

Management's Commitment

PMI's management is committed to ensuring that all personnel fully support the company's export management and compliance program functions, especially in critical areas such as Sales, Engineering and Shipping. PMI management will ensure effective legal and regulatory compliance by identifying the company's specific export compliance requirements and assigning qualified, knowledgeable personnel, and designated back-up, to perform all the export-related functions.

Purpose

The purpose of this Export Compliance Policy is to provide guidance to all PMI employees on the company's export control policies, as well as procedures, and identify designated company personnel who are responsible for ensuring compliance with U.S. export control and related laws and regulations in all of the Company's export and the re-export transactions. These policies and procedures serve as our standard for conducting business. This document provides a comprehensive program of safeguards and measures to minimize the risk of potential violations of applicable export control and related laws, regulations, and company policies.

Export Operations and Controls Overview

PMI exports gripping, protection, handling, and termination products for underwater cable systems used in a variety of marine industries such as seismic survey and exploration, offshore oil & gas, and research and development.

The majority of export shipping is to large, global geophysical companies headquartered in Western Europe and the Middle East. Exports make up approximately 60-70% of total shipments and PMI's business. The majority of export shipments are "routed export transactions" where the foreign customer facilitates the pickup of goods at PMI's dock for export to the end-user. The balance of export shipments are arranged by PMI using a freight forwarder or common parcel carrier.

Generally, PMI's customer base includes commercial consumers located in countries with which the United States has favorable relations and there are relatively few export control and economic sanctions concerns. The majority of PMI's transactions involve repetitive sales to existing customers. Nonetheless, export control and economic sanctions are ever-changing and strict compliance with the applicable laws and regulations is a paramount concern for the company.



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Export Compliance Policy

- Assist in the filing necessary export licenses if needed
- Ensures the customers/freight forwarders are forwarding the Electronic Export Information (EEI)

OVERVIEW OF EXPORT CONTROLS

I. INTRODUCTION

The U.S. export control system generally requires export licensing for defense items and technical data related to the items, for items that have both commercial and military applications, including technology related to the items, and for exports of items and technologies to sanctioned persons, companies, universities, and destinations. U.S. national security, economic interests and foreign policy shape the U.S. export control regime. The export laws and regulations aim at achieving various objectives, such as preventing the proliferation of weapons of mass destruction, advancing the U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights.

These controls generally restrict the export of products and technologies based on the type of product and technology and the destination of the export. In both the defense and high-technology sectors, the U.S. Government tightly regulates the export not only of equipment and components, but also of technology. Technology includes technical information, such as blueprints and manuals, as well as design services (including the transfer of “knowledge”) and training. U.S. laws assert jurisdiction over U.S.-origin equipment and technology even after it is exported (*i.e.*, restricting the re-export or re-transfer to third parties). In addition to general export licensing, the United States maintains economic embargoes against a number of countries whose governments consistently violate human rights or act in support of global terrorism. Such embargoes bar most transactions by U.S. persons with these countries. Finally, the U.S. Government maintains lists of Specially Designated Nationals or persons and entities that are barred from conducting export business because of previous activities.

Three principal agencies regulate exports from the United States: the U.S. Department of State Directorate of Defense Trade Controls (“DDTC”) administers export control of defense exports; the U.S. Department of Commerce Bureau of Industry and Security (“BIS”) administers export control of so-called “dual-use” items and technology exports; and the U.S. Department of the Treasury Office of Foreign Assets Control (“OFAC”) administers exports to embargoed countries and specially designated entities.

EXPORT ADMINISTRATION REGULATIONS (EAR) – EXPORT CONTROLS ON COMMERCIAL DUAL-USE GOODS AND TECHNOLOGIES, AND CERTAIN DEFENSE ARTICLES, DEFENSE SERVICES, AND TECHNOLOGIES

The U.S. Department of Commerce, Bureau of Industry and Security (“BIS”) regulates the export of commercial products and technologies under the Export Administration Regulations (“EAR”), 15 C.F.R. §§ 730-774. The EAR covers a wide range of products and technologies, the product and technology classifications are highly technical, and, most importantly, the need for a license depends not only on the type of product, but also on its final destination, the end-user, and the end-use.

The Commerce Control List (“CCL”) is found at Supplement 1 of 15 CFR § 774. It provides the technical specifications, reasons for control, and any applicable license exceptions. There is also an Alphabetical Index to the CCL, which is not an exhaustive list of export-controlled items under the EAR. The product and technology classification found on the CCL is known as the Export Control Classification Number (“ECCN”). Each ECCN is an alpha-numeric code that describes the item or technology and indicates the export licensing requirements.

