Mapping Out Your Compliance Strategy

How to Develop an Effective Export Management and Compliance Program (EMCP)

April 5, 2011
Charleston, SC
INTRODUCTIONS

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62% of Respondents Have a Full Compliance Program

- Yes: 61.9%
- No: 10.0%
- Partially - Plan to do more: 28.1%

Source: Management Dynamics, Benchmark Report: 2010
How Aware of Export Compliance Are Your Company Stakeholders (Senior Management)?

- Somewhat aware but no involvement: 37.7%
- Not really aware or involved: 7.1%
- Not aware; a low priority right now: 7.5%
- Very aware & involved: 47.7%

Source: Management Dynamics, Benchmark Report: 2010
National security requires a strong partnership among, and between, government agencies and industry in international trade.
IF YOU SEE SOMETHING, SAY SOMETHING.

BE SUSPICIOUS OF ANYTHING UNATTENDED.
Tell a cop, an MTA employee or call 1-888-NYC-SAFE.
THE REGULATIONS
Foundation of an Effective
Export Compliance Program
2011 EXPORT CONTROL FORUM

Featuring Keynote Address on Export Control Reform

By Eric L. Hirschhorn, Under Secretary for Industry & Security

February 28-March 1, 2011, Irvine, California

Find out more and register.

IN THE NEWS

January 18, 2011
BIS publishes a Final Rule on Additions and Revisions to the List of Validated End-Users in the People's Republic of China: CSMC Technologies Corporation and Advanced Micro Devices China, Inc.

Final Rule

January 14, 2011
The BIS Annual Report to the Congress for Fiscal Year 2010

Report

January 14, 2011
The BIS 2011 Report on Foreign Policy-Based Export Controls

Report

January 14, 2011
The BIS Offsets in Defense Trade Fifteenth Study

Report

January 7, 2011
BIS publishes a Final Rule on Publicly Available Mass Market Encryption Software and Other Specified Publicly Available Encryption Software in Object Code. This rule change is part of the implementation of the Obama Administration's
Elements of an EMCP

Obtaining EMCP Assistance

Compliance Guidelines

EMCP Audit Module: Self-Assessment Tool

Freight Forwarder Guidance
NO COOKIE CUTTER APPROACH!
IDENTIFY ORGANIZATIONAL STRUCTURES THAT HAVE AN EXPORT COMPONENT

| Accounting | Information Technology |
| Contracts | Legal Counsel & Licensing |
| Customer Service | Marketing |
| Engineering/R&D | Purchasing |
| Field Services | Sales |
| Finance | Shipping |
| Human Resources | Travel Agency (in-house) |
KEY ELEMENTS
OF AN EFFECTIVE COMPLIANCE PROGRAM

(1) Management Commitment
(2) Risk Assessment
(3) A Written EMCP
(4) Compliance Training
(5) Pre/Post Export Compliance Security & Screening
(6) Recordkeeping [EAR Part 762]
(7) Export Compliance Monitoring & Auditing/Assessing
(8) Handling & Reporting Export Compliance Problems & Violations
(9) Corrective Actions

March 9, 2011

Memorandum For All Employees and Contractors

From: President and CEO

Subject: Export Compliance Policy Statement

I. Introductory Statement of Management Commitment to Export Compliance

II. Dual-Use Risk Statement

III. Penalties Statement

IV. Who To Direct Questions

V. Employee Acknowledgement/Receipt
Chief Compliance Officer

- Necessary component indicating senior management commitment of resources
- Must be at an appropriate senior level and empowered
- Critical to overall success of an organization’s export compliance program
- Support from, or connection to, specific corporate level officer
MANAGEMENT BUY-IN IS CRITICAL

PENALTIES…
Just One Way To Get Past Denial and Grab Management’s Attention

Admin: $250,000 per or 2x value. Criminal: Imprisonment up to 20 yrs. Up to $1 million per violation or twice the gross gain, whichever is greater. ■ Loss of export privileges.

