

Return to [Table of Contents](#)

Chapter 1. Exporter Services

BXA's Office of Exporter Services (OEXS) carries out a wide range of activities to help exporters understand and comply with export control requirements. OEXS develops, maintains, and disseminates the Export Administration Regulations (EAR) and administers BXA's outreach seminar program to educate the exporting community about export control, regulations, and licensing policy. OEXS also provides advice on a broad range of export issues, including licensing and documentation requirements for export transactions and special country policies. OEXS helps implement the Enhanced Proliferation Control Initiative (EPCI) End-User Verification process through which U.S. exporters are informed of foreign entities engaged in activities that raise proliferation concerns. Furthermore, OEXS develops Internal Control Program guidelines and Export Management System guidelines that companies can use to ensure exports are consistent with the EAR. Finally, OEXS conducts systems reviews of Special Comprehensive License (SCL) and International Cooperative License (ICL) internal control programs to verify compliance with the EAR and the terms of the licenses.

OEXS conducts its work through four divisions: Regulatory Policy, Outreach and Educational Services, Export Management and Compliance, and Operations. OEXS has field offices in Newport Beach and San Jose, California.

Regulatory Policy Division

OEXS implements changes in the EAR (15 CFR parts 730 to 774) drafts new regulations, and coordinates the clearance of all changes to the EAR. Below is a summary of significant regulatory changes made to the EAR during FY 2001.

- On September 28, 2001, BXA published a rule liberalizing exports to State Parties to the Chemical Weapons Convention (CWC) of medical, analytical, diagnostic, and food testing kits containing small quantities of Australia Group (AG)-controlled chemicals that also are identified on CWC Schedule 2 or Schedule 3 and exports of certain mixtures containing less than 30 percent by weight (previously 25 percent or less) of any single AG-controlled chemical. This rule also added Cyprus and Turkey to the list of countries that participate in the Australia Group, thereby eliminating license requirements for exports and reexports of certain AG-controlled items to these two countries.
- On August 10, 2001, BXA published a rule revising Country Group E:1¹ and expanding

¹ Country Group E:1 was revised by identifying those countries designated by the Department of State as countries whose governments have repeatedly provided support for acts of international terrorism; i.e., Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

the scope of countries that are eligible for License Exception Temporary Imports, Exports, and Reexports (TMP).

- On July 12, 2001, BXA published a rule implementing certain provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). TSRA requires the President to terminate existing U.S. unilateral agricultural and medical products sanctions on and also established a licensing regime for the export of agricultural commodities, medicines, and medical devices to designated terrorist countries. BXA implements TSRA as it relates to exports of agricultural commodities to Cuba. The July 12 rule establishes License Exception Agricultural Commodities (AGR) to permit exports and reexports to Cuba of agricultural commodities that are not specifically identified on the Commerce Control List (CCL). The Treasury Department's Office of Foreign Assets Control (OFAC) implements TSRA as it relates to exports to Iran, Libya, and Sudan of agricultural commodities, medicines, and medical devices that are not specifically identified on the CCL.
- On April 9, 2001, BXA published a rule revising controls on microprocessors, graphic accelerators, and external interconnects, reflecting changes agreed to by the multilateral Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods as a result of rapid technological advances and widespread commercial availability of such items.
- On April 9, 2001, BXA published a rule easing controls on certain nuclear items to Brazil, Latvia, and Ukraine following the admission of these countries to the Nuclear Suppliers Group. The Nuclear Suppliers Group member countries have agreed to establish export licensing procedures for the transfer of items identified on the Annex to the Nuclear-Related Dual-Use Equipment, Materials, and Related Technology List, which is published by the International Atomic Energy Agency. In addition, the April 9 rule added Austria, Finland, Ireland, and Sweden to a list of countries not subject to certain nuclear end-use restrictions, because of their commitment to nuclear nonproliferation.
- On March 1, 2001, BXA published a rule removing many license requirements imposed on exports to Serbia in May 1999. However, the license requirements were maintained for exports and reexports by U.S. persons of any item subject to the EAR to persons listed in Executive Order 13088, as amended by Executive Order 13192, including Slobodan Milosevic, his family, his close associates, and individuals indicted for war crimes by the International Criminal Tribunal for the former Yugoslavia.
- On January 19, 2001, BXA published a rule revising License Exception Composite

Theoretical Performance (CTP) to reflect rapid technological advances in computing capability. This rule implemented the sixth revision to U.S. export controls on high performance computers (HPCs), allowing HPCs with a CTP up to 85,000 million theoretical operations per second (MTOPS) to be exported to Computer Tier 3 countries under License Exception CTP. The rule also deleted Computer Tier 2 and moved all the countries included in Computer Tier 2 to Computer Tier 1. Beginning March 20, 2001, exporters were no longer required to submit National Defense Authorization Act advance notifications for exports of HPCs with a CTP exceeding 85,000 MTOPS.