A. ITEMS SUBJECT TO THE EAR

Generally, all items of U.S.-origin, or physically located in the U.S., are “subject to the EAR.” Foreign-manufactured goods are generally exempt from the EAR reexport requirements if they contain less than a *de minimis* level of U.S. content by value. Under the EAR, generally the *de minimis* level is **25%**; however, that content level is reduced to **10%** if the export is to a party located in an embargoed country.

The EAR requires a BIS license for the exportation of a wide range of items with potential “dual use” (commercial or military) or is otherwise of strategic value to the U.S (but not made to military specifications) or have been transferred to the EAR from the ITAR under Export Control Reform (ECR), which began in 2012 and is ongoing. Items and technologies listed on the CCL often require a BIS license prior to exportation. Items not listed on the CCL (not having a specific ECCN) are designated as “EAR99” items and *generally* can be exported without a BIS license, unless the export is to an embargoed country, or to a prohibited person or end-use. The following summarizes the types of items controlled under the EAR:

- **Commodities.** Finished or unfinished goods ranging from high-end microprocessors to airplanes to ball bearings.
- **Manufacturing Equipment.** This includes equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled (“CNC”) manufacturing and test equipment.
- **Materials.** This includes certain alloys and chemical compounds.

- **Software.** This includes software specifically associated with particular commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.
- **Technology.** Technology, as defined in the EAR, includes both technical data and services. **NOTE:** The EAR may apply different standards to technology for “use” of a product than technology for the “design” or “manufacture” of the product.

B. THE COMMERCE CONTROL LIST CATEGORIES

The CCL provides a list of very specific items that are controlled. The CCL is similar to the “dual-use” list adopted by other countries under the Wassenaar Arrangement, although the CCL has additional items. The CCL is divided into the nine (9) categories and five (5) groups below. The CCL is updated rather frequently and is available online at <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>.

The CCL categories are:

- 0 Nuclear & Miscellaneous
- 1 Materials, Chemicals, Microorganisms and Toxins
- 2 Materials Processing
- 3 Electronics
- 4 Computers
- 5 Telecommunications & Information Security
- 6 Sensors and Lasers
- 7 Navigation and Avionics
- 8 Marine
- 9 Aerospace & Propulsion

Within each CCL category are product groups:

- A Systems, Equipment and Components
- B Test, Inspection and Production Equipment
- C Material
- D Software
- E Technology

For example, underwater camera equipment would be classified under ECCN 8A992. The “8” refers to Category 8, *Marine*, and the “A” refers to the product group, equipment. Generally, if the last three digits begin with a ‘zero’ or ‘one’ (e.g., 4A001), the product is subject to stringent controls, whereas if the last three digits are a “9XX” (e.g., 8A992), then generally there are

fewer restrictions on export. As shown, below, however, even when the item is subject to an ECCN with the last three digits starting with a "9," special restrictions may apply.

C. DEFINITION OF "EXPORT" AND "RE-EXPORT" UNDER THE EAR

- 1. Export.** Export is defined as the actual shipment or transmission of items subject to the EAR out of the U.S. The EAR is similar to the ITAR in that it covers intangible exports of "technology," including source code, as well as physical exports of items.
- 2. Deemed Export.** Under the EAR the release of technology to a foreign national in the U.S. is "deemed" to be an export, even though the release took place within the U.S. Deemed exports may occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public data that will be received abroad.
- 3. Re-export.** Similar to the ITAR, the EAR imposes restrictions on the re-export of U.S. goods, *i.e.*, the shipment or transfer to a third country of goods or technology originally exported from the U.S.
- 4. Deemed Re-export.** Finally, the EAR defines "deemed" re-exports as the release of technology by a foreign national who has been licensed to receive it to the national of another foreign country who has not been licensed to receive the technology. *For example*, ECCN 5E001 technology may be exported to a university in Ireland under the license exception for technology and software but might require a deemed re-export license authorization before being released to a Russian foreign national student or employee of that university in Ireland.

D. JURISDICTION

The first step in determining the correct, applicable export controls regime and, therefore, export license requirements, is determining the correct jurisdiction over the item or technology – the ITAR or the EAR.

Classification cannot be determined without first determining jurisdiction. Many companies have had to face multimillion-dollar penalties because they did not determine jurisdiction correctly. Since 2012, ECR has caused the transfer of several items and technologies from the ITAR to the EAR. This has resulted in the jurisdiction over these items and technologies to have been shifted from the ITAR to the EAR. Since ECR, both the ITAR and the EAR have an "Order of Review" to help guide the company to its jurisdiction determinations. While these online tools are helpful, they are not to be used exclusively to determine the proper jurisdiction over the company's items and technologies.

