U.S. Department of Commerce
Bureau of Industry and Security

Export Compliance Guidelines

The Elements of an Effective Export Compliance Program

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YOUR EXPORT COMPLIANCE PROGRAM

Welcome to export compliance, a topic that may be a small segment of your overall organization's compliance programs, however, if not properly addressed could create major challenges. This document contains information on the elements of an effective Export Compliance Program (ECP) and how to build a program suitable for your company or organization.

The purpose of an ECP is to create a series of procedures that help organizations operate their export activities in accordance with the Export Administration Regulations (EAR). Though these guidelines are written specifically to assist with compliance with the EAR, requirements from other regulations can also be incorporated into your ECP. Having an effective ECP helps organizations integrate requirements from export controls with their business operations. This minimizes risks of violating the EAR and streamlines export operations.

The Elements of an Effective Export Compliance Program (ECP)

The Bureau of Industry and Security (BIS) has identified the following elements as critical for an effective ECP for items subject to the EAR. These elements provide a foundation for the basic structure of your ECP, but they do not necessarily constitute an exhaustive list. The Elements are:

1. Management Commitment
2. Risk Assessment
3. Export Authorization
4. Recordkeeping
5. Training
6. Audits
7. Handling export violations and taking corrective actions
8. Build and maintain your ECP

Tailor your ECP to your specific organization's needs

The list or number of elements that your organization utilizes may be longer but needs to reflect the unique export operations and re-export activities of your organization.

Factors that will impact your ECP:

- size of your organization
- strategic nature of items and possible end-uses or end-users
- geographic location of organization, subsidiaries, and customers
- relationships with business partners
- volume of exports
- complexity of internal export processes

Building an ECP for the first time?

If this is your first time building an ECP, start with Element 8 first. In that element, you'll learn how to build a team, evaluate your needs, and start framing your ECP. Then go through Elements 1-7.

ELEMENT 1

MANAGEMENT COMMITMENT

Senior Management commitment is the most important factor in the success of an ECP. With that support, the ECP is more likely to be fully embraced by the organization and integrated in the company's daily operations. Every effective ECP is a top down process with the organizations senior management giving significance and legitimacy to the program by:

- Publicly supporting compliance policies and procedures
- Providing sufficient resources
- Supporting export compliance training and training sessions

The Management Commitment Statement

A great way to demonstrate strong management support and commitment for export policies and procedures is to have the Chief Executive Officer, President, or another senior executive, personally sign the Management Commitment Statement. This formal statement communicates to all employees and staff the importance of export compliance and the commitment to adhere to the requirements of the EAR. This statement should be reviewed and disseminated annually for all employees to read and sign. It should also be included in the opening pages of your ECP manual.

The message should communicate that export compliance requires a proactive, organization-wide commitment that includes all levels and that each employee plays a role in securing the integrity of the system. Employees should understand "the big picture" and also realize their own personal role and responsibility in guaranteeing export compliance. If not, they risk being the weak link that can bring the whole program down.

Additionally, the statement should be communicated to contractors, during the contract process, who are acting on the company's behalf. This would include consultants, interns, freight forwarders, distributors, sales representatives, joint venture partners, and any other contractor. It should be a condition of doing business with the organization.

Contents of the Management Commitment Statement

- Affirm the company's commitment to export compliance and commitment of appropriate resources to compliance.
- Explain the basic purpose of export controls and its importance in protecting national security and foreign policy interests for the United States.
- State that no sale under any circumstances, will be made that violates or potentially violates the U.S. export regulations and laws.

- Stress the importance of the organization's employees being familiar and compliant with export controls, so that the employees understand possible noncompliance scenarios, specific risks as they relate to the company's products, technology, destinations and activities.
- Communicate the risk of unauthorized transfers, for even low-level technology, which can potentially jeopardize national security or further the development of weapons of mass destruction.
- Describe the possible penalties that a company and individual could face for non-compliance:
    - Loss of export privileges
    - Disciplinary action by the company
    - Damage to the individual and company's reputation
    - Criminal penalties
    - Administrative/Civil penalties
- Include the name and contact information of the Export Compliance Manager, in case there are export compliance questions such as:
    - Potential violations
    - Updates to the manual or statement
    - Procedural export uncertainties

EXAMPLE OF A POSSIBLE MANAGEMENT COMMITMENT STATEMENT

On Company Letterhead

DATE:

TO: All Employees & Contractors
FROM: Name, President/CEO/Chairman
SUBJECT: Export Policy Statement

(*Company*) is committed to compliance with all export controls in the Export Administration Act and the Export Administration Regulations. This commitment extends to promoting strict compliance on an on-going basis with terms and conditions.

It is (*Company*) policy that all employees, comply with the United States export policies and regulations. Under no circumstances will exports be made contrary to U.S. export regulations by any individual operating on behalf of (*Company*).

Employees outside the United States may not re-export any commodity, technology, or software unless appropriate authorization has been obtained, and this includes foreign-produced items that are the direct product of U.S. technology and software and are subject to export controls under the Export Administration Act.

No activities will be undertaken that are in violation of the United States policies which seek to control nuclear proliferation, