



ACTIVESTATE EXPORT COMPLIANCE POLICY (“POLICY”)

ActiveState Software Inc. (“ActiveState”) and its affiliates are committed to strict adherence to all U.S. and Canadian export control laws and regulations including the Export Control Regulation (EAR), and International Traffic in Arms Regulation (ITAR) in U.S.; Export and Imports Permits Act, Canada, Export Control List published by Department of Foreign Affairs, Canada; and United Nations Arms Trade Treaty (ATT) as well as other regulations relating to international dealings (collectively “Export Control Laws”).

ActiveState is committed to full compliance with Export Control Laws but not limited to the regulations administered and enforced by the U.S. Department of Homeland Security, U.S. Department of State, the U.S. Department of Commerce, Bureau of Industry and Security, U.S. Department of Treasury, Office of Foreign Asset Control. Under no circumstances shall ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers export any technical data, or software contrary to U.S. and Canadian export control laws and regulations.

There are various administrative, civil, and criminal penalties associated with the violations of Export Control Laws which may be imposed against ActiveState, or its End-Users, or any of the ActiveState’s Resellers or their End-Customers and/or individual employees for the violation of Export Control Laws. ActiveState has established and implemented this Policy to achieve compliance with the Export Controls Laws. This Policy can be used as a practical guide during day-to-day order processing and for selling or reselling of any ActiveState Services. It is imperative for every ActiveState employee or its End-Users any of the ActiveState Resellers or their End-customers to comply with this Policy.

- This Policy will be maintained and distributed by the ActiveState General Counsel and will be posted on the ActiveState’s website.
- This Policy may be revised without further notice and it is your responsibility to ensure compliance with the latest version of this Policy.

TABLE OF CONTENTS

No.	CONTENT	PAGE NO.
1.	Definitions	3
2.	Introduction	4
3.	EXPORT CLASSIFICATION (U.S.) <ul style="list-style-type: none">- Determining Agency Jurisdiction- Classification of Products- Export Licensing Decisions and Processes- ITAR (U.S.)- Export Screening	5 7 8
4.	EXPORT CONTROL (CANADA) <ul style="list-style-type: none">- Destination And Origin Considerations	11 12
5.	Red Flag Indicators – Things to look out for in export transactions	14



DEFINITIONS

- Foreign Person is a person who is not a citizen or permanent resident of the U.S. or Canada.
- Reseller means any person or entity authorized by ActiveState to resell its Services to end customers or other entities.
- Services means ActiveState Platform.
- End-Customer means the end user who is either a person or an entity and who is contracted with the Reseller and uses ActiveState Services.
- End-User means the end user who is either a person or an entity and who is contracted directly with ActiveState and uses ActiveState Services.



INTRODUCTION

Adherence to export control laws and regulations is essential and any non-compliance may subject ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers to penalties, including fines, imprisonment, and loss of export privileges. Such penalties, or adverse publicity could seriously damage ActiveState' business. ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers will conduct its export-related activities in compliance with the Export Control Laws.

This Policy is particularly important for ActiveState or its End-Users' or any of the ActiveState Resellers' or their End-customers' employees who are directly involved with exports, such as those who participate in the sale or shipment of Services or technical data to non-U.S./Canadian destinations.

Export can not only occur by shipping Services to another country, but also by other activities ("Deemed Export") such as:

- An ActiveState or its End-Users' or any of the ActiveState Resellers' or their End-customers' employee in possession of U.S. or Canadian technology engaging in technical discussions with a Foreign person irrespective of the place of discussion; or
- Foreign person touring facilities in U.S. or Canada; or
- Foreign person accessing technology of a U.S. or Canadian operating unit as an employee, consultant, or subcontractor.



EXPORT CLASSIFICATION (U.S.)

To be “export compliant,” ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers must know how its products fit within, and are affected by, export regulations. Each product or item must be reviewed to determine which government agency has export jurisdiction over the item, and hence controls the export. Additionally, the proper category or export classification of the item must be determined. Classification of products is important both for U.S. & non-U.S. companies whose government regulations include lists or annexes of export-controlled items. Both agency jurisdiction and export classification are essential in assessing whether an export license is required in order to ship the item.

