

INTREDEX™

Defense Export Controls, ITAR and NIST 800-171 Compliance

Dr. Oz Erdem
Nov 30, 2018

Interservice/ Industry Training, Simulation and Education Conference
(I/ITSEC)

INTREDEX™

Agenda

- ❖ Export Controls: Definitions and Controlling Agencies
- ❖ Basics of EAR Compliance
- ❖ End-Use and End-User Checks
- ❖ ITAR Overview
- ❖ Software and Technology Controls
- ❖ Deemed Exports & Hiring Foreign Nationals
- ❖ Managing ITAR Controlled Projects and TCP
- ❖ Essentials of ITAR Compliance Program
- ❖ DFARS Requirements
- ❖ NIST 800-171 Compliance

Copyright © Intredex 2

INTREDEX™

Basics & Controlling Agencies

Export: Any item that is sent from the U.S. to a foreign destination is an export. "Items" include *commodities, software or technology*, such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information.

Deemed Export/Re-export: Release of technology or source code subject to the EAR to a foreign national in the U.S. is deemed to be an export to the home country of the foreign national; and deemed to be a re-export if it happens abroad.



U.S. DEPARTMENT OF STATE
DIRECTORATE OF DEFENSE TRADE CONTROLS





Dual Use Items
Bureau of Industry and Security
U.S. Department of Commerce
Where Industry and Security Intersect




USNRC
UNITED STATES NUCLEAR REGULATORY COMMISSION

Copyright © Intredex 3

INTREDEX™


U.S. Department of Commerce – BIS



Dual Use Items
Bureau of Industry and Security
U.S. Department of Commerce
Where Industry and Security Intersect

- Controls the export of "DUAL USE" items
Export Administration Regulations (EAR)
(15 CFR Part 730-774)
- Commerce Control List (CCL) lists the controlled goods, material, software and technologies
- Issues most of the export and re-export licenses

Enforces the compliance via
Office of Export Enforcement



**Commerce
Control
List**

Copyright © Intredex 4

U.S. Department of State – DDTC

INTREDEX™

U.S. Munitions List

- Controls the Export and Temporary Import of Defense Articles and Defense Services
- Implements Arms Export Control Act (AECA)
- Regulates and Enforces **International Traffic in Arms Regulations**
- ITAR (22CFR Part 120-130)



Copyright © Intredex 5

U.S. Department of the Treasury – OFAC

INTREDEX™

- **Office of Foreign Assets Control (OFAC)** administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals.

Foreign Asset Control Regulations (31 CFR Part 501-598)



- Sanctions are generally based on United Nations and other International mandates, and involve close cooperation with allied governments:

- Financial Sanctions,
- Specially Designated Nationals List (SDN),
- Counter Terrorism Sanctions,
- Counter Narcotics Trafficking Sanctions,
- Non-Proliferation Sanctions,
- Sectoral Sanctions
- Iran, Syria, Cuba and Ukraine Related Sanctions

FACR

Copyright © Intredex 6

U.S. Department of Energy

INTREDEX™

- Implements **Atomic Energy Act** (10 CFR Part 810)
- Controls the Export of Technology related to special nuclear materials (assistance to foreign atomic energy activities)

11/12/2014

Copyright © Intredex 7

U.S. Nuclear Regulatory Commission

INTREDEX™

- Independent agency to ensure the safe use of radioactive materials for beneficial civilian purposes
- Controls the Export and Import of Nuclear Equipment and Material
- **NRC Regulations** (10 CFR Part 110)



Copyright © Intredex 8

Compliance is a Teamwork!

INTREDEX™

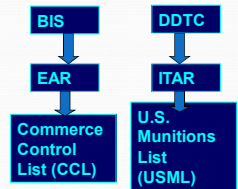


Copyright © Intredex 9

How to Determine Jurisdiction?