DDTC has the sole authority to determine jurisdiction over an item or technology – whether it is ITAR- or EAR-controlled. DDTC encourages exporters to self-classify their products and technologies. If doubt exists, legal counsel will assist the company in determining jurisdiction. In addition, a party can submit a Commodity Jurisdiction (“CJ”) request to DDTC to determine jurisdiction and whether an item is ITAR- or EAR- controlled.

E. CLASSIFICATION

After the jurisdiction of a product or technology is determined to be the EAR, the company must determine the correct ECCN. Like DDTC, BIS encourages companies to determine the proper classification of its products and technologies. BIS has two (2) assistance procedures that can be used to determine proper ECCN classification or when licensing requirements are uncertain.

To determine the appropriate ECCN for a particular item, a party can submit a “Classification Request” to BIS. To determine whether a license is required or would be granted for a particular transaction, a party can request BIS provide a non-binding “advisory opinion.” While BIS provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

Unlike the ITAR, for classification purposes BIS generally looks at the classification of the complete product being exported rather than at the classification of each subcomponent of the item (*i.e.*, “black box” treatment), as opposed to the “see-through” treatment under the ITAR.

F. AUTHORIZATION TO EXPORT

Once it is determined that a license is required, an exporter can apply for export authorization from BIS. Unlike the ITAR, there is no requirement for formal registration prior to applying for export authorization.

The EAR contains a number of exceptions, as detailed in 15 C.F.R. § 740. Determining whether a particular exception applies requires review of the specific application, as well as review of the notes on applicable license exceptions following the ECCN entry on the CCL.

Once an item has been classified under a particular ECCN, the company must determine whether a license is required for export to a particular country. The starting place is the information following the ECCN heading. The “List of Items Controlled” describes the specific items covered or not covered by the ECCN.

(1) *Determine Reason for Controls.* The “License Requirements” section provides notations as to the reasons for control. These reasons include:

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AT	Anti-Terrorism	CB	Chemical & Biological Weapons
CC	Crime Control	CW	Chemical Weapons Convention
EI	Encryption Items	FC	Firearms Convention
MT	Missile Technology	NS	National Security
NP	Nuclear Nonproliferation	RS	Regional Security
SS	Short Supply	XP	Computers
SI	Significant Items		

The most common controls on the CCL are Anti-Terrorism (AT) and National Security (NS), while other controls only apply to limited types of articles. For example, ECCN 8A992 lists “License Requirements: Reason for Control: AT, Foreign Policy” and the following:

Control(s)	Country Chart
AT applies to entire entry	AT Column 1
Russian industry sector sanctions apply to entire entry.	See § 746.5 for specific license requirements and license review policy.

The Russian Industry Sector Sanctions came into effect in 2014, in light of events in Ukraine and Crimea, showing how the EAR and the CCL can be amended based on current affairs and U.S. government policy.

(2) *Apply Country Chart.* Once an item is identified as meeting the criteria for a particular ECCN, you can refer to the Commerce Country Chart, found at 15 C.F.R. § 738, Supp. 1. An “X” will indicate if the particular control applies to that country, a license is required. For example, Syria has an “X” under AT Column 1; therefore, a license would be required unless an exception applied. Russia does not have an “X” under AT Column 1; however, in the Country Chart, a footnote is now present – Russia⁶ – indicating that a further review must be made for any export to that country. Footnotes are listed at the end of the Commerce Chart and cannot be overlooked as they provide specific direction on the applicable export controls. Footnote 6 states that § 746.5 must be reviewed for ECCN 8A992 where the export destination is Russia for the specific BIS license requirement.

(3) *License Exceptions.* The EAR contains a number of license exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740, as well as review of the notes on applicable license exceptions following the ECCN entry.

The license exceptions include:

- LVS Items of limited value (value is set under each ECCN).
- GBS Items controlled for national security reasons to Group B countries.
- CIV Items controlled for national security reasons to particular countries where end-user is civilian.
- TSR Certain technology and software to certain countries.
- APP Computer exports to certain countries.
- KMI Encryption exemption for key management.
- TMP Certain temporary exports, re-exports, or imports, including items moving through the U.S. in transit.
- RPL Certain repair and replacement parts for items already exported.
- GFT Certain gifts and humanitarian donations.
- GOV Exports to certain government entities.
- TSU Certain mass-market technology and software.
- BAG Baggage exception.
- AVS Aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels.
- APR Allows re-export from certain countries.
- ENC Certain encryption devices and software.
- AGR Agricultural commodities.
- CCD Authorization of certain consumer communication devices to Cuba.

As with any license or other authorization, before relying on a license exception, it must be approved by the management, documented, and the documentation must be retained for five (5) years from the last date of export authorized under the applicable license exception.