Determining Agency Jurisdiction

The U.S. Department of Commerce’s Bureau of Industry and Security (BIS or Bureau) is charged with the development, implementation, and interpretation of U.S. export control policy for commercial and dual-use commodities, software, and technology (and related technical data). Dual-use items subject to BIS regulatory jurisdiction are mostly for commercial use but can also have military applications. The regulations governing exports of commercial and dual-use items are included in the Bureau’s Export Administration Regulations (EAR). These commercial and “dual-use” items are listed on the Commerce Control List (CCL) of the EAR.

Items which are “defense articles and services” (and related technical data) are controlled by the U.S. Department of State through its Directorate of Defense Trade Controls (DDTC).

Commercial items which have been specially modified for military use, even if the modifications or design changes are minor, may be considered “defense articles” controlled by the DDTC - even though the products are almost identical to commercial items. A “Commodity Jurisdiction” (CJ) request may be submitted to the Department of State to obtain an official determination whether an item is controlled for export by the Department of State or the Department of Commerce.

If the item is believed to be a defense product, service, or technical data, or if there is uncertainty whether it is controlled for export purposes by the Commerce Department or instead by the State Department, a Commodity Classification or Commodity Jurisdiction Request should be pursued prior to export.

Classification of Products

There are two principal ways of determining the classification of a U.S. item:

- Informal (Internal) Review - by review of the item (particularly its technical parameters) in conjunction with the Commerce Control List of the EAR and/or the U.S. Munitions List if the item is military or defense-related in character, or the applicable NRC regulations if it is nuclear-related. This review should include involvement of in-house technical personnel with knowledge of the product.
- Formal Review - by submission of a formal written request to the U.S. Government. The written request to BIS, termed a Commerce Classification Request, requires the submission via the Bureau’s on-line system called SNAP. The request should contain a description of the item, a recommended Export Control Classification Number (ECCN) for the item (or EAR99, if applicable), and an analysis of the technical parameters of both the item and the ECCN. Product brochures or data sheets, if available, should be included with the request, and a cover letter is also recommended - containing a description of the item(s) and the requester’s views as to why she/he considers a particular ECCN to be the correct category for the item.

Export Licensing Decisions and Processes

- Laws Governing Export Controls. The Export Administration Act (EAA) of 1979 as amended 50 U.S.C. app. §2401 - 2420 (EAA). EAA grants authority to various Federal agencies to regulate exports. The agencies in question include the United States Department of Commerce via the Bureau of Industry and Security and the U.S. Department of State via the Directorate of Defense Trade Controls.
- Commercial use items and items that are considered dual-use (i.e., items that have a defense application but may be used in a commercial setting are considered dual-use if they are not specifically designed for the



military), are governed by the Export Administration Regulations (EAR). The EAR is located in 15 C.F.R. part 730 et seq. A critical component of the EAR is determining the Company's Product's Export Control Classification Number (ECCN). ECCN numbers are derived from a matrix contained at 15 C.F.R. part 774 sup. 1. ECCN numbers are broken down into categories 0 through 9. Further defined by product groups such as equipment assemblies and components, materials, technologies and software.

- The ECCN denotes the type of export control imposed on an item. Export controls are imposed on items for various policy concerns including national security, technology, nuclear non-proliferation, foreign policy and crime control.
- Not all products have an ECCN number. Some products are removed from the EAR and are designated EAR 99. EAR 99 is a generic term indicating the government has not imposed a specific Export Control Classification Number.

*It is important to note that at the time of publishing this Policy ActiveState's Services are defined as EAR 99 and do not have export licensing requirements unless certain prohibitions apply. The prohibitions causing an item defined as EAR99 are listed in 15 C.F.R. §736.2(b).



ITAR (U.S.)

Part 121 of the regulations enumerates the items contained on the munitions list. In the event ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers are manufacturing a product for the defense department or an agency thereof and it is not one of the twenty specifically delineated items on the munitions list, ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers must consider whether or not your item falls under Category 21, "miscellaneous article". In Paragraph A of Category 21, the miscellaneous articles subject to the U.S. Munitions List is any article not specifically enumerated in other categories of the U.S. Munitions List which has substantial military applicability, and which has been specifically designed, developed, configured, adapted or modified for military purposes.