INTREDEX™

- Is this a dual-use item?
- Is this an item specially designed, manufactured, produced, configured, modified or adapted for a military end-use?
- Obtain **technical specification** and/or **technical support** for the item to find out the correct jurisdiction and Control Classification/Category number



Copyright © Intredex 10

Steps of Compliance with the EAR

INTREDEX™

Check below:

- ✓ Is the item subject to the exclusive jurisdiction of another Federal Agency (i.e., OFAC, DDTC, NRC, ATF)
- ✓ Publicly Available technology and software
- ✓ Re-export of U.S. Origin Items
- ✓ Foreign made item incorporating controlled U.S.-origin items
- ✓ Apply the direct product rule for the foreign made item resulted from a U.S.-origin technology



Copyright © Intredex

Steps of Compliance with the EAR

INTREDEX™

- ✓ Classify the product/technology
- ✓ Determine the Country of Ultimate Destination
- ✓ Identify the Reason for Control and Country Chart
- ✓ If foreign-made item, determine if de-minimis rule applies
- ✓ Review *General Prohibition 3* – Direct Product Rule
- ✓ Are the involved parties and recipients export denied persons/entities?



Copyright © Intredex

Steps of Compliance with the EAR

INTREDEX™

Check below:

- ✓ Is End-Use or End-User prohibited?
 - ❖ What is the exact End-Use application?
 - ❖ What else they can possibly do with the exported item?
- ✓ Is the destination embargoed or sanctioned?
 - ✓ Consider the location of Intermediate Consignee, Ultimate Consignee and End Users
- ✓ Is this a Proliferation activity of U.S. persons?



Copyright © Intredex

Steps of Compliance with the EAR

INTREDEX™

- ✓ Review the "Know Your Customer" Guidelines and General Prohibition Ten (*Knowledge of violation to occur*)
- ✓ Complete the review of General Prohibitions



Copyright © Intredex

End Use and End-User Checks

INTREDEX™

End-user (end 'yoōzər)
the person who actually uses a particular product





End use
the application or function for which something is designed or for which it is ultimately used

End-User/End-Use Controls

INTREDEX™

❖ Prohibits exports, reexports and transfers in-country of items for various reasons:

- ❖ Nuclear end-uses (Part 744.2) 
- ❖ Unmanned Aerial Vehicles, missiles and rockets (Part 744.3)
- ❖ Chemical and Biological weapons uses (Part 744.4)
- ❖ Maritime Nuclear Propulsion (Part 744.5) 
- ❖ Certain cameras, systems, or related components (Part 744.9)



Copyright © Intredex

What Else for End-User/End-Use Controls?

INTREDEX™

- ❖ Prohibits exports, reexports and transfers in-country of items for various reasons:
 - ❖ Certain entities in Russia (Part 744.10)
 - ❖ Certain foreign aircraft or vessels (Part 744.7)
 - ❖ Military end-use/end-user to the P.R.C., Russia and Venezuela (Part 744.21)
 - ❖ Microprocessors to military users and uses in Country Group D:1 (Part 744.17)



If you know or are informed
Refer to Part 744 for other controls

Copyright © Intredex

Check the Parties to the Transaction

INTREDEX™

- ❖ Lists to Check at minimum:
 - ❖ BIS Denied Persons List
 - ❖ BIS Entity List
 - ❖ BIS Unverified List
 - ❖ OFAC Lists (SDN, Non-SDN, SSI, etc.)
 - ❖ Dept. of State – Nonproliferation Sanctions
 - ❖ Debarred List

Lists are updated Frequently!

Conducting a business with these entities & persons w/o prior U.S. Government authorization can violate the Export Control Laws

Copyright © Intredex

What are the Red Flags?

INTREDEX™

- ❖ Part 732, Supp. 3
- ❖ Possible indicators that a diversion might be planned by the customer contrary to the law
- ❖ Abnormal or suspicious circumstances, examples:
 - ❖ Customer is evasive about destination or use
 - ❖ Customer pays cash
 - ❖ Product capabilities do not fit into the customer's business or to destination country's infrastructure
 - ❖ Customer rejects after-sale onsite support



ITAR Compliance Milestones

INTREDEX™

- Setup and maintain an ITAR export compliance program
- Appoint Empowered Official(s) and designated compliance personnel
- Identify where exactly you can apply the compliance controls in the development, manufacturing and export/distribution process
- Understand the applicable controls and required authorizations
- Train employees on export compliance controls
- Perform periodic assessments

Copyright © Intredex 20

Empowered Official (Part 120.25)