II. EXPORT OF DEFENSE ARTICLES AND SERVICES – INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

Under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130,2 DDTC administers the export and re-export of defense articles, defense services and related technical data from the U.S. to any foreign destination, or to any foreign person, whether located in the U.S. or abroad.

Section 121.1 of the ITAR contains the *United States Munitions List* (“USML”) and includes the commodities and related technical data and defense services controlled for export purposes. The ITAR controls not only end-items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end-item, if they are “specially designed” according to the meaning of that term as now defined since ECR went into effect.

While there are some parallels to the EAR, there also are some major differences in how the regulations and the relevant agencies function. They are similar in that both agencies – DDTC and BIS – focus on “technology transfer” and have been increasingly focused on enforcement.

A. ITEMS CONTROLLED UNDER THE ITAR

The ITAR uses three (3) different terms to designate export-controlled items – defense articles, technical data, and defense services. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip.

1. **Defense Article** means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated in the USML.
2. **Technical Data** means any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose. It should be noted that if a U.S. government contractor makes the determination that an effort is controlled under the ITAR, all work and technical data generated for that project is subject to the ITAR, regardless of previous existence in the public domain.
3. **Defense Service** means providing assistance, including training, to a foreign person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing technical data to foreign persons. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.

B. THE USML CATEGORIES

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services. The USML divides defense items into 21 categories, listed below. An electronic version of the USML is available on the Department of State website at:

http://www.pmdtcc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf.

- I. Firearms, Close Assault Weapons and Combat Shotguns
- II. Guns and Armament
- III. Ammunition / Ordnance
- IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- V. Explosives and Energetic Materials, Propellants, Incendiary Agents, and their Constituents
- VI. Surface Vessels of War and Special Naval Equipment**
- VII. Ground Vehicles
- VIII. Aircraft and Related Parts
- IX. Military Training Equipment and Training
- X. Personal Protective Equipment
- XI. Military Electronics
- XII. Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII. Materials and Miscellaneous Articles
- XIV. Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- XV. Spacecraft and Related Articles
- XVI. Nuclear Weapons Related Articles
- XVII. Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII. Directed Energy Weapons
- XIX. Gas Turbine Engines and Associates Equipment
- XX. Submersible Vessels and Related Equipment**
- XXI. Articles, Technical Data and Defense Services Not Otherwise Enumerated

C. CLASSIFICATION

While DDTC has jurisdiction over deciding whether an item is ITAR- or EAR-controlled, it encourages exporters to self-classify the item. If doubt exists as to whether an article or service is covered by the USML, upon written request in the form of a Commodity Jurisdiction (“CJ”) request, DDTC will provide advice as to whether a particular article is a defense article subject to the ITAR or is under the jurisdiction of BIS and controlled under the EAR.

When issuing a CJ Determination, DDTC will most often provide the classification (ITAR or EAR) for the item or technology that is the subject of the request. Modifications, different configurations, and the like of that item or technology may change the jurisdiction and classification, so further developments must be carefully considered and analyzed to ensure proper self-classification after a CJ Determination is obtained.

D. DEFINITION OF EXPORT UNDER THE ITAR

The ITAR defines the term “export” broadly. The term applies not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information. The ITAR defines as an “export” the passing of information or technology to foreign nationals even in the U.S. The following are examples of exports:

1. Exports of articles from the U.S. territory

- Shipping or taking a defense article or technical data out of the U.S., including technical data on laptops, thumb drives, etc.
- Transferring title or ownership of a defense article to a foreign person, in or outside the U.S.

2. Extra-territorial transfers

- The re-export or re-transfer of defense articles from one foreign person to another, not previously authorized (*i.e.*, transferring an article that has been exported to a foreign country from that country to a third country).
- Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the U.S. or abroad.

3. Export of intangibles

- Disclosing or giving access to technical data to a foreign person, whether in the U.S. or abroad, through oral, visual, or other means.
Caveat: This can easily occur outside of the workplace

E. AUTHORIZATION TO EXPORT

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTTC. Registration is required prior to applying for a license or taking advantage of some license exemption. *Registration does not authorize the export of a defense article, technical data, or a defense service.*

Once the registration is complete, an exporter may apply for an export authorization by submitting a license application for the export of defense articles, technical data or defense services. Most types of applications also contain additional certifications / transmittal letters,

supporting documentation, and in some cases, non-transfer and use certification from the licensee and / or the foreign government of the licensee.

III. OFAC SANCTIONS PROGRAM AND BARRED ENTITIES LISTS

A. SANCTIONED COUNTRIES

U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, including Cuba, Iran, North Korea, Syria, and the Crimea Region of Ukraine. Generally, this prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran could require an OFAC license or be prohibited. These are generally referred to as "comprehensive" sanctions programs.