Regulation of Manufacturers of Defense Products of Services

Registration of manufacturers and exporters; 22 CFR §122.1(a) requires that manufacturers in the United States who engage in the business of manufacturing or exporting defense articles register with DDTC.

Commodity Jurisdiction Request

A commodity jurisdiction (CJ) is a request used to determine whether an item or service is subject to export licensing by the Department of Commerce or the Department of State (pursuant to the Directorate of Defense Trade Controls (DDTC)). While the Bureau of Industry and Security is the primary licensing agency under the Commerce Department for commercial use and dual-use exports, the DDTC licenses defense articles and services. In the event ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers cannot determine which export licensing body is the proper authority for submitting license applications, the company should request a commodity jurisdiction determination.



EXPORT SCREENING

U.S. Department of Commerce

Some transactions require that export licenses be obtained due to the nature of the product and the government controls imposed on the product's export to certain countries.

If the item to be exported is controlled by the U.S. Department of Commerce, product classification/country screening is performed by reference to the Commerce Control List (CCL) and the Commerce Country Chart (respectively, Part 774 and Supp. No. 1 to Part 738 of the EAR).

The complete CCL country chart can be found at [Commerce Control List Country Chart](#).

U.S. Department of State

If the item is controlled by the Department of State or the Nuclear Regulatory Commission, then the regulations of that agency must be followed (ITAR). In most cases, licenses will be required to ship any Department of State-controlled item to any destination.

Consolidated Screening List

The objective of the "Consolidated Screening List" (CSL) screen is to ensure that export transactions do not involve:

- persons whose export privileges have been denied by the U.S. Government; or
- certain other parties of concern.

Among the latter are "entities" that the U.S. Government has identified as involved in weapons proliferation activities and high risk of diversion; "specially designated nationals" who are considered to be part of the governments of embargoed or "of concern" countries; or persons involved in terrorist activities, war crimes, or narcotics trafficking. Note that "persons" and "entities" can include individuals, companies, and other organizations.

More information about Consolidated Screening list can be found at [Consolidated Screening List](#).

Denied persons do not have the privilege of making or participating in U.S. exports because they have violated export laws or regulations or are subject to United States embargos. Companies are prohibited from selling products/services to, or otherwise dealing with, a denied person in a transaction involving export or re-export of U.S. origin items. The specific restrictions imposed on a "denied person" vary; generally, they prohibit any involvement of that person in an export transaction involving a U.S. item. "Entities" on the Denied Persons/Entities List may not be involved in certain U.S. exports, particularly as consignee or end user of an item exported from the U.S., unless an export license is obtained for the export transaction.

Persons, who must be checked against the various lists noted above, include everyone known to be involved in the export - e.g., the ordering party, purchasing party, exporting party (including buyers who plan to export), re-exporting party, intermediate consignees, end-user, parties servicing U.S.-origin goods outside the U.S. banks, and freight forwarders and other transporting parties.

Diversions Risk Screen

This screen is performed to guard against a shipment being "diverted" from its initial destination to a prohibited destination e.g., transhipped or re-exported to a country that is embargoed or to which additional authorization would be required. §736.2(b)(10) of the EAR prohibits a person from exporting or re-exporting an item if the person has "knowledge" that a violation of the EAR or any license exception or any governmental order has occurred, or is about to occur, or is intended to occur in connection with the item.

Anti-Boycott Screen

This screen is used to ensure that export transactions comply with U.S. anti-boycott laws and regulations. The anti-boycott screen must be performed by ActiveState or its End-Users or any of the ActiveState Resellers or their End-customers. This is because the U.S. anti-boycott laws apply to non-U.S. companies under the U.S. parent if they are controlled by a U.S. company (and “control” is presumed if there is ownership). The U.S. anti-boycott laws extend to “activities in the interstate or foreign commerce of the United States,” and hence would include, for example, certain transactions involving items acquired from the U.S.

