



Regulatory Defense Trade Controls

- When is an A S9100 Registered organization required to follow the ITAR?
- What regulatory elements are applicable?



Today's Goal

- Understand where and when A S9100C requires compliance with EA R and/ or the ITAR
- Gain an understanding of certain specifics of each regulation as it pertains to A S9100 Registered Organizations



Regulatory Controls: ITAR

- Code of Federal Regulations
- Title 22 Foreign Relations
- Chapter I Department of State
- Subchapter M International Traffic in Arms Regulations
- Parts 120 - 130



Regulatory Controls: EAR

- Code of Federal Regulations
- Title 15 Commerce and Foreign Trade
- Chapter VII Bureau of Industry and Security,
Department of Commerce
- Subchapter C Export Administration Regulations
- Parts 730 - 774



Where is “Regulatory” Found in AS9100

- Forward (1)
- Introduction (1)
- Section 1, Scope, 1.1 General (3) and within NOTE 2
- Section 4, 4.1 General Requirements (1) and within NOTE 3
- Section 5, 5.1 Management Commitment (1)
- Section 7, 7.2.1 Determination of Requirements Related to the Product (1)
- Section 7, 7.3.1 Design and Development Planning (1)
- Section 7, 7.3.2 Design and Development Inputs (1)
- Section 7, 7.4.2 Purchasing Information (1)
- Section 7, 7.5.5 Preservation of Product (1)
- Section 8, 8.3 Control of Nonconforming Product (NOTE) (1)



Similar Requirements: AS9100/EAR/ITAR

- Knowledge and Awareness
- Functional Processes and Procedures
- Record Keeping



EAR Overview

Bureau of Industry and Security
Department of Commerce

Dual use items are governed by the Export Administration Regulations (EAR) for reasons of National Security, Foreign Policy (Crime Control, Anti-Terrorism, Regional Stability) and Non Proliferation (Nuclear Weapons, Chemical & Biological Weapons, Missiles).



EAR Covers Exports and Reexports and More...

The EAR cover not only exports from the U.S., but also reexports of U.S. origin items from other countries, sales of foreign made products containing U.S.-origin components or derived from U.S.-origin technology, and disclosures of U.S.-origin technology to foreign nationals (even if occurring within the U.S.).



EAR Defines “Knowledge”

For the purposes of most of the EAR, knowledge includes not only knowledge that the circumstances are substantially certain to occur, but also awareness of a high probability of its occurrence. Such awareness may be inferred from evidence of the conscious avoidance of facts known to a person and is also included when a person's willful avoidance of

includes variants such as know and know, and encompasses more than knowledge.



The EAR Process: How to Determine the Regulatory Requirement

- Depends primarily on what you are exporting and what country it is going to
- The CCL (Commerce Control List) contains the items subject to the licensing authority of BIS
- Each entry is called Export Control Classification Number (ECCN)
 - Five alpha-numeric characters