INTREDEX[®]

- Directly employed by the company/organization or a subsidiary
 - Legally empowered in writing by the applicant to sign license applications or other requests
 - Understands the provisions and requirements of the various export control statutes and regulations, and the liabilities and penalties
- Having authority in the following:
 - Policy or management
 - Inquiry of any aspect of a proposed export or temporary import by the applicant
 - Verify the legality of the transaction and the accuracy of the information to be submitted
 - Refuse to sign any license application or other request for approval without prejudice or other adverse recourse

Copyright © Intredex 21

ITAR Registration (Part 122)

INTREDEX[®]

- Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services must register with DDTC
- Exemptions:
 - Officers and employees of the U.S. Government acting in an official capacity;
 - Persons whose activity is confined to the unclassified technical data only; (needs to register if they need export license/approval)
 - Persons whose activities are licensed under the Atomic Energy Act of 1954, as amended; or
 - Persons who engage solely for experimental or scientific purposes, including R&D. (needs to register if they need export license/approval)



Copyright © Intredex 22

ITAR Registration (cont'd)

INTREDEX[®]

- Registration is an annually repeated/renewed process
- Must submit renewal requests at least 30 days but no earlier than 60 days prior to the expiration date
- Lapse in registration?
- Some activities require immediate (within 5 days) notification of DDTC
- DDTC must be notified in advance, in case of sale or transfer of the company, merger, acquisition, or another substantial change

Copyright © Intredex

Defense Articles & Services (Part 120)

INTREDEX[®]

Specifically designed, developed, configured, adapted or modified for a military application and

- Does not have predominant civil applications, and
- Does not have performance equivalent to those used for civil applications

Is specifically designed, developed, configured, adapted or modified for a military application, and has significant military or intelligence applicability



Copyright © Intredex 24

U.S. Munitions List (Part 121.1)

INTREDEX™

1. Firearms, Close Assault Weapons and Combat Shotguns
2. Guns and Armament
3. Ammunition/Ordnance
4. Launch Vehicles, Missiles, Rockets, Torpedoes, Bombs, and Mines
5. Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
6. Surface Vessels of War and Special Naval Equipment
7. Ground Vehicles
8. Aircraft and Related Articles
9. **Military Training Equipment and Training**
10. Personal Protective Equipment
11. Military Electronics

U.S.
Munitions
List
(USML)

Copyright © Intredex 25

U.S. Munitions List (cont'd)

INTREDEX™

12. Fire Control, Range Finder, Optical and Guidance and Control Equipment
13. Materials and Miscellaneous Articles
14. Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
15. Spacecraft and Related Articles
16. Nuclear Weapons Related Articles
17. Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
18. Directed Energy Weapons
19. Gas Turbine Engines and Associated Equipment
20. Submersible Vessels and Related Articles
21. Articles, Technical Data, and Defense Services Not Otherwise Enumerated

U.S.
Munitions
List
(USML)

Copyright © Intredex 26

U.S. Munitions List (Category IX)

INTREDEX™

Category IX - Military Training Equipment and Training

(a) Training equipment, as follows:

- (6) Training devices specially designed to be attached to a crew station, mission system, or weapon of an article controlled in this subchapter;
- (7) Anti-submarine warfare trainers;
- (8) Missile launch trainers;
- (9) Radar target generators;
- (10) Infrared scene generators; or
- (11) Any training device that:
 - (i) Is classified;
 - (ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or
 - (iii) Is being developed using classified information.

U.S.
Munitions
List
(USML)

Copyright © Intredex 27

U.S. Munitions List (Category IX)

INTREDEX™

Category IX - Military Training Equipment and Training

(b) Simulators, as follows:

- (1) System specific simulators that replicate the operation of an individual crew station, a mission system, or a weapon of an end-item that is controlled in this subchapter;
- (4) Software and associated databases not elsewhere enumerated in this subchapter that can be used to model or simulate the following:
 - (i) Trainers enumerated in paragraph (a) of this category;
 - (ii) Battle management;
 - (iii) Military test scenarios/models; or
 - (iv) Effects of weapons enumerated in this subchapter; or

U.S.
Munitions
List
(USML)

Copyright © Intredex 28

U.S. Munitions List (Category IX)

INTREDEX™

Category IX - Military Training Equipment and Training

(b)(5) Simulators, as follows:

- (i) Are classified;
- (ii) Contain classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or
- (iii) Are being developed using classified information.

U.S.
Munitions
List
(USML)

Copyright © Intredex 29

U.S. Munitions List (Category IX)

INTREDEX™

Category IX - Military Training Equipment and Training

(e) Technical data and defense services:

- (1) Directly related to the defense articles enumerated in paragraphs (a) and (b);
- (2) Directly related to the software and associated databases enumerated in paragraph (b)(4) of this category even if no defense articles are used or transferred; or
- (3) Military training not directly related to defense articles or technical data enumerated in this subchapter.

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

U.S.
Munitions
List
(USML)

Copyright © Intredex 30

Commodity Jurisdiction (Part 120.4)

INTREDEX™

What if the end-use/function is unclear?



- Submit Commodity Jurisdiction (CJ) analysis request to DDTC via *Defense Export Control and Compliance System (DECCS)*
- Electronics submission of DS-4076 Application package
- Per 22 CFR 120.4(b), DDTC registration is not required for CJ request
- Requires manufacturing background and sales information
- Manufacturer can submit. In case an applicant is different, letter of authorization from the manufacturer is required
- Review timeline is generally 6-8 weeks

Copyright © Intredex

Technical Data: ITAR or EAR?

INTREDEX™

- ☐ Look for a **defense article** that is **directly related** to the data or technology at hand
- ☐ If found, and the article was specifically designed, adapted, configured, or adapted for military or space purposes then the related data or technology will probably be ITAR controlled
- ☐ If not found, then directly related technical data, technology or manufacturing equipment cannot be ITAR controlled
- ☐ Watch for markings and labels on data, e-mail and in computer systems

Copyright © Intredex

COTS and ITAR

INTREDEX™

- ❑ COTS items that are not specially designed, modified, configured or adapted for a military end-use or intelligence, and not enumerated in USML, are not subject to ITAR
- ❑ Is it really COTS?
 - ❑ It is the distinction between something out of the catalog versus something custom made

Copyright © Intredex

Case Studies

INTREDEX™

Case Study

A US based company is involved in a US Air Force contract where it developed software for intercept receivers, jamming equipment, and UAVs.

Is the item subject to the EAR/ITAR?

Same company is looking for ways to sell the slightly modified version of the software to Italian Air Force.

Is the item subject to the EAR/ITAR?

A few years later, company re-used some components of the voice interception in another software package and offered to the commercial market.

Is the item subject to the EAR/ITAR?

Copyright © Intredex

Software and Technology Controls

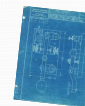
INTREDEX™



Types of Technology

INTREDEX™

- ❖ Information on Web sites
- ❖ Conversations
- ❖ Manuals
- ❖ Outline Drawings
- ❖ Plant Visits
- ❖ External Reviews
- ❖ Proposals
- ❖ Test Data/Evaluation
- ❖ Symposium/Public Presentations




- ❖ Faxes
- ❖ Sketches
- ❖ Photographs
- ❖ Plans/Charts
- ❖ Instructions
- ❖ Specifications
- ❖ Brochures and Data Sheets
- ❖ Blueprints



Copyright © Intredex 36

Exporting Technology and Software INTREDEX[®]

- ❖ **Actual Shipment and Transmission to**
 - Customers and Subcontractors
 - Foreign affiliates
 - Suppliers and Consultants
 - Universities,...
- ❖ **of the following**
 - Development or Production technology and/or software
 - Sales data and documentation
- ❖ **Mutual Research, Design, Production or Testing platforms**
 - Electronic data transfer and sharing
- ❖ **Shared facilities and labs with external parties**



Copyright © Intredex 37

Exporting Technology and Software INTREDEX[®]

- ❖ **Deemed Export (Release to a Foreign Person)**
 - **Hiring Foreign Person Permanently or Temporarily**
 - Employees
 - Contractors
 - Co-op/Interns
 - Visiting Researchers/Professors
 - **Access of Foreign National Visitor to Technology or Software**
 - Visual tour
 - Conversations/Discussions
 - Business presentations/meetings



Copyright © Intredex 38

Case Studies INTREDEX[®]

❑ Case Study


A German engineer and a British engineer are sitting in a plane from San Francisco to Shanghai. The plane is flying over the Pacific ocean. They begin discussing a project details. The technology they are discussing is U.S. origin.