More limited ("targeted") sanctions may block particular transactions or require licenses under certain circumstances for exports to a number of countries, including but not limited to Burma, Libya, and Zimbabwe. Because this list is not complete and subject to change, please visit <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

While most sanctions are administered by OFAC, BIS has jurisdiction over certain exports prohibitions (via "embargo" regulations), as is the case with exports to Syria. In other words, a license from BIS would be required to ship most items to Syria and other OFAC sanctioned countries or could be prohibited. Economic sanctions and embargo programs are country-specific and very detailed in the specific prohibitions.

B. TERRORIST AND OTHER BARRED ENTITY LISTS

Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. Therefore, all persons and parties involved in a potential transaction must be screened against these lists to ensure that PMI does not engage in a transaction with a barred entity. PMI currently uses a screening software program, known as Visual Compliance™, to expedite screening of these and other lists. However, PMI cannot rely exclusively on results from Visual Compliance™ and further investigation and review is often necessary to meet the company's export compliance obligations and practices.

- **Specially Designated Nationals and Blocked Persons List ("SDN List").** Maintained by OFAC, this is a list of barred terrorists, narcotics traffickers, and persons and entities associated with embargoed regimes. Generally, all transactions with such

persons are barred. The *SDN List* is available at:

<http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.

- **General Prohibitions, General Orders, and Administrative Orders (15 C.F.R. § 736).** There are 10 General Prohibitions additional General Orders and Administrative Orders that further prohibit and restrict transactions involving a U.S. person and foreign parties or countries. A link to the General Prohibitions, General Orders, and Administrative Orders is available at: http://www.bis.doc.gov/index.php/forms-documents/doc_view/413-part-736-general-prohibitions.
- **List of Debarred Parties.** The U.S. Department of State bars certain persons and entities from engaging in the export or re-export of items subject to the USML (available at: <http://www.pmdtc.state.gov/compliance/debar.html>). Note that the number of countries subject to a U.S. arms embargo is much broader than those subject to OFAC embargoes. See http://www.pmdtc.state.gov/embargoed_countries/index.html. Therefore, any PMI products or technical information that is subject to the ITAR (USML) must not be involved in transactions that would involve an embargoed country.
- **Denied Persons List.** These are individuals and entities that have had their export privileges revoked or suspended by BIS. The *Denied Persons List* is available at: <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>.
- **Entity List.** These are entities identified as being involved in proliferation of missile technology, weapons of mass destruction, and related technologies. The *Entity List* is found at Supplement No. 1 of 15 C.F.R. § 744 and is updated frequently.
- **Sectoral Sanctions Identifications (SSI) List.** This list is specific to individuals and entities designated as part of the Ukraine-/Russia-related Sanctions. *Certain Directives apply to the designated parties and set out prohibitions on dealings with those parties, including those with interests in the Russian energy sector, specifically involved with the exploration and the potential for the production of oil from certain deepwater (greater than 500 feet), Artic offshore, and shale projects.* The *SSI List* is available at this shortened link: <http://1.usa.gov/1qE26Wt>.
- **Unverified List.** These are foreign persons and entities for which BIS has been unable to verify the nature of their operations. While transactions with these entities are not legally barred, special due diligence is required. *As a policy, unless a special exception applies and a transaction is approved, in writing, by PMI's President and export controls legal counsel, the Company will not be involved in transactions involving parties on the Unverified List.*

- **Excluded Parties List System (EPLS).** These are entities that have been barred from contracting with U.S. Government agencies. In general, companies cannot contract with such parties in fulfilling a U.S. Government contract, either as prime or sub-contractor. The *EPLS* is available at this shortened link: <http://1.usa.gov/1LMLzc2>.

VI. ANTI-BOYCOTT RESTRICTIONS

The anti-boycott rules were implemented to prevent U.S. businesses from participating directly or indirectly in the Arab League's boycott of Israel. The laws prevent U.S. persons from doing business under terms that would restrict that person's ability to do business with other countries under a boycott not recognized by the U.S. The Arab League's boycott has lessened over the years, but remains in effect in some countries. These restrictions are enforced by BIS. The applicable regulations are at 15 C.F.R. § 760.

Anti-boycott restrictions are most likely to appear in dealings with entities in certain Arab League countries (such as Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen), but other countries outside of the Middle East cannot be overlooked, such as Bangladesh and Indonesia.

The anti-boycott regulations have strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action.

A. JURISDICTION

These laws generally apply to any person or entity in the U.S., and to U.S. persons or entities abroad. As examples, the laws apply to:

- A foreign company's affiliate or permanent office in the U.S.
- A U.S. company's foreign affiliate's transaction with a third-party if that affiliate is controlled by the U.S. Company and involves shipment of goods to or from the U.S.