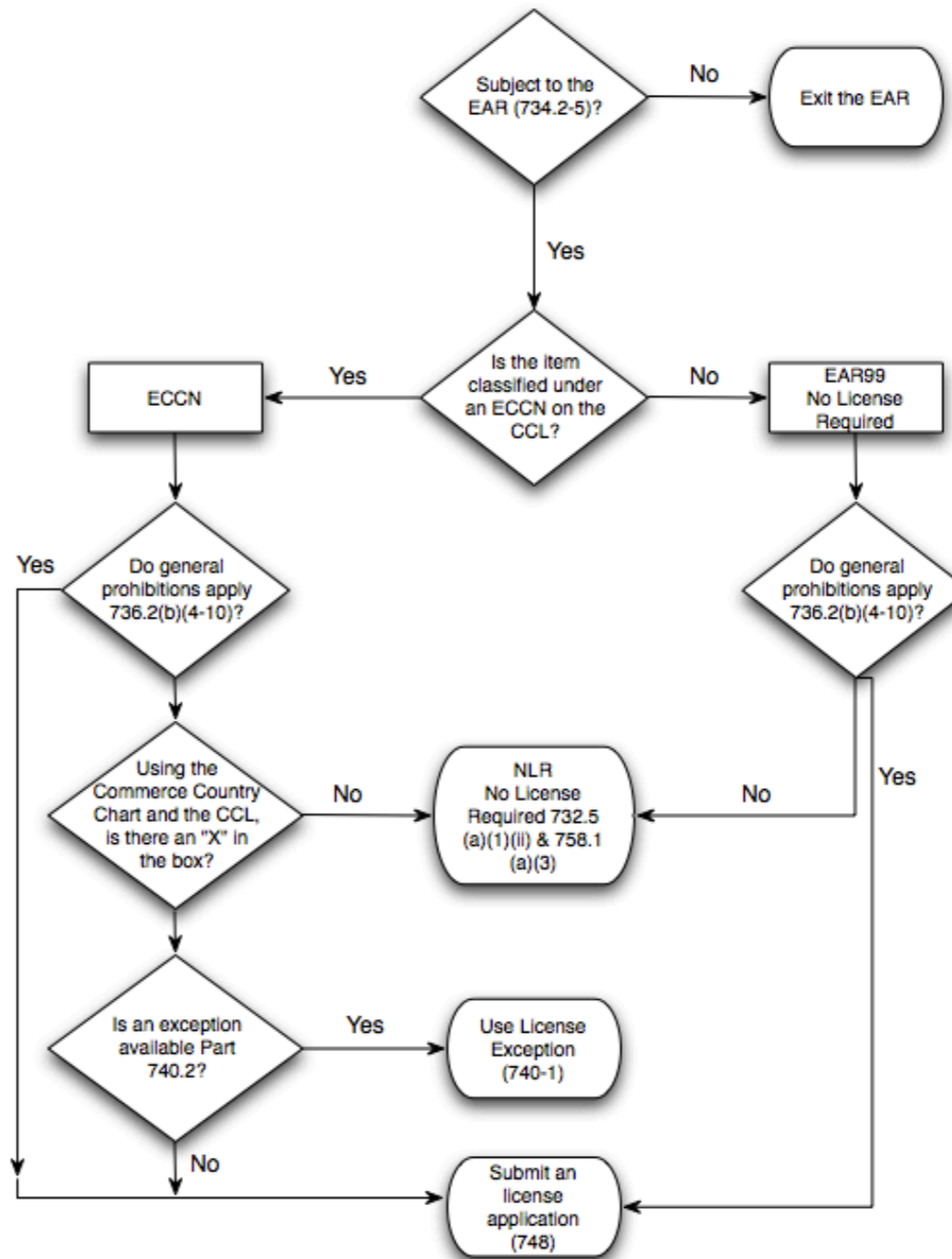
Other Factors in the EAR Process

- End Use
 - Nuclear
 - Chemical/Biological Weapons
 - Missile
 - Support of these activities by U.S. Person
- End User
 - Denied Persons List
 - Specially Designated Nationals List
 - Entity List & Unverified End Users



Procedure: Subject to the EAR?

Dual Use Process Flow





Determining if a license is required

- Using the CCL and Country Chart: Once you have determined that the item is classified under a specific ECCN, you must use the information contained in the “License Requirements section of that ECCN in combination with the Country Chart to determine whether a license is required.
- License Decision Making Process: Using the ECCN in the CCL, is the item controlled for a single Reason for Control?
 - If yes, identify the single Reason for Control and the relevant Country Chart column identifier (e.g., CB Column 1).
 - If no, identify the Country Chart column identifier for each application Reason for Control (e.g., NS Column 1, NP Column 1, etc.)



Determining if a license is required

- Review the Country Chart: With each applicable Country Chart Column identifiers noted, turn to the Country Chart (Supplement No 1 to Part 738). Locate the correct Country Chart column identifier on the diagonal headings, and determine whether an "X" is marked in the cell next to the country in question for each Country Chart column identified in the applicable ECCN. Repeat if the item is subject to more than one reason for control.
 - If yes, a license application must be submitted unless a license exemption applies (see Part 740)
 - If no, a license is not required. Provided that general prohibition 4 through 10 do not apply and that any requirements in 742.15(b) have been met, the shipment may proceed with the symbol "NLR" (EAR99)
- The definition of EAR99 can be found immediately after the last ECCN listing in every ECCN category.



