

Industry Panel Best Practices:

Krista Larsen, FLIR Systems - Portland, OR

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Jim Dickeson, Lynden International - Freight Forwarder - Seattle, WA


Moderator: Nelson Dong, Dorsey & Whitney LLP - Seattle, WA

Robert Seay – Biography

Bob is the Manager, Contracts & Export Compliance, for Crane Aerospace, Inc., and oversees compliance activities at the company's sites in Seattle, WA, Burbank, CA, and Cleveland, OH.


Previous to joining Crane in 2001, Bob worked in various business, engineering, contracts, program management, and executive capacities for several technical companies, including Chevron, AT&T, Tidemark, and Art Anderson, and was located in several domestic and overseas locations including Indonesia, Brazil, and Angola.

Bob graduated with a BSEE from Washington State University in 1978 and earned an MBA from Seattle University in 1997. He has been active in Export Compliance activities the past few years with the Aerospace Industries Association and with the Society for International Affairs.




Export Compliance: Technical Data

Training Module
August 14, 2009




What is Technical Data? (per the Regulations)



▲ Technical Data is:

- Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of hardware. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.
- Software directly related to hardware, including but not limited to, the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair.

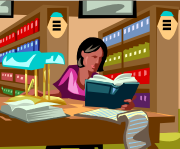
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What is not Technical Data (per Regulations)

▲ Technical Data is not:

- Information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges, universities or information in the public domain.
- Basic marketing information on function or purpose or general system descriptions of hardware.




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What is Technical Data? (in the Aerospace Group)


- ▲ The definition from the regulations is very broad and covers just about any proprietary technical information about our products.
- ▲ Much of the information within our TeamOne system meets the definition of Technical Data.
- ▲ When in doubt, assume that any of our proprietary technical information and software related to a hardware product is Technical Data.



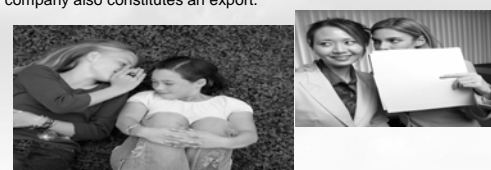
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What is an export of Technical Data?



- ▲ Disclosure of Technical Data by any means (via documents, via conversation, via display of products, etc.) to any Foreign Person anywhere in the world (even in the USA) constitutes an export of Technical Data.
- ▲ Disclosure to a US person that works for, or represents, a foreign company also constitutes an export.

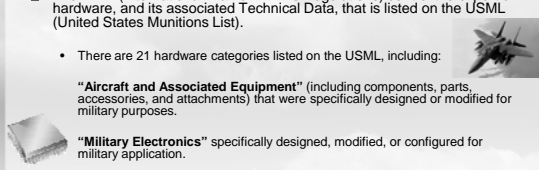


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What regulations control export of Tech Data?

- ▲ The **EAR** (Export Administration Regulations) control the export of all of our hardware, and its associated Technical Data, except for the hardware and data that is controlled by the ITAR regulations.
- ▲ The **ITAR** (International Traffic In Arms Regulations) control the export of hardware, and its associated Technical Data, that is listed on the USML (United States Munitions List).
 - There are 21 hardware categories listed on the USML, including:
 - “**Aircraft and Associated Equipment**” (including components, parts, accessories, and attachments) that were specifically designed or modified for military purposes.
 - “**Military Electronics**” specifically designed, modified, or configured for military application.



These 2 categories cover 99% of all the types of hardware we produce at Lynnwood, Burbank, and Elyria.

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What to Worry About



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What to worry about under ITAR

- ▲ You need an export license to be approved by the US government **BEFORE** you export ITAR-controlled Technical Data to any foreign person or country.
- ▲ Please re-read the previous statement.
- ▲ Please re-read the first statement.
- ▲ Thank you.

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Marking of Technical Data



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Marking of Technical Data




- ▲ It is an industry standard and Aerospace Group policy (AGIS 20-087) to mark all Technical Data transmitted to US and foreign customers or suppliers with the appropriate EAR or ITAR statement that is posted on SiteLink. This is how the customer or supplier will know which regulation controls the data.
- ▲ Here is the EAR statement: **"This document contains Data controlled by the U.S. Export Administration Regulations. Diversion or use contrary to U.S. law is prohibited."**
- ▲ Here is the ITAR statement: **"This document contains Data controlled by the U.S. International Traffic in Arms Regulations. Diversion or use contrary to U.S. law is prohibited."**

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TeamOne Data Marking

- ▲ In late 2009, a project to automatically mark either the EAR or ITAR statement on certain types of documents contained within TeamOne was scheduled to go live. This should greatly reduce the risk of Technical Data being released without an export-compliance marking. It should also reduce the risk of unauthorized export of ITAR-marked data.
- ▲ However, Technical Data not automatically marked must be manually marked by the person initiating or executing the export of such data.