B. RED FLAGS

The U.S. Commerce Department has set forth the following red flags to look for as signs of anti-boycott restrictions:

- Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.

- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- Furnishing information about business relationships with Israel or with blacklisted companies.
- Furnishing information about the race, religion, sex, or national origin of another person.
- Paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by the anti-boycott regulations.

These restrictions may appear on pre-printed portions of agreements, in a request for quote (RFQ), in a request for proposal (RFP), letter of credit, a vessel certification, and similar documents. Often these statements are made in the negative, so particular attention must be given during a review of such documents.

C. EXCEPTION

A major exception to the anti-boycott rules is the provision that permits compliance with the import requirements of a boycotting country. This exception permits firms to comply with import restrictions that prohibit imports from Israel or Israeli firms. The exception does not permit compliance with a boycott of blacklisted firms outside of Israel, nor does it allow for the issuance of a negative certificate-of-origin of any type. Other exceptions allow firms to provide country-of-origin information on the shipping documents, or information required for immigration or employment purposes. The exceptions can be found at 15 C.F.R. § 760.3.

D. REPORTING

Any U.S. person or entity who is asked to enter into an agreement or provide information that would violate anti-boycott laws must report this to BIS using a form BIS-621-P in accordance with 15 C.F.R. § 760.5. Information regarding the reporting of suspected anti-boycott activities can be found at <http://www.bis.doc.gov/index.php/enforcement/oac?id=300>. In addition, the U.S. Internal Revenue Service (IRS) requires U.S. taxpayers to report operations in or relating to boycotting countries and nationals and request to cooperate with boycott activities. See IRS Form 5713, located online at: <http://www.irs.gov/pub/irs-pdf/f5713.pdf>.

These reporting requirements apply even where the U.S. person or entity refuses to participate. Crossing out the boycott language in a proposed contract does not end the matter. The duty to report remains even where the requesting foreign entity accepts the redaction of the boycott language.

For more information on anti-boycott rules see:

<http://www.bis.doc.gov/index.php/enforcement/oac>. The Office of Boycott Compliance has also set up an advice line for questions about the anti-boycott rules, which can be reached at (202) 482-2381.

V. PENALTIES FOR EXPORT VIOLATIONS

Generally, any person or entity that brokers, exports, or attempts to export a controlled item without prior authorization, or in violation of the terms of a license, is subject to penalties. Violators may incur both criminal and civil penalties. Although there is a maximum amount for a civil or criminal penalty, the actual penalty imposed is often multiplied. For instance, each shipment might be considered a separate violation, and BIS will often find multiple violations of related restrictions in connection to each shipment (*e.g.*, export without a license, false representation, actions with knowledge of a violation, *etc.*).

A series of violations occurring over a period of time may result in hundreds of thousand or even millions of dollars of penalties. Penalties for export violations such as defense items, dual-use items or exports to sanctioned country are similar. Penalties could range from more than \$300,000 to \$1,000,000 and up to 20 years in prison. The harshest penalty could be a Denial Order which could ban the U.S. Company from exporting or a foreign company from buying export products for a period of time. Personal liability (civil and criminal) may be included.

I. U.S. AND FOREIGN PERSONS

For purposes of defense and dual-use exports, a *U.S. person* is defined as a U.S. entity or a U.S. citizen, a person lawfully admitted for permanent residence in the U.S. (*i.e.*, green card holder), or a person who is a protected individual under the Immigration and Naturalization Act (8 U.S.C. § 1324b(a)(3) (*i.e.*, certain classes of asylees and refugees). A U.S. person may be engaged in activities that are export controlled, unless there are some additional restrictions that limit participation to U.S. citizens.

The regulations define foreign person as any party who is not a U.S. person. BIS looks at the person's most recent citizenship or permanent residence. DDTTC looks at the person's country of origin (*i.e.*, country of birth), current citizenships, and connections with those countries.

Note that the definitions for a U.S. and a foreign person differ for purposes of the OFAC sanctions.

A. PUBLICLY AVAILABLE

The ITAR and the EAR do not control information which is published and generally accessible or available to the public. Note that even though the two regimes have similar scope, the ITAR and the EAR vary in the specific information that qualifies as publicly available. Caveat: Do not assume that because information is found on a publicly accessible website that it is *not* subject to the ITAR or the EAR. There are many instances where ITAR- or EAR-controlled information has been improperly posted to a website. Do not perpetuate a violation of the ITAR or EAR in such a situation.

- **ITAR provision:** The ITAR describes such information as information in the *public domain*. The information in the public domain may be obtained through:
 - sales at newsstands and bookstores;
 - subscription or purchase without restriction to any individual;
 - second class mailing privileges granted by the U.S. Government;
 - at libraries open to the public;
 - patents available at any patent office;
 - unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, **in the U.S.**;
 - public release in any form after approval of the cognizant U.S. Government agency; or
 - *fundamental research* in the U.S.