EAR 99 (NLR) Concerns

- Embargoed / Sanctioned Country
- Denied Persons, Debarred, etc.
- End Use / End Use: Nuclear, Chemical Weapon, etc
- **** NLR - No License Required ****



EAR Requires That a Person Know Their Customer

- Decide whether there are “red flags”. Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination.
- If there are “red flags”, inquire. You can rely on representations from your customer and repeat them in the documents you file unless red flags oblige you to take verification steps.
- Do not self-blind. Do not cut off the flow of communication, do not instruct sales personnel to tell potential customers to refrain from discussing actual end-use, end-user, and ultimate country of destination.



Know Your Customer (continued)

- Employees need to know how to handle “red flags”. Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation.
- Reevaluate all the information after the inquiry. To determine whether the red flags can be explained or justified. If they can, you may proceed.
- Refrain from the transaction or advise BIS and wait.



EAR Record Keeping Requirement

- The principal legal document used at the time of export is the Shipper's Export Declaration (SED), which must be filed electronically using the Automated Export System (AES) record.
- An SED/AES record must be filed for all exports of physical goods unless an exemption is available. The principal exceptions are shipments of unlicensed items in which no Schedule B number (or Harmonized Tariff Schedule number) accounts for more than \$2,500 worth of items, exports of tools of trade, and intangible exports such as electronic transmissions, downloaded software (except mass market software), technical data and technology.
- Where an export is exempt from the SED/AES requirement, a statement to that effect (including the basis for the exemption) must appear on the loading document (e.g., bill of lading, air waybill).



EAR Record Keeping (continued)

- The SED/AES record must be prepared and signed by the principal party in interest (the final party in the U.S. who can control the export).
- This can be the U.S. manufacturer, a U.S. Distributor, and U.S. party acting as purchasing agent for the foreign buyer, or if in the U.S. at the time of purchase and export, the foreign buyer itself.
- A U.S. forwarding agent or other agent of the foreign buyer can be the exporter for EAR purposes but cannot fill that role unless the agent also acts as the buyer's purchasing agent in the U.S.
- Filing an SED/AES record constitutes a representation that all applicable EAR terms and conditions have been satisfied. Entering a license exemption symbol is a representation that the transaction qualifies for the exemption in question.



EAR Record Keeping (continued)

- For many exports a destination control statement (DCS) must appear on the bill of lading, air waybill, and commercial invoice covering the export.
- This includes all CCL listed items (i.e., not classified as EAR99) unless exported under license exemption.
- Even if not required many exporters and forwarding agents place a DCS on all such documents even if not required.
- A DCS is not required for reexports.



EAR Record Keeping (continued)

- The BIS export license (if any), outbound bill of lading, and SED/AES filing (or, if there is no SED/AES filing, the Shipper's Letter of Instructions or other instructions to the carrier) must be consistent as to country of destination, shipper/license, ultimate consignee, item descriptions, and consignee named on the carrier's outbound manifest.
- Note that carriers are prohibited from issuing bills of lading and air waybills that are inconsistent with these documents, as well as delivering items to unauthorized ports of unloading.
- Exporter shall maintain all records relating to EAR transactions. These are export control documents which include but are not limited to memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records.
- All records shall be kept for five years after the latest of (1) the export, (2) the financing, transporting, or other servicing of the export, and (3) any known reexport, transshipment, or diversion on behalf of proliferation end users.



The ITAR

- The ITAR is administered by the Directorate of Defense Trade Controls (DTC or DDTC).
- Items subject to the ITAR are enumerated on the United States Munitions List (USML).



The ITAR

- The USG claims jurisdiction over a defense article exported from the U.S., or produced under a manufacturing license agreement (MLA) or technical assistance agreement (TAA) that involves a U.S. Person, forever and irrespective of the number of intermediate transfers between the original owner and the current possessor of the item.
- This includes situations in which a foreign commercial product contains even a single, low-value USML component of U.S. origin. Unlike the EAR, the ITAR do not have a de minimis exclusion.



What is Covered Under ITAR?