Outreach and Educational Services Division

Export Compliance Seminar Program

BXA provides the business community with information regarding changes in export policy and licensing procedures through a program of educational seminars and workshops. OECS' alliance with a number of industry trade associations, universities and colleges, state and local governments, and nonprofit international business-related organizations is a critical aspect of this program. This alliance furthers BXA's goal of maintaining a cooperative relationship with industry.

The OECS outreach program to the domestic and international business communities encourages compliance with the EAR and increased government-industry interaction on export licensing policy. During FY 2001, through a variety of programs offered at locations throughout the United States, BXA continued to instruct and assist new and established exporters. In addition to providing basic and advanced level courses, BXA also provided specialized workshops on topics of specific interest (e.g., commercial encryption licensing, chemical weapons regulations, export management systems, and freight forwarder programs).

OECS conducted 47 export compliance seminars in FY 2001, which provided information and training to over 6,000 participants. BXA also provided speakers for numerous trade-related events. Through the overseas program, BXA continues to instruct foreign exporters and governments on U.S. export controls. In FY 2001, BXA conducted seminars in China, Sweden, the Netherlands, and the Republic of South Korea.

Update 2001

BXA's 14th annual Update Conference on Export Controls and Policy attracted over 600 representatives from the global exporting community. The annual conference, which is BXA's premier event and the Commerce Department's largest event in the Washington, D.C., area, brings high-level government officials and industry representatives together to discuss changes in export control policies and procedures.

Exporter Counseling

OEXS is BXA's front line unit in providing exporter counseling and plays a major role in guiding exporters through complex licensing transactions. Our regulatory specialists provide one-on-one counseling 11 hours a day through meetings, telephone counseling sessions, and responses to e-mail and fax inquiries. In addition, the BXA Web site provides exporters constant access to timely information and services.

OEXS accomplishes its outreach and counseling activities through its headquarters in Washington, D.C., and through its Western Regional Offices in Los Angeles and San Jose, California. The regional offices are located in the fastest growing, high-technology regions in the United States and are within commuting distance of more than 10 percent of the total U.S. population.

In FY 2001, the resources of the former Exporter Counseling Division and the Export Seminar Staff were combined into a new office, the Outreach and Educational Services Division. This merger enhanced training and educational services by integrating a large portion of BXA's outreach functions into one office. Beginning in FY 2001, the Special Licensing and Compliance Division became the Export Management and Compliance Division, a title more accurately reflecting the office's current and planned responsibilities.

OEXS enhances its customer service initiatives through brochures and export control-related publications. To support our diverse customer base, some of these publications have been translated and published in other languages. BXA published the "Bureau of Export Administration's Introduction to Export Controls" in FY 2001. Previous publications include the "Helpful Hints for Completing the Multipurpose Application Form BXA-748P," which has been updated to include information regarding electronic license submission through the Simplified Network Application Process (SNAP) system.

Operations Division

Export License Processing

In FY 2001, BXA received 10,843 license applications, a slight increase over the 10,701 applications that were received in FY 2000. BXA completed review of 10,773 applications in FY 2001.² The highest number of approvals under one commodity classification was for EAR99 items, with 1,108 approvals. Overall, BXA approved 8,806 applications, returned 1,740 applications without action, and denied 225 applications. This decrease in denied applications (down from 398 denials in FY 2000) resulted largely from the removal of many Indian and Pakistani entities from the Entities List.