Is their discussion subject to the EAR?

If subject to the EAR, is it a violation if a Russian national passenger sitting behind starts eavesdropping?

Copyright © Intredex

Tech Transfer Export Decision Tree INTREDEX[®]



❖ **Is the Technology/Software Subject to Export Administration Regulations (EAR) or ITAR?**

Jurisdiction? EAR vs. ITAR

- Check #1- Defense services on certain dual use items?
- Check #2- Public Availability?
- Check #3- Fundamental Research?

Copyright © Intredex 40

Publicly Available Technology

INTREDEX™

Do not require a license, some examples include:

- ❖ Tech or SW already published or will be published (excluding EAR controlled encryption technology & software)
- ❖ Resulting technology from the fundamental research
- ❖ Educational technology (e.g., textbooks, open literature, books, journals, etc.)
- ❖ Technology used in the patent applications
- ❖ Released technology at open conferences, meetings, seminars, trade shows or other open gatherings



Copyright © Intredex 41

Case Studies

INTREDEX™

Case Study

Copyright © Intredex

Fundamental Research

INTREDEX™

Release/Submission of Basic and Applied Research information will not be subject to the EAR & ITAR:

- ❖ Information is ordinarily published and shared with the broad scientific community
- ❖ No non-disclosure or other restricting conditions are attached to the technology



Restricted foreign nationals can access to the controlled fundamental research technology with no license required only if;

- ❖ All resulting technology should be published and meeting above conditions

Copyright © Intredex 43

Foreign Person Employees

INTREDEX™

- Foreign person employees in the U.S. who will potentially access to U.S.M.L. defense articles or technical data must be licensed (DSP-5) by DDTC
- Technical Assistance Agreement may also be required in certain cases



Copyright © Intredex 44

Foreign Person Employees (cont'd)

INTREDEX[®]

Important Things in Licensing Process

- Specific purpose (end-use) for which the technical data is required
- Logical connection between the person's need for the technical data and the job description
- Nationality of the foreign person matters in speed of license approval
- Consistency between the foreign person's address and U.S. visa issuing country matters

Copyright © Intredex 45

Visitor Process

Should address the following topics

- Countries of Concern
- Visit of Country of Concern Nationals
 - Employees of foreign affiliates
 - Employees of Customers, Subcontractors, Suppliers, Partners, Universities,...
 - Representatives of foreign government offices
- Screening against the **Sanctioned Party Lists**
- Analysis of the type and controlled status of the technology
- Export License and/or License Exception determination steps
- **Technology Control Plan (TCP)**



Copyright © Intredex 46

Trade Shows & Exhibitions

INTREDEX[®]

- Export authorizations for exhibitions and trade shows can take various forms
- SEVERAL authorizations may be required!
- Consider what is involved:
 - Hardware?
 - Technical Data?
 - Defense Services? (Demos)



Copyright © Intredex 47

Trade Shows & Exhibitions (cont'd)

INTREDEX[®]

- Some applicable License Exemptions:
 - Part 123.16 (b)(4)
 - Models and mock-ups that are non-operable and do not reveal any technical data and do not contain controlled components.
 - Part 123.16 (b)(5)
 - Temporary export for public exhibition, trade show, air show or related event if that article was previously licensed (DSP-73) for public exhibition
 - Part 123.4 (a)(3)
 - Temporary import (and subsequent export) of U.S. – origin defense items without a license, for a period of up to 4 years, for demonstration or marketing. (Other temporary imports are under DSP-61 license)

Copyright © Intredex 48

Technology/Tech Transfer Control Plan

INTREDEX[®]

- Often required by the DDTC & Defense Technology Security Administration (DTSA) for approval of a license or agreement
- Can be Broad or Program/End-Use Specific
- Proof of the intention to maintain appropriate controls to comply with terms of export authorization
- Outlines the procedures and requirements for transfer of technical data to U.S. and non-U.S. persons