- **EAR provision:** The EAR does not control publicly available technology if it is already published or will be published. Information is published when it becomes generally accessible to the interested public in any form, including:
 - publication in periodicals, books, print, *etc.*, available for general distribution **free or at cost**;
 - readily available at libraries open to the public;
 - patents and open patents applications available at any patent office; or
 - release at an open conference, meeting, seminar, trade show, or other gathering open to the public.

The EAR requires that the publication is available for distribution free or at price not to exceed the cost of reproduction and distribution; however, the ITAR does not have such a requirement.

Note also that the EAR does not specify where an open conference, meeting, seminar or trade show must take place, and thus allows, for example, participation at a foreign conference so long as the conference is open to all technically qualified members of the public, and



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attendees are permitted to take notes. Unlike the EAR, the ITAR limits participation in conferences and similar events to those that are taking place in the U.S.

Training

Training for export compliance targets those employees directly and indirectly involved in export related processes. Process owners ensure that any employee who is directly involved with the process or interacts with the process is trained on their individual responsibilities for ensuring ongoing compliance. The process owners and/or supervisors monitor the performance of the employee to determine their capability to carry out their assigned responsibilities.

Training Documentation and Records Retention

Maintaining training records helps PMI's management to ensure employees receive the training that they need to conduct their jobs. Training records for each training event will be maintained according to PMI's Records Management Program and ISO requirements. Each training event is to be documented using a sign in sheet and recorded in Synergy. This documentation should include: the date, time, the instructor(s) name; the subjects covered; and a list of the employees who attended the training.

General Record Keeping

The ITAR and the EAR require all documentation relating to an export transaction to be retained for five (5) years from the last date of the transaction (including the last date on which items are exported or technical information is released under a license or other authorization such as a license exception). PMI's policy is to maintain export-related records on a project basis and in accordance with PMI's Records Management Program.

Those records might include:

1. a description of the unclassified technical data;
2. the name of the recipient /end-user;
3. the date / time of export;
4. the method of transmission (e.g., e-mail, fax, telephone, FedEx); and
5. the license application, license, or exemption under which the export took place.

Audit Program

In order to maintain PMI's export compliance program and ensure consistent adherence to U.S. export laws, internal reviews of PMI's process may be periodically conducted. The purpose



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of the reviews is: (i) to identify possible violations and (ii) to identify deficiencies in training, procedures, *etc.*, that can be rectified.

Detecting and reporting violations

It is the policy of PMI to voluntarily self-disclose violations and apparent violations if they happen. As discussed, the penalties for these violations can be very severe, including personal liability, monetary fines, and imprisonment. However, government agencies assign great weight to voluntary self-disclosures as a mitigating factor.

Any individual who suspects a violation has occurred must immediately notify Bob Schauer and/or Cheryl Doell. A thorough review will be conducted. PMI will then, in consultation with the legal counsel, send an initial notification about the suspected violation to the appropriate government agency. PMI will then follow the government agency's instruction to correct and/or resolve the issue.

TECHNICAL INFORMATION (DEEMED EXPORTS)

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled *information or services* to foreign nationals even when the transfer takes place within the territory of the U.S. Though taking place inside the U.S., the transfer is "deemed" to be an export (as if exporting to the country of the foreign national). Both the ITAR and the EAR provide for deemed exports, even though in the case of defense exports the regulations generally speak of exports. While the ITAR distinguishes between the transfer of *technical data* and *defense services*, the EAR generally provides for the release of *technology*. Transfer of export controlled technical information may occur through:

1. a demonstration;
2. oral briefing;
3. telephone call or message;
4. laboratory or plant visit;
5. presenting at conferences and meetings;
6. emails or letters;
7. hand-carried documents, hardware or drawings;
8. design reviews;
9. the exchange of electronic communication;
10. posting non-public data on the Internet or the Intranet;
11. carrying a laptop with controlled technical information or software to an overseas destination.



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Personnel that facilitate these various forms of communication should be concerned about export controls compliance. For example, a WebEx should have terms of service stating the following:

“You agree that the use of WebEx is subject to U.S. and local export control laws and regulations. You represent that you are not a citizen of an embargoed country or a prohibited end user under the applicable U.S. or local export and anti-terrorism laws, regulations and lists. You agree not to export, re-export, divert, transfer or disclose any portion of the services websites or any related technical information or materials, directly or indirectly, in violation of any applicable export law regulation.”