The average processing time for applications reviewed only by BXA (i.e., applications not referred to other agencies for review) continues to decline. In FY 2000, non-referred applications were completed with an average processing time of 15 days; BXA reduced the average processing time to 12 days in FY 2001. A significant challenge remains to reduce the average processing time for cases that are referred for interagency review. In FY 2001, 86 percent of all completed licensing decisions were referred to other agencies, with an average processing time of 44 days. BXA continues to work with other agencies to negotiate delegations of authority acceptable to all agencies involved in the interagency process. Obtaining delegations of authority from other agencies increases the number of applications BXA can review without referral. At the same time, BXA continues to work on developing standard conditions on applicable specific categories of cases, such as deemed exports and night vision equipment, that are acceptable to all agencies. With more than 99 percent of all approved applications being approved with conditions, having pre-approved conditions for specified exports will significantly reduce the time to issue a license.

BXA continues to see an increase in the use by exporters of SNAP, a Web-based system that allows exporters to submit export and reexport license applications, high performance computer notices, and commodity classification requests directly to BXA through a secure Internet connection. As more exporters have started using SNAP, the number of applications submitted electronically using the older Export License Application and Information Network has gradually decreased. BXA also has experienced a marked decline in the number of paper export license applications received. SNAP submissions represented 88 percent of total electronic submissions received and 54 percent of all applications received (both paper and electronic).

² This includes cases received before FY 2001, but completed during the fiscal year.

BXA continues to test a new prototype automated application system that would allow the electronic submission of technical specifications and supporting documentation, which currently only can be submitted by fax or express mail. BXA hopes to have the new system fully operational in FY 2002.

Export License Referral Process

The Department, pursuant to Executive Order 12981 and agency practice, refers certain export license applications to other agencies for review and recommendation, based on the level of technology, the appropriateness of the items for the stated end-use, and the country of destination. The principal agencies to which BXA refers license applications are the Departments of Defense, State, and Energy. Since the transfer of jurisdiction over the export of commercial encryption products to the Department, the Department of Justice and the National Security Agency have also had a role in the license review process for encryption license applications. Recommendations from the reviewing agencies either to approve or deny the license application must be submitted to BXA within 30 days of receipt of the referral.

Executive Order 12981 also established an interagency dispute resolution process. The Operating Committee (OC) reviews all license applications for which reviewing departments and agencies are not in agreement. The Chair of the OC (a BXA official) considers the recommendations of the reviewing agencies and informs them of the Chair's decision within 14 days after receipt of the agency recommendations. Prior to elevation to the OC, certain license applications can be discussed on a consultative basis at State Department-chaired, working-level, interagency groups that review cases related to specific proliferation-related concerns. Specifically, nuclear nonproliferation cases are reviewed by the Subgroup on Nuclear Export Coordination, missile technology cases are reviewed at the Missile Technology Export Controls interagency group, and chemical/biological weapons control cases are reviewed at the Shield, an interagency group.

Any reviewing agency may appeal the decision of the Chair of the OC to the Chair of the Advisory Committee on Export Policy (ACEP), an Assistant Secretary-level body chaired by the Department's Assistant Secretary for Export Administration. The principal members of the ACEP are from the Departments of Defense, State, and Energy. In the absence of a timely appeal, the OC Chair's decision will be final.

A reviewing agency must appeal an OC decision to the ACEP within five days of the OC's final decision. Appeals must be in writing, from an official appointed by the President and confirmed by the Senate or an officer properly acting in such capacity and must cite the statutory and regulatory basis for the appeal. Decisions of the ACEP are based on a majority vote.

Any dissenting agency may appeal the ACEP's decision to the Export Administration Review Board (EARB), a Cabinet-level group composed of the Secretaries of Defense, State, and Energy and chaired by the Secretary of Commerce, by submitting a letter from the head of the agency. In the absence of a timely appeal, the decision of the ACEP is final. The Chair of the Joint Chiefs of Staff and the Director of Central Intelligence are non-voting rights members of the EARB. Export applications considered by the EARB are resolved by a majority vote, and any agency may appeal the decision to the President. In the absence of a timely appeal, the EARB's decision is final.

Executive Order 12981 also reduced the time permitted to process a license application to 90 calendar days from the day it is submitted. After that time, final action shall be taken on the application or it will be escalated to the President for a decision.

"Is Informed" Process

The development of a list of entities of proliferation concern through the "Is Informed" process arose from the Enhanced Proliferation Control Initiative (EPCI) announced in 1990 to stem the proliferation of missile technology and nuclear, chemical, and biological weapons. Under EPCI, licensing requirements can apply to exports and reexports of items (i.e., goods and technology) that normally do not require an export license when there is an unacceptable risk of use in or diversion to activities related to nuclear, chemical, or biological weapons or missile proliferation, even if the end-user is not primarily involved in weapons-related activities.