Copyright © Intredex 49

Hosting U.S. Technology in Cloud

INTREDEX[®]

EAR Only: As long as all of below conditions are met:

- ❖ Technology & Software is Unclassified
- ❖ Secured using "end-to-end encryption"
- ❖ Secured using modules compliant with FIPS 140-2 and supplemented by other controls consistent with NIST guidance
- ❖ Not intentionally stored in country listed in Country Group D:5 or in Russia
 - ❖ D:5 - Supplement 1 to Part 740: U.S. Arms Embargoed Countries

BEWARE! This Safe Harbor rule does not apply to ITAR controlled technical data/software

Copyright © Intredex 50

When Authorization is Needed?

INTREDEX[®]



Regardless of location and time, these activities will require one or more of the following:

- *A License;*
- *An Agreement;*
- *Applicable License Exemption*

* Authorizations required for re-exports/disclosures outside of the U.S. is excluded from this diagram

Copyright © Intredex

Export License (Part 123)

INTREDEX[®]

- DDTC issued & signed document –generally valid for 4 years– which authorizes:
 - Export (permanent or temporary) of a specific U.S. Munitions List (USML) hardware or data
 - Only to the identified end user(s)
 - Only via identified brokers/forwarders
 - For the specific end use

When new license is required?

- ❖ Amendments possible for typos, freight forwarder change
- ❖ Any change to quantity, end-use, end-user, foreign consignee or duration requires new license

Copyright © Intredex 52

Export License Types

INTREDEX[®]

DSP-5 Permanent Export of Unclassified Defense Articles and related Unclassified technical data
DSP-6 is used to amend

DSP-61 Temporary Import of Unclassified Defense Article
DSP-62 is used to amend

DSP-73 Temporary Export of Unclassified Defense Article
DSP-74 is used to amend

DTrade
Electronic Filing

Copyright © Intredex

Export License Types (cont'd)

INTREDEX[®]

DSP-83 Nontransfer and Use Certificate for Foreign persons; requirement for license app for SME and classified items

DSP-85 Export and temporary imports of classified items and technical data

DSP-94 Authority to Export Defense Articles sold under the Foreign Military Sales (FMS) Program

DSP-119 Amendment, may only be used to amend the DSP-85

Downloadable

Copyright © Intredex

Agreements (Part 124)

INTREDEX[®]

- Activities Frequently Requiring Agreements
 - Supporting Direct Commercial Sales to Foreign Parties
 - Providing Overseas Maintenance or Training Support
 - Technical Studies, Evaluations, Demonstrations or Consultations with Foreign Parties

Copyright © Intredex

Agreements (cont'd)

INTREDEX[®]

- Activities Frequently Requiring Agreements
 - Release of Manufacturing Data or Rights
 - Efforts to Import Technology from Abroad
 - Supporting a Foreign Military Sales Case (Beyond scope of LOA)
 - Supporting U.S. government-Sponsored Foreign Contracts

Copyright © Intredex

Agreements (cont'd)

INTREDEX™

- Examples of Limited Services which can use a DSP-5 license pursuant to §124.1 instead of an Agreement
 - Short-term training
 - Limited duration/low technology integration work
 - Limited duration/low technology repair
 - Activities supporting a U.S. government contract (including subcontractor flow down) when the U.S. party does not have any contractual relationship with the foreign party
 - Space-Related Insurance Activities, unless SME technical data will be transferred

Copyright © Intredex

Agreements (cont'd)

INTREDEX™

Technical Assistance Agreement (TAA)

- Agreement for performance of defense service and/or disclosure of technical data
- Does NOT grant a right or license to manufacture defense article
- Can include assembly of defense articles
- Does NOT convey production rights or manufacturing know-how

Copyright © Intredex

Agreements (cont'd)

INTREDEX™

Manufacturing Licensing Agreement (MLA)

- Authorizes manufacture of defense articles abroad
- Involves the transfer of technical data or defense services

Warehouse and Distribution Agreement (WDA)