- Defense Article(s) and Technical Data
- Defense Service(s)



ITAR Requires: Knowledge

- **Empowered Official:** A U.S. person who:
 - Is directly employed by the applicant or a subsidiary in a position of having authority for policy and management within the applicant organization; and
 - Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
 - Understand the provisions and requirements of the various statutes and regulations, and criminal liability, civil liability and administrative penalties for violating the ITAR; and
 - Has the independent authority to enquire into and aspect of a proposed export or temporary import; and
 - Verify the legality of the transaction and the accuracy of the information submitted; and
 - Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.



ITAR Requires an Action: DDTC Registration

- The AECA requires registration with the DDTC for any person in the business of manufacturing, exporting, or importing any defense articles or defense services on the USML and for any person in the business of brokering the manufacture, import, export or transfer of defense articles or defense services.
- Registration is required for even a single incident of such activity.



Common Misunderstanding

- Registration

Aegis Electronic Group, Inc. is now an ITAR Registered Manufacturer and Exporter

May 18, 2011 (M2 PRESSWIRE via COMTEX) -- Aegis Electronic Group, Inc., a top industrial camera distributor specializing in the distribution, integration and support of visible and Near IR cameras, components and modified integrated system solutions, is pleased to announce that the United States Department of State Office of Defense Trade Controls Compliance has designated Aegis to be an ITAR registered manufacturer and exporter.

By virtue of this registration, Aegis commits itself to compliance with the Arms Control Act (AECA) and the International Traffic in Arms Regulations (ITAR Part 122). It is also a precondition for obtaining export licensing and other approvals from the Directorate of Defense Trade Controls (DDTC).

Receiving this registration demonstrates that Aegis Electronic Group, Inc. has the knowledge and understanding to fully comply with the Arms Export Control Act (AECE) and International Traffic in Arms Regulations, as well as having corporate procedures and controls in place to ensure compliance.

The following excerpt is from the EXPORTLAWBLOG: Reported By Cliff Burns on June 27, 2011

According to this [Law360 post \(subscription required\)](#), James Larrison, a former employee of [Aegis Electronic Group](#) was sentenced to probation for his role in the company's export of an EAR99 Hitachi JU72 video camera junction to Iran. Larrison [pleaded guilty](#) to the export violation in December 2009. In April 2011, Aegis [entered](#) into a deferred prosecution agreement and agreed to pay a \$20,000 fine to the Office of Foreign Assets Control ("OFAC") in connection with this export.

Larrison was given probation because he cooperated against his former employer and provided the government prosecutors and investigators information about the complete absence of an export compliance program at Aegis.



ITAR Requires Monitoring

Notification of Changes of Status and Information:

Registrants must notify the DDTTC of a variety of changes in status of information previously furnished. Notice by overnight courier or registered mail must be provided within five days following any material change in information on the registrant statement (Form DS-2032), including a change in senior officers, the establishment, acquisition or divestiture of a subsidiary or a foreign affiliate, a merger, a change of location,



ITAR Requires Monitoring (continued)

Notification of Changes of Status and Information:

If a registrant merges with, acquires, or is acquired by another entity, the resulting entity must notify the DDTC of the new firm name, all previous firm names, which DDTC registrant number will survive and which (if any) will be discontinued. Also to be provided is the number of each license issued under a discontinued DDTC registration

number

with an unshipped balance that will be exported under the surviving registration number; any license not the subject of notification will be considered invalid. Any existing DDTC approved agreements (e.g., technical assistance, manufacturing license, and distribution agreements) whose U.S. licensor will change due the transaction

must

be amended within sixty days after the notification of the merger or acquisition, with an executed copy of the amendment being provided to the DDTC. Any agreements not so amended will be considered invalid.



ITAR Requires Monitoring (continued)

Notification of Changes of Status and Information:

One type of notification must be made substantially before the change occurs. The registrant must give the DDTTC sixty days advance notice of the intended sale or transfer to a foreign person of ownership or control of the registrant or any entity thereof.



ITAR Export Clearance Procedures

1. Exports of USML items are subject to a host of special export clearance procedures.
2. Many freight forwarders and customs brokers are unfamiliar with these procedures.
3. Errors and omissions by a forwarder or broker can be attributed to the exporter for penalty purposes.

When a defense article is exported, whether under a license, and agreement, or an exemption, the bill of lading and invoice must bear the following statement:

These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.