U.S. export control laws and regulations prohibit certain restrictive trade practices or activities which would implement boycotts sponsored or promoted by other countries and to which the U.S. government does not adhere. The regulations also require prompt reporting of certain boycott-related requests (see Part 760 of the EAR).

Prohibited activities under U.S. export anti-boycott laws include:

- A boycott-related refusal, or agreement to refuse to do business, or request that others refuse to do business with a boycotted country.
- Furnishing information about business relationships with boycotted countries or blacklisted persons.
- Discriminating against religion, race, sex, or origin.
- Furnishing information on the religion, race, sex, or national origin of a U.S. person in response to a boycott-related request.
- Implementing a letter of credit containing prohibited boycott language.
- U.S. tax laws also include provisions relating to international boycotts of Israel (see 26 U.S.C. § 999). These laws include reporting requirements for U.S. companies and their related (more than 50% owned) companies, both non-U.S. as well as U.S., having “operations” in, with, or related to boycotting countries and their nationals (“operations” is defined quite broadly and includes sales). Reports must be made to the U.S. Department of the Treasury on those operations and also on any participation in, or cooperation with, an international boycott or any request for such participation or cooperation. The U.S. levies large legal and tax penalties if a U.S. (or U.S.-owned) company participates in or cooperates with an illegal boycott; it also denies tax credits if such companies engage in commercial activity with a “sanctioned country”. Export personnel should also keep in mind that U.S. export laws and tax laws differ as to what specific actions or conduct are reportable/non-reportable and prohibited/permissible. Compliance is required with both export-related and tax-related anti-boycott laws/regulations.

The U.S. Department of the Treasury is periodically required to list countries which may require participation in, or cooperation with, an international boycott that the U.S. government considers to be illegal. Currently those countries are:

- Iraq
- Kuwait
- Lebanon
- Libya
- Qatar
- Saudi Arabia
- Syria
- Yemen

Embargoed and “Of Concern” Countries Screen

This screen is to ensure that export transactions are not entered into with customers in, or associated with, embargoed countries and countries “of concern” unless such exports are permitted by applicable government regulations and Company policies.

Potential exports to countries that are embargoed or “of concern” must be screened more carefully than others because of the strict controls imposed on those countries, particularly by the U.S. Government. Certain regulations of the U.S. Government apply to both U.S. and non-U.S. transactions because those regulations control goods



and technology of U.S. origin and activities of “U.S. persons” wherever those goods/technology/U.S. persons are located.

The United States currently maintains embargoes which prohibit trade with the following countries:

- Crimea - Region of Ukraine
- Cuba
- Iran
- North Korea
- Syria

Under U.S. law, it is illegal to export products to those countries, either directly from the U.S. or by re-exporting products from an intermediate country. U.S. export laws also prohibit “U.S. persons” from direct involvement in exports to those countries, even if the products to be shipped are not of U.S.-origin. (U.S. law also prohibits most imports from, financial transactions with, and visits to, those countries by U.S. persons.)

A lesser restriction on certain countries includes Export Sanctions administered by the U.S. Department of Commerce through the Bureau Industry and Security (BIS) and Treasury through the Office of Foreign Assets Control (OFAC). The complete list of the sanctioned countries can be found at [Sanctioned Countries List](#).



EXPORT CONTROL (CANADA)

In accordance with the Export and Import Permits Act, the Trade Controls Bureau is responsible for issuing permits and certificates for various products included on the Export Control List (ECL).

The issuance of export permits under the Export and Import Permits Act (EIPA) is administered by the Trade and Export Controls Bureau of Global Affairs Canada. To assist exporters, [Trade and Export Controls Bureau](#) publishes on its website important information, such as the Export Controls Handbook, Export Controls Online (EXCOL), Notices to Exporters, Frequently Asked Questions (FAQs), Commodity Codes, and the contact information for the divisions in the Trade and Export Controls Bureau administering export controls for specific items.