Outline of Screening Procedures to Follow Before Disclosing Technical Information

The following outline of screening procedures is to be used in an effort to achieve export controls compliance relating to the release, disclosure, or transfer of technical information to a foreign person, regardless of the format being used and whether or not the foreign person is located within or outside of the U.S.:

1. Know whether the technical information is subject to export controls, under either the EAR or the ITAR (ask if you are unsure);
2. Determine the location and citizenship status of each foreign person who will receive the technical information or have access to it using the End Use/User Statement;
3. Based on information obtained regarding 1. and 2. above, determine whether an export license is required **before** the release, disclosure, or transfer of the technical information to the foreign person(s) occurs;
4. Determine whether a license exception (“exemption” under the ITAR) is available and can be relied on **before** the release, disclosure, or transfer of the technical information to the foreign person(s) occurs; and
5. As applicable, contact Cheryl Doell to secure an export license or other authorization from the licensing agency having jurisdiction over the technical information subject to export controls (the U.S. Department of Commerce, Bureau of Industry and Security or the U.S. Department of State, Directorate of Defense Trade Controls) **before** the release, disclosure, or transfer of the technical information to the foreign person(s) occurs.

Particularly where a meeting, call, webinar, or the like is scheduled for a future time, each situation should be reviewed on a case-by-case basis and must include **before** a release, disclosure, or transfer of technical information.

The above outline is to be used at the start of each new program, project, quotation, purchase order, or similar matter in which one of more foreign persons may be involved to any extent. The above outline can be provided in a separate questionnaire document to other parties or used as a “script” and reviewed by phone, Skype, or other platforms, with other parties. The information collected should be maintained according to PMI’s Record Management Program.

If information collected on the questionnaire needs further review, investigation, or otherwise acted upon, PMI will work with export controls legal counsel.

LICENSE EXCEPTIONS AND EXEMPTIONS RELATED TO TRAVEL OUTSIDE THE U.S.

Travel or transmissions to destinations outside the U.S. can also implicate export control regulations. A license may be required depending on which items are taken, which countries are visited, or whether defense services are provided to a foreign person. It is important to note that presenting results at a scientific conference OUTSIDE of the U.S. is also considered to be an export. However, an exception or exemption from license requirements may exist.

A **License Exception** may be available for EAR controlled items, technology, or software if the individual travelling outside the U.S. can certify that he or she:

1. will ship or hand-carry the items, technology, or software for PMI business only;
2. will return or certify the destruction of the items, technology, or software within 12 months of leaving the U.S.;
3. will keep the items, technology, or software within his or her effective control;
4. will take necessary security precautions to protect against the unauthorized export of the technology; and
5. **will not directly or indirectly ship or hand-carry the items, technology, or software to China, Iran, Syria, Cuba, North Korea, Russia, or the Crimean Region of Ukraine without first consulting with Bob Schauer and/or Cheryl Doell.**

A **License Exemption** may be available to ITAR controlled technical data transmitted outside the U.S. if the individual transmitting the technical data can certify that:

1. the technical data is to be used overseas solely by a U.S. person(s);
2. the U.S. person overseas is an employee of PMI or the U.S. Government and is not an employee of a foreign subsidiary;



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3. if the information is classified, it will be sent overseas in accordance with the requirements of the Department of Defense Industrial Security Manual; and,
4. no export will be made to an arms embargoed country.

Please note that other exceptions or exemptions may be available.

Any individual intending to travel or transmit controlled data outside the U.S. should first consult with Bob Schauer and/or Cheryl Doell. Bob Schauer will have the final authority on the applicability of the proposed license exception and may consult with export controls legal counsel, if necessary, in making that determination. All exceptions or exemptions must be documented, and the record maintained for at least five (5) years after the later of the termination of the project or the travel return date.

FINAL NOTE

The majority of PMI's products, parts, and materials (including drawings, designs, technical information, etc.) are classified under the EAR as "EAR99." Recall that the designation "EAR99" indicates that particular items, software, and technologies are "subject to the EAR," but are not controlled for export, re-export, and transfer by a specific ECCN. ***EAR99 does not indicate that there are no export controls whatsoever and a BIS export license may be required for particular entities, persons, and country destinations.***



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ACKNOWLEDGMENT AND AFFIRMATION

I, the undersigned, do hereby acknowledge that I have read and understand PMI Industries, Inc.'s Export Compliance Policy and do hereby affirm, to the best of my knowledge and belief, that my current and future actions shall fully comply with the Policy, the ITAR, and the EAR, and I have no knowledge of any unlawful or undisclosed violations of the Policy, the ITAR, or the EAR, or that I have notified the President or Vice President – Office Operations of any violations or apparent violations of which I have knowledge and I will cooperate in the investigation of such.

[Sign Name]

[Print Name]

[Title or Position]

[Date]