Before an entity is added to the "Entity List," its alleged proliferation activities are extensively evaluated by a BXA-chaired interagency group.³ This group determines if exports to a particular entity present an unacceptable risk of use in or diversion to missile, chemical, and biological weapons or nuclear proliferation activities. If a positive determination is made, the group then decides if a license is necessary for otherwise "uncontrolled" items being exported to that entity. Decisions are made by a majority vote. Agencies that dissent may escalate the decision to the ACEP. Appeals may be further escalated to the EARB and President as described in the previous section.

A major revision to the Entity List occurred in FY 2001 when 12 entities located in the Peoples Republic of China were added to the list. In FY 2000, a similarly significant revision occurred when approximately 50 Indian and Pakistani entities were removed from the list.

Export Management and Compliance Division

³ The interagency group includes representatives from the Departments of Commerce, State, Energy and Defense.

Special Comprehensive License

OEXS offers an alternative licensing mechanism for exporters who routinely make high volume shipments of pre-approved items to pre-approved destinations, end-uses, and end-users. A special license was established for these exporters to use in lieu of submitting individual applications. The increased flexibility and reduced paperwork burden on exporters and re-exporters allow U.S. firms to improve delivery timing, which gives them an edge in the new global economy.

This licensing option, called a Special Comprehensive License, is available to reliable, experienced exporters who have a strong corporate commitment to developing and maintaining an Internal Control Program (ICP). Parties using the SCL must have mechanisms in place to ensure that each export and reexport made under an SCL meets the terms and conditions of the license and complies with the EAR. BXA does not review each individual transaction authorized by an SCL.

The SCL may authorize a number of activities, such as servicing, export and reexport of capital equipment, and/or exporting items for the purpose of resale and reexport. BXA currently has authorized 12 companies to export and reexport pursuant to a SCL.

International Cooperative Licenses

International Cooperative Licenses are approved by BXA to fulfill the work of the U.S. Government in international cooperative projects. These licenses are crafted after the SCL structure and paperwork requirements and require an ICP.

Internal Control Programs

The SCL and ICL both mandate an ICP. Each license holder crafts its ICP to ensure that its export and reexport procedures comply with the requirements of the license and the EAR. Elements of the ICP include customer screening, auditing, training, and recordkeeping. OEXS revises and distributes ICP Guidelines and other tools that can be used by SCL and ICL holders in implementing and auditing of their programs, including the SCL Holder Review Module. This Module was used as the basis for developing the Export Management System (EMS) Review Module to be used by companies that do not hold SCLs.

Exporters may download the EMS Review Module for download from the Export Management System area of the BXA Web site (www.bxa.doc.gov).

OEXS counsels exporters and consignees who participate in this procedure to develop and refine

their ICP. The ICP has been the standard model for use by multinational companies worldwide since its implementation in 1985 and is now being implemented by other countries as part of their export control programs.

Systems Reviews

Consistent with the provisions of Section 4 of the EAA, BXA periodically reviews all active SCLs and ICLs. The reviews allow BXA to evaluate the adequacy of the ICPs and to ensure compliance with the EAR and the terms of the license. Systems Reviews are viewed as a compliance activity and as an educational opportunity because guidance is provided to the SCL holder and consignees at the time of the reviews. BXA conducted eight Systems Reviews in FY 2001.

Export Management System Guidelines

EMS is a BXA-developed compliance program that companies may implement to ensure compliance with the EAR. Establishing an EMS is optional, but can greatly reduce the risk of inadvertently engaging in a transaction that violates the EAR. BXA published the first EMS Guidelines in September 1992, in response to requests from the business community for assistance on how to screen more vigilantly their customers in compliance with the EPCI.

The Guidelines include Administrative and Screening Elements and an Order Processing Element that helps develop a foundation for a compliance program within an individual company. Through the various screening elements and checklists within the Guidelines, companies can develop procedures for gaining knowledge about potential customers and transactions. The Guidelines also provide suggestions for exporter compliance with the General Prohibitions described in Part 736 of the EAR.

OEXS counsels firms on developing EMS programs customized to their specific business activities. OEXS also conducts EMS workshops and seminars to educate the export community on the various tools available to assist them with EAR compliance.

Return to [Table of Contents](#)