DESTINATION AND ORIGIN CONSIDERATIONS

Area Control List

The export or transfer of any goods or technology (including technical data, technical assistance and information necessary for the development, production or use of a good) to countries on the [Area Control List](#) (ACL) is controlled and must be authorized by an export permit issued by the Minister of Foreign Affairs under the authority of the *Export and Import Permits Act*.

As of June 20, 2019, the ACL consisted of only one country: North Korea

Export Prohibitions and Sanctions

Certain export prohibitions have been implemented under the authority of the Export and Import Permits Act. The latest information can be found on [Canada's economic sanctions](#).

Countries listed in [List of Current Sanctions](#) are subject to prohibitions on certain exports. Exporters are advised to be aware of these and/or any applicable sanctions if they are exporting to or otherwise doing business in/or with any of the countries named. Sanctions do not necessarily take the form of export restrictions, nor do they necessarily apply to any country as a whole.

Exporters should also note that certain individuals and entities have been designated as terrorists under the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism and the United Nations Al-Qaida and Taliban Regulations, which both implement United Nations resolutions.

Canadian Export Controls on U.S.-Origin Goods and Technology

Export Control List Item 5400 controls exports of the following: All goods and technology of United States origin, unless they are included elsewhere in this List [the Export Control List], whether in bond or cleared by Canada Border Services Agency, other than goods or technology that have been further processed or manufactured outside the United States so as to result in a substantial change in value, form or use of the goods or technology or in the production of new goods or technology.

Exports that are controlled by Item 5400 must be authorized by an export permit. Two types of export permits are possible in this case, depending on the destination of the items:

- Exports of Export Control List Item 5400 goods and technology to Cuba, Iran, North Korea, and Syria or to any destination on Canada's Area Control List require individual export permits.
- For all other destinations, General Export Permit No. 12 (GEP 12) applies. No individual export permit application is required. The exporter must simply quote "GEP 12" in the appropriate field in the Canadian Export Reporting System (CERS) or other export reporting documentation for presentation to the Canada Border Services Agency when the goods are tendered for export. For more information about General Export Permits, see section F.5.

"All goods and technology of United States origin" means items that are manufactured/created in the United States. "Origin" does not mean the country from which the items were last exported to Canada.

Exports to the United States

Export permits are not required for many of the goods and technologies listed in the Export Control List if they are destined to a consignee in the United States.

Items that require an export permit to the U.S. are defined in the Export Control List (this is reflected in a statement in the Guide that the control applies to "All Destinations").

Items exported from Canada to the U.S. are thereafter subject to U.S. export controls regardless of whether a Canadian export permit was required. Exporters are advised to obtain written assurances from their U.S. consignees that U.S. export controls will apply should the goods be subsequently exported from the United States.

If exports are destined to bonded or sufferance warehouses located in the U.S., they are considered “in transit”. Goods exported from Canada through the U.S. to a third country (i.e., transit/transshipment) require a Canadian export permit for the third country when they leave Canada.

If uncertain as to whether an export permit for the U.S. is required, an exporter should submit an export permit application to the Export Controls Division.

OECD Due Diligence Guidance for Responsible Business Conduct

The OECD Due Diligence Guidance for Responsible Business Conduct is intended to provide practical information to businesses on the implementation of the OECD Guidelines for Multinational Enterprises by providing explanations of its due diligence recommendations. Canadian exporters should familiarize themselves with this Guidance in order to avoid and address adverse impacts related to labour, human rights, the environment, corruption, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships.

Summary of Export Prohibitions can be found at D.6 Table 1 at [Export Prohibition List](#).



RED FLAG INDICATORS – THINGS TO LOOK FOR IN EXPORT TRANSACTIONS

- The End-User or End-Customer or its address is similar to one of the parties found on the Commerce Department's [BIS'] list of denied persons.
- The End-User or End-Customer or purchasing agent is reluctant to offer information about the end-use of the item.
- The Service's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The End-User or End-Customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The End-User or End-Customer has little or no business background.
- The End-User or End-Customer is unfamiliar with the product's performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the End-User or End-Customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the Services and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the End-User or End-Customer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.

Please note that the above list is not all-inclusive, in so far as any other suspicious or irregular circumstances in a transaction should also be checked with ActiveState General Counsel.