An Effective Compliance Program Can Be A Mitigating Factor With Great Weight!
KEY ELEMENTS FOR AN EFFECTIVE COMPLIANCE PROGRAM

(1) Management Commitment

(2) **Risk Assessment**

(3) A Written EMCP

(4) Compliance Training

(5) Pre/Post Export Compliance Security & Screening

(6) Recordkeeping [EAR Part 762]

(6) Export Compliance Monitoring & Auditing/Assessing

(7) Handling & Reporting Export Compliance Problems & Violations

(8) Corrective Actions

Element 2: also see Guidelines, p. 29 – 48 & Audit Module, p. 8 – 21.
RISK ASSESSMENT

COMPANY ASSESSMENT TOOL

Export Program Parameters

Company Profile
Business Activity Profile
Customer Profile
Country Profile
Commodity Profile
End-Use Profile
Order Processing Profile
Shipping Profile
U.S. Persons Activities Profile
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POWER OF
THE WRITTEN WORD
YOUR COMPLIANCE MANTRA

THE HOW

By Whom?
How?
When?
Where?
What?
Why?

think
THE THREE Ds OF COMPLIANCE
DEFINE, DEVELOP, DOCUMENT

Define All Export Processes

Include Domestic and International Processes

Define All Functional Steps

Start At The Very Beginning … End At The Very End

Identify Responsible Personnel. Provide Contact Info.

Like Map quest: Flow Chart and Narrative Description
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Element 4: also see Guidelines, p. 57 - 62 & Audit Module, p. 24 - 25.
Informed employees minimize the likelihood that inadvertent noncompliance will occur.

The better a law, policy, or procedure is understood, the more likely it will be adhered to correctly in practice.
Friday - January 21, 2011

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Final Rule

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The BIS Annual Report to the Congress for Fiscal Year 2010 Report
Essentials of Export Controls

Module 1: Export Control Basics (22:10)
Transcript

Module 2: Classifying your Item and Determining if you need a license (20:24)
Transcript

Module 3: General Prohibitions including Prohibited End-users and End-uses & activities (13:01)
Transcript

Module 4: Using License Exceptions (11:03)
Antiboycott Compliance Module: Overview of the Antiboycott Provisions of the Export Administration Regulations (15:19)

Transcript

Note: These are full length Windows Media format videos narrated by BIS staff. Downloading may take a few minutes with certain internet connections. Please email the BIS Webmaster if you experience any difficulties.

Webinars

Elements of an Effective Export Compliance Program (September 16, 2009) (2:05:07)

Special Comprehensive License Webinar (July 16, 2009) (48:09)


Archived Webinar Programs
Archived Webinar Programs

The following archived webinar broadcasts are available for viewing free of charge. The slide presentation is also available in PDF format to download and print.

September 16, 2009
Elements of an Effective Export Compliance Program
Video | PDF

July 16, 2009
Special Comprehensive License Webinar
Video | PDF

June 22, 2009
EAR Compliance Webinar in Automated Export System Electronic Export Information Filings
Video | PDF

November 25, 2008
Encryption Rule Webinar
Video | PDF

May 28, 2008
Embargoes and Other Sanctions Webinar
Video | PDF

April 15, 2008
Deemed Export Advisory Committee Report
Video | PDF

March 12, 2008
Reexport Controls
Video | PDF
HOW DO YOU COMMUNICATE YOUR COMPLIANCE MESSAGE?

Posters
Handbooks
Company Newsletters
Payroll Inserts
Employee Requirements
Bulletin Boards
Positive Incentive Program
Intranet & Internet
Television/You Tube/Twitter
Videos
E-mail
Voice-mail
CD Roms
Checklists
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Element 5: also see Guidelines, p. 63 – 125 & Audit Module, p. 8 – 21.
DETERMINING JURISDICTION
CLASSIFYING YOUR ITEM

Determining Your ECCN is the

Once the Export Control Classification Number (ECCN) has been identified, you can determine which countries require an export license and which license exceptions may apply.
PARTY ORIENTED SCREENS

NAMES & ADDRESSES OF PROHIBITED PARTIES, UNVERIFIED PARTIES, & CAUTIONARY FACTORS

General List Oriented Screens
(1) Denied Persons List
(2) Entity List
(3) Specially Designated Nationals List [Treasury]
(4) Debarred Parties List [State]
(5) Sanctioned Parties List [State]

Red Flag Oriented Screens
(1) Red Flag Indicators
(2) Unverified List

Do I know my customer and who will receive my export?
ACTIVITY ORIENTED SCREENS

PROHIBITED END-USES

End-Use Activity Oriented Screens
(1) Proliferation for Restricted Nuclear Uses
(2) Proliferation for Restricted Chemical Uses
(3) Proliferation for Restricted Biological Uses
(4) Proliferation for Rocket Systems and Unmanned Air Vehicles
Deemed Exports: What is being targeted?