Agreement to establish a warehouse or distribution point abroad

Copyright © Intredex

License Exemptions

INTREDEX™

Limited amount of License Exemptions apply

- Specific conditions apply before using an Exemption
- Records must be retained
- Temporary imports (Part 120.4) if the item
 - Is to be serviced,
 - Is to be enhanced or incorporated into another item authorized to export
 - Is to be exhibited, demo or marketed in the U.S.
 - Is being returned after rejected as a permanent import
 - Is approved under the U.S. Foreign Military Sales (FMS)
- Unclassified models or mock-ups (Part 123.16)
- Trade show and exhibitions (Part 123.16)

Copyright © Intredex

License Exemptions (cont'd)

INTREDEX™

- Technical data submission in furtherance to approved MLA and TAA (Part 125.4.(b)(2))
- Technical data previously authorized for export to the same recipient (Part 125.4.(b)(4))
- Basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient (Part 125.4.(b)(5))
- Technical data for use by U.S. persons overseas (Part 125.4.(b)(9))
- Technical data approved for public release by the cognizant U.S. Government department or agency or Office of Freedom of Information and Security Review (Part 125.4.(b)(13))

Copyright © Intredex

Licensing Process

INTREDEX™

- **Required information include:**
 - ❖ DDTC Registration info
 - ❖ Applicant information
 - ❖ Name, address, phone numbers
 - ❖ Name and address of the recipients, ultimate consignees and end-users
 - ❖ Name of used freight forwarders
 - ❖ Probable port of exit
 - ❖ U.S. Government agency which will use and/or knowledgeable about the item
 - ❖ Item's export history, if applicable past authorizations

Copyright © Intredex

Proscribed Countries (Part 126.1)

INTREDEX™

License/authorization denial

Belarus
Burma
China
Cuba
Iran
North Korea
Syria
Venezuela

License/authorization denial except for some cases

Afghanistan
Central African Republic
Cyprus
Democratic Republic of Congo
Eritrea
Haiti
Iraq
Lebanon
Libya
Somalia
Sudan
Zimbabwe

Copyright © Intredex

Fines and Penalties for Violations

INTREDEX™

- **Violation of ITAR**
 - Civil Penalties:
 - Up to \$ 1,134,602 fine per violation
 - Criminal Penalties:
 - Up to 10 years imprisonment and \$1,000,000 fine per violation
- **Other sanctions may apply**
 - Consent agreement
 - Debarment
 - Seizure/forfeiture of goods

Copyright © Intredex 64

Case Studies

INTREDEX™

Case Study

Company B plans to manufacture a product in the UK with the technology developed in the UK in collaboration with U.S. engineers incorporating U.S. ITAR controlled technology. The amount of the U.S. content in the final product is 20%.

Is the UK technology subject to the ITAR? explain

Copyright © Intredex

DFARS-ITAR Flowdown §225.79 and 48 CFR 252.225.7048

INTREDEX™



- DFARS requires that a clause “*flowdown clause*” mandating strict compliance with U.S. export control laws and regulations be included in all DoD solicitations and contracts

- **Subcontractor:** All suppliers, distributors, vendors, etc.

- **Subcontract :** All purchase orders, task orders, contracts,..

“The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for Contractors to register with the Department of State in accordance with the ITAR.”

Copyright © Intredex 66

DFARS ITAR Flowdown (cont'd)

INTREDEX™



How Subcontractors Can be Compliant?

- ❖ Develop written export policies and procedures (EAR and ITAR)
- ❖ **Determine whether the company is required to register with DDTC**
- ❖ Properly classify items, technology and services for licensing purposes
- ❖ **Implement access controls**
- ❖ **Apply for licenses if necessary**
- ❖ **Enforce and publish the export policy**
- ❖ **Record Retention ...**
- ❖ Record Retention ...
- ❖ Record Retention ...

Copyright © Intredex 67

DFARS Rule 252.204.7012

INTREDEX™

DFARS requires

- **Safeguarding Covered Defense Information and**
- **Cyber Incident Reporting**

Cyber Incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Controlled Technical Information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination.

Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24

Copyright © Intredex 68

DFARS Rule 252.204.7012

INTREDEX™

DFARS requires

- Safeguarding Covered Defense Information and
- Cyber Incident Reporting

Covered Defense Information (CDI) means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

Is My Export Controlled Info a CDI?