ITAR Export Clearance Procedures (continued)

Unclassified Items

Defense Articles: When a defense article is being exported permanently, the DDTTC license must be filed with the U.S. Customs and Border Protection (CBP) at the port of export. CBP will hold the license and debit subsequent shipments against its limitation.

If a subsequent shipment against the license is made from a different port, the CBP officials there will communicate with CBP at the original port of export to confirm the existence and validity of the license. When the license has been exhausted or has expired, CBP will return the license to the DDTTC.

In the case of a temporary export, the exporter retains the license and presents it to CBP for decrementing at the time of export and again at the time of reimport.

NOTE: The Automated Export System (AES) has replaced the Shipper's Export Declaration (SED) for export clearance of defense articles.



ITAR Export Clearance Procedures (continued)

At least eight hours before departure, in the case of an air or truck shipment, or twenty four hours before departure, in the case of sea or rail shipment, the exporter must electronically file the required AES information with CBP.

The ITAR include provisions for emergency shipments that can't meet these requirements: Emergency filings must occur at least two hours before departure by air and one hour before departure by truck.

The exporter also must present to CBP at the port of export such documentation as proof of AES filing and the AES External Transaction Number or Internal Transaction Number.



ITAR Export Clearance Procedures (continued)

When defense articles are to be exported by mail, the license nevertheless must be filed in advance with CBP and an AES filing must be made. The exporter certifies its compliance with these requirements by marking on the package,

“This export is subject to the controls of the ITAR, 22 C.F.R. (identify section for an exemption) or (state license number) and the export has been electronically files with the U.S. Customs and Border Protection using the Automated Export Systems (AES).”

A copy of this certification must be retained in the exporter's files for five years.



ITAR Export Clearance Procedures (continued)

Technical Data: Licenses for unclassified technical data are retained by the exporter. AES filing for such items normally is not required and the exporter must self-decrement the license and notify the DDTTC when the export occurs.

Any license not filed with CBP, but retained by the exporter, must be returned to the DDTTC by the exporter within sixty days after it has been used up or expired.



ITAR Export Clearance Procedures (continued)

CPB must return each license to the DDTC upon the earlier of the exhaustion of the total quantity or value of the expiration date.

Any license not filed with CBP, but retained by the exporter, must be returned to DDTC by the exporter within sixty days after it has been used or expired.



ITAR Procedure: Licenses

License applications must be submitted electronically through DTC's D-Trade 2 system. Unless authorized under an alternative DTC authorization (e.g., a TAA or MLA) or an ITAR exemption, a license from DTC is required for the permanent export, temporary export, or temporary import of a defense article.

Authorization for the permanent import of defense articles is obtained from the Bureau of Alcohol, Tobacco, Firearms and Explosives of the Department of Justice (ATFE), whose munitions list contains only a part of the USML.

Items on the ITAR version of the USML that do not appear on the ATFE version do not require authorization from ATFE or DTC when imported permanently.



Proposals to Foreign Customers

In some instances involving significant military equipment (SME) even a proposal to a potential foreign customer, specifically, a proposal or presentation designed to constitute a basis for a decision to purchase or manufacture SME requires advance notification to or approval of DTC.

Where a potential sale is involved, the requirement apply if (1) the value of the SME to be sold is \$14 million or more, (2) the equipment is for the use of armed forces outside NATO, Australia, New Zealand, South Korea, and Japan, and (3) the sale would involve the export of a defense article or the furnishing of a defense service.

In addition, DTC approval is required wherever a manufacturing license agreement (MLA) or technical assistance agreement (TAA) is contemplated if (1) the SME is intended for use by foreign armed forces and (2) the transaction would involve the export of any defense article or the offshore provision of any technical data or defense service.



Proposals to Foreign Customers (continued)

A covered proposal or presentation is:

The communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchases to decide either to acquire the particular equipment in question or to enter in the MLA or TAA. For example, a presentation which describes the equipment's performance characteristics, price, and probable availability for delivery would require prior notification or approval.

Not covered:

The following would not require prior notification or approval; advertising or other reporting in a publication or general circulation; preliminary discussion to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of SME.



ITAR Record Keeping

Each registrant must maintain records regarding its activities under the ITAR for five years from the expiration of the license or other approval.

Such records must be made available to the DDTC upon request.