Nationally
- Biotechnology
- Pharmaceuticals
- Nanotechnology
- Quantum Computing
- Advanced Materials
- Communications & Encryption Technology
- Weapons Systems yet unclassified
Methods Used to Target Technology

- Unsolicited emails
- Front companies
- Liaisons with universities that have ties to defense contractors
- Recruitment by foreign intelligence services
- National laboratories
- Compromise of laptop while traveling overseas
- Attending/Hosting conferences
- Relocating R&D facilities overseas
- Circumventing export control laws
- Visiting scientific & research delegations
- Hacking
- Downloading information from your network
Deemed Export Enforcement Facts

• Since 2004, Export Enforcement has closed over 120 investigations, involving a deemed export. Many of these investigations resulted in action being taken or the issuance of a warning letter.

• Since 2004, BIS has issued 19 final orders in 17 investigations involving deemed export violations. This has resulted in over $2 million in fines.

• Approximately one-half of the cases involved Voluntary Self-Disclosures (VSDs) and both commodity and technology exports.

• Eight cases involved deemed export violations alone.

• Most violations involved unauthorized transfers of Category 3 (Electronics) and Category 5 (telecommunications).
Key Compliance Issues

• Since 2004, a central theme in over 120 investigations of deemed exports has been the poor communications or disconnect between the key compliance personnel:

  • 1) Export Compliance Personnel
  • 2) Human Resources
  • 3) Hiring Managers

• There were also issues surrounding foreign visitors and the need for enhanced compliance training.

• This is significant for high technology companies because the investigations identified the fact that many companies maintained effective programs for commodities but that it did not carry over in the area of technology.
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RECORDKEEPING

PART 762 DESCRIBES…

What You Have To Retain

What You Don’t

Requirements For Producing Records

Format Requirements, Original & Reproduction

Specific Guidance On Reproduction

Retention Period
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Element 7: also see Guidelines, p. 137 - 140 & Audit Module in its entirety, esp. p. 3 & 29 – 30.
AUDIT, AUDIT, AUDIT

An audit is the most effective and efficient way to identify your company’s compliance risks and vulnerabilities and provide reasonable assurance that your compliance safeguards and measures are effective and that your export compliance program is working.

Peace of Mind!
AUDIT, AUDIT, AUDIT

YOUR AUDIT PROGRAM SHOULD INCLUDE...

- Experienced audit personnel.
- Business unit and corporate audits.
- Internal and external audits.
- Transaction and procedural auditing.
- High risk activity auditing.
- Audit reporting, corrective action, and follow-up procedures.
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Elements 8 & 9: also see Guidelines, p. 141 – 143 & Audit Module, p. 31.
ELEMENTS OF A “BEST PRACTICE” NOTIFICATION PROGRAM

A safe environment.

Clear policy & written guidelines.

Prompt response to & from management regarding noncompliance.

An internal & external escalation process.

Problem & root cause identification.

Corrective & preventive action that strengthens internal controls when weaknesses discovered.

Accountability & consequences for noncompliance.
Positive reward for disclosure & report.
INTERNAL NOTIFICATION

Defined investigation procedures to be followed.

Defined investigative report documentation requirements.

- Policy and procedures for taking remedial action.

Defined documentation requirements for remedial action taken.

Follow-up procedures to management.

Follow-up notification to reporting employee.
EXTERNAL NOTIFICATION

If you determine external notification may be necessary:

- Immediately cease activities of concern.
- Advise employees to save all documents.
- Determine mitigating factors.
  - Determine if other violations may exist.
    - Counsel experienced in export law can be helpful.
  - Centralize communications.
  - Disclose promptly.
VOLUNTARY SELF-DISCLOSURE

Permitted under EAR Section 764.5.

Initiated by a company when there is knowledge of a possible export violation of the EAR, license, license condition, or order.

Written disclosure submitted to Export Enforcement which conducts investigation. **Send to:**

Director, Office of Export Enforcement
1401 Constitution Ave., N.W.
Room H4514
Washington, D.C. 20230

Do **not** submit to an EE Field Office.

Process:
⇒ Logged into tracking system in EE Headquarters, Washington
⇒ Sent to appropriate EE Field Office for investigation.
⇒ Acknowledgement letter of receipt sent.
“Great Weight” Mitigating Factor for Administrative Actions
- Prior to Government knowledge.
- Full knowledge & authorization of senior management.


In FY 2010: 226 VSDs closed;
- 153 (67%): Warning Letter;
- 43 (19%): No Violation or No Action;
- 14 (6%): Rolled into Already Existing Case;
- 13 (6%): Administrative Penalty;
- 2 (1%): Referred to Other Agency;
- 1 (1%): Verbal Warning;

No VSDs Have Resulted in Issuance of a Criminal Penalty

Point of Contact for VSD Questions:
Kirk Flashner, Office of Export Enforcement
(202) 482-6460; kflashne@bis.doc.gov
HAPPY EXPORTING

Thanks for your attention!