INTREDEX™

It is treated as CDI when it is

Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract;

or

Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract



Copyright © Intredex 70

DFARS: Cloud Computing

INTREDEX™

DoD Cloud Computing Security Requirements Guide (SRG) applies when

- ✓ Cloud solution is being used to process data on DoD's behalf,
- ✓ DoD is contracting directly with a cloud service provider (CSP) to host or process data in the cloud, or
- ✓ Cloud solution is being used for processing that DoD normally conducts but has outsourced



Using Internal CSP?

NIST SP 800-171 standards apply when a contractor uses an internal cloud as part of its internal enterprise network systems

Copyright © Intredex 71

DFARS: Cloud Computing

INTREDEX™

Using External CSP?

Requirements equivalent to the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline apply

- Must confirm that the CSP complies with requirements in DFARS 252.204-7012



Copyright © Intredex 72

What are the Requirements?

INTREDEX™



- ❖ Unclassified DoD information and CDI are safeguarded from cyber incidents by implementing **NIST 800-171**
- ❖ Any loss of this information is assessed and minimized via the cyber incident reporting and damage assessment processes.
 - ❖ DIBNet portal within 72 hours of discovery
- ❖ Develop **SYSTEM SECURITY PLAN**
- ❖ Develop **INCIDENT RESPONSE PLAN**
- ❖ Ensure to have **INFOSEC PROCEDURES**

Copyright © Intredex 73

NIST SP 800-171 Top 2 Requirements

INTREDEX™

1. Access Control

- Limit system access to authorized users and devices
- Limit system access to the types of transactions and functions

2. Awareness and Training

- Everyone is made aware of the security risks, standards and procedures related to security
- Personnel are trained to carry out their assigned information security-related responsibilities

74

NIST SP 800-171 Top 2 Requirements

INTREDEX™

3. Audit and Accountability

- Create and retain system audit logs and records
- Actions of system users should be uniquely traced to those users

4. Configuration Management

- Maintain baseline configurations and inventories of organizational systems
- Enforce security configuration settings for information technology products

75

NIST SP 800-171 Top 2 Requirements

INTREDEX™

5. Identification and Authentication

- Identify system users, processes acting on behalf of users, and devices
- Authenticate (or verify) the identities of users, processes, or devices

6. Incident Response

- Establish an operational incident-handling capability
- Track, document, and report incidents to designated officials and/or authorities both internal and external

76

NIST SP 800-171 Top 2 Requirements

INTREDEX™

7. Maintenance

- Perform maintenance on organizational systems
- Controls on the tools, techniques, mechanisms, and personnel used to conduct system maintenance

8. Media Protection

- Protect (i.e., physically control and securely store) system media containing CUI, both paper and digital
- Limit access to CUI on system media to authorized users

77

NIST SP 800-171 Top 2 Requirements

INTREDEX™

9. Personnel Security

- Screen individuals prior to authorizing access to organizational systems containing CUI
- Systems containing CUI must be protected during and after personnel actions such as terminations and transfers

10. Physical Protection

- Limit physical access to systems, equipment, and the operating environments to authorized individuals
- Protect and monitor the facility and support infrastructure for organizational systems

78

NIST SP 800-171 Top 2 Requirements

INTREDEX™

11. Risk Assessment

- Periodically assess the risk to organizational operations
- Scan for vulnerabilities in organizational systems and applications periodically and when identified

12. Security Assessment

- Periodically assess the controls in systems to determine if the controls are effective in their application
- Plan of action designed to correct deficiencies and eliminate vulnerabilities in systems

79

NIST SP 800-171 Top 2 Requirements

INTREDEX™

13. System and Communications Protection

- Monitor, control, and protect communications
- Architectural designs, software development techniques, and systems engineering principles that promote effective information security within organizational systems.

14. System and Information Integrity

- Identify, report, and correct system flaws in a timely manner.
- Provide protection from malicious code at designated locations within organizational systems.

80




Questions

INTREDEX[®]

Contact Us
 1511 E. State Rd 434
 Suite 2001
 Winter Springs, FL 32708

Phone: 321-244-2626
E-mail: oerdem@intredex.com



82