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Avenues for Tech Data "Escapes"

- ▲ iSupplier
- ▲ Tech Pubs / Configuration Management
- ▲ Engineering / Program Management
- ▲ Sales / Business Development
- ▲ Business and Order Management
- ▲ Foreign Sales Reps
- ▲ Field Service Reps



- ▲ Each organization's Vice President and its Directors and Managers need to ensure proper controls are in place to prevent any member of their organization from initiating or executing an unauthorized export of Technical Data.

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When in Doubt

- ▲ If you are unsure about whether an action you are about to take might violate an Aerospace Group export compliance policy or US government export regulation, **STOP, until you have verified that the action is in compliance with policy and regulations.**

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Tools

- ▲ Resources, including AGIS instructions, guidelines, templates, and tools are available to help you understand and comply with export compliance regulations. These can be found on the SiteLink Home Page and Export Compliance page.
- ▲ Every work team is responsible for incorporating references to export compliance requirements, as well as appropriate controls for preventing violations, into the standard work for each job function. If you feel the standard work for your individual job is lacking adequate export compliance controls, advise your supervisor immediately and initiate corrective action.

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ANSWER KEY

Test of Export Compliance Knowledge about Technical Data Transfer 10-21-09

- 1) All of our product technical data falls under the control of either the _____ or _____ export regulations.
 - a) ITAR or FAA
 - b) EAR or ITAR**
 - c) FAR or DFARS

- 2) If a hardware product is classified as ITAR-controlled, its associated technical data will be classified as:
 - a) EAR-controlled
 - b) You can't tell
 - c) ITAR-controlled**

- 3) If one of our commercial products that is EAR-controlled is modified solely to meet the requirements of a military application, the modified product and data will be controlled by:
 - a) EAR
 - b) ITAR**
 - c) EAR if used on a commercial application, ITAR if used on a military application

- 4) Our EAR-Controlled products and associated technical data can be exported to Iran and Cuba without a license, but our ITAR-Controlled products and data cannot be.
 - a) True; no licenses are ever required to export our EAR-controlled products and data
 - b) False; licenses are required to export our EAR-controlled products to certain countries**

- 5) You disclose technical data about one of our products to a non-US person in a conference room in Lynnwood, WA. Has an export of data occurred that is subject to US export regulations?
 - a) Yes**
 - b) No
 - c) Only if there is no export license in place

- 6) Must a license from the Department of State be in place before you can export ITAR-controlled technical data?
 - a) Yes**
 - b) No
 - c) Not if you are just discussing the data on the phone with your foreign customer

- 7) You can look up the EAR or ITAR classification of all of our products (by part number) on the Export Classification Inquiry Tool, accessible from the SiteLink Export Compliance page.
 - a) True**
 - b) False

- 8) It is Aerospace Group policy (AGIS 20-087) to mark all technical data transmittals to customers or suppliers with the appropriate EAR or ITAR statement that is posted on SiteLink.
- a) **True; this is how the customer or supplier will know which regulation controls the data.**
 - b) False; if you don't know which regulation controls the data, you don't have to mark it.
 - c) Not if the data is being sent to a US company.
- 9) It is OK to transmit or discuss ITAR-controlled technical data with our customers, as long as a license from the Dept of State is in place no later than 90 days after such disclosure.
- a) True, especially in the early phases of a new program, before any hardware has been shipped.
 - b) **False, no such disclosures can be made before an approved license is in place.**
- 10) If you are unsure about whether an action you are about to take might violate an Aerospace Group export compliance policy or US government export regulation, what should you do, if you have to complete the action immediately to meet a critical customer deadline?
- a) Proceed with the action, satisfy the customer, and ask someone about it later.
 - b) **Hold up the action until you have verified that the action is in compliance with policy and regulations.**
- 11) The ITAR definition of "technical data" includes:
- a) Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.
 - b) Software directly related to defense articles, including but not limited to, the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair.
 - c) Information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges, universities or information in the public domain.
 - d) Basic marketing information on function or purpose or general system descriptions of defense articles.
 - e) **Both a and b above.**
- 12) Most export licenses that authorize you to export hardware automatically authorize you to export all of the associated technical data.
- a) True
 - b) **False**

13) One type of ITAR export license that we often obtain at the start of a new development program is called a “Technical Assistance Agreement” (TAA). The TAA typically allows for the transfer of technical data between specific parties that have signed the TAA and is typically valid for 10 years. Does the ITAR require that records be kept of each individual verbal, visual, and written export of technical data made under each TAA?

a) **Yes, and we must make the records immediately available to the government upon request**

b) No

14) In addition to requiring us to apply for a license to export our ITAR-controlled products and technical data to China (which under current U.S. policy would almost certainly be denied), the export regulations also require us to apply for a license to export EAR-controlled products and data to China if we have reasonable grounds to believe that those products or data would be used or diverted for a military end-use.

a) **True**

b) False