evaluation of Corporate Compliance Programs.	14-18
	[7]	Substantive Case Law	14-18
	[8]	Other Federal Compliance Regulations	14-19
	[9]	Industry Best Practices	14-19
§ 14.04		Reporting Structure within the Organization for Export Compliance.	14-20

U.S. EXPORT CONTROLS

	[1]	Conflicts of Interest	14-20
	[2]	Direct Access to Senior Management and Board of Directors	14-21
	[3]	Attorney-Client Privilege.	14-22
	[4]	Internal Investigations	14-22
§ 14.05		Components of an Export Compliance Program.	14-23
	[1]	Initial Observations	14-23
	[a]	Program Tailored to the Organization	14-23
	[b]	It's a Process, Not a Document.	14-23
	[c]	Ongoing Effort	14-23
	[d]	Cost of the Compliance Program	14-24
	[2]	Core Components.	14-24
	[a]	Export Compliance Manager.	14-24
	[b]	Written Policies and Procedures	14-25
	[c]	Training.	14-26
	[d]	Management Support.	14-27
	[e]	Risk Assessment.	14-28
	[f]	Global Data Systems	14-29
	[g]	Dealing With Suspected Violations	14-29
	[h]	Periodic Auditing	14-30
	[i]	Periodic Updating.	14-30
	[j]	Export Recordkeeping	14-30
	[3]	Detailed Components.	14-30
	[a]	Introductory Provisions	14-31
	[b]	Export Administration Regulations	14-31
	[c]	International Traffic in Arms Regulations	14-32
	[d]	Sanctions Laws.	14-33
	[e]	Other Provisions as May Be Required	14-34
§ 14.06		Advanced Issues	14-35
	[1]	Foreign Offices and Subsidiaries, Foreign Parent Company, and Other Foreign Affiliates	14-35
	[2]	Foreign Export Control Laws	14-36
	[3]	Mergers and Acquisitions	14-36
	[4]	Automated Compliance Resources	14-37
	[a]	Automated Screening Programs	14-37
	[b]	Automated Training Programs	14-38
	[c]	Transaction Review Programs.	14-38

	TABLE OF CONTENTS	xliii
	[d] Automated Recordkeeping	14-38
[5]	Electronic Business Transactions	14-39
[6]	Internal Communications Resources.	14-39
	TABLE OF ABBREVIATIONS	TA-1
	INDEX	I-1