In addition to these general requirements, the ITAR require that for each export of unclassified technical data, the name of the end user, the date and time of the export, and the method by which the data are transmitted.



ITAR Record Keeping (continued)

Records may be maintained electronically, so long as the registrant uses a process or system capable of reproducing all records on paper and exhibiting a high degree of legibility and readability on a viewer or monitor.

Moreover, the information must be incapable of alteration without recording all changes, who made them, and when they were made.

Finally, processes or systems based on the storage of digital images must afford accessibility to all digital images in the records being maintained.



EAR & ITAR

The Five Questions Before Any Transaction

1. What are the capability, use or uses, intended by the designer or manufacturer, and technical characteristics of the item to be exported?
2. To what country is the item ultimately being shipped?
3. Who will the end user of the item?
4. To what use will the item be put?
5. If exporter is not engaging in an export or reexport, is exporter assisting a prohibited end use or end user?



A S9100C

Forward: To assure customer satisfaction, aviation, space and defense organizations must produce, and continually improve, safe, reliable products that meet or exceed customer and applicable *statutory and regulatory* requirements.

- *Is the product or service EAR or ITAR?*
- *Are there controls to assure compliance to EAR or ITAR?*



AS9100C

Introduction: This international Standard can be used by internal and external parties, including certification bodies, to assess the organization's ability to meet customer, *statutory and regulatory* requirements applicable to the product, and the organization's own requirements.

– *Check the USML and the CCL*



AS9100C

1.1 General: “Should there be a conflict between the requirements of this standard and applicable *statutory or regulatory* requirements, the latter shall take precedence.”

Certain record keeping requirements will exceed the AS9100 requirements for “Records”.

a) needs to demonstrate its ability to consistently provide product meets customer and applicable *statutory and regulatory* requirements, and

b) aims to enhance customer satisfaction through the effective application of the system, including processes for continual improvement of the system and the assurance of conformity to customer and applicable *statutory and regulatory* requirements.

Training, Audits, Artifacts



AS9100C

3.1 Risk: An undesirable situation or circumstance that has both the likelihood of occurring and a potentially negative consequence.

- *No understanding end use and end user*
- *Exporting without a license*
- *Denial orders, sanctions, fines, etc.*



AS9100C

4.1 The organization's quality management system shall address customer and applicable statutory and regulatory quality management system requirements.

- *Control of Technical Data from Non-U.S. Persons*
- *Control of the defense articles*
- *Shipping Statements on Bills Of Lading, Commercial Invoices, etc.*
- *Exporting Procedures*
- *Controlling defense services*
- *Record Keeping*



A S9100C

Section 4.1 NOTE 3: Ensuring control over outsourced processes... and 7.1.4 Control of Work transfers...

- *All organizations manufacturing, exporting or providing broker services in connection with USML items must be DDTC registered.*
- *Does the supplier have the proper training and controls in place?*



A S9100C

Section 5.1 Management Commitment, communicating to the organization the importance of meeting customer as well as statutory and regulatory requirements.

- *Is there an ITAR Policy*
- *Who is the contact for Export Control questions or concerns?*
- *Do employees sign that they have reviewed a Technology Control Plan?*



A S9100C

Section 5.1 Management Commitment, communicating to the organization the importance of meeting customer as well as statutory and regulatory requirements.

- *Is there an ITAR Policy*
- *Who is the contact for Export Control questions or concerns?*
- *Do employees sign that they have reviewed a Technology Control Plan?*



A S9100C

Section 7.3.1 Design and Development Planning and 7.3.2 Design and Development Input

- *Who is on the design team, are all U.S. Persons, is this confirmed?*
- *Are there tele-cons between organizations, who is the U.S. Person question confirmed for such meetings?*



A S9100C

Section 7.4.2 Purchasing Information

- *Know the End Use and End User*
- *Determine if on the embargoed or other lists*
- *The USG has the right to review records*



A S9100C

Section 7.5.5 Preservation of Product

- *Are defense articles marked to assure control (including technical data)?*
- *Have packages been properly labeled if mailed?*



AS9100C

Section 8.3 Control of Nonconforming Product

- *No product related but procedurally, have any violations occurred?*
- *Is a VD required?*



Thank You For Your Time

Questions/Comments?



For further questions or comments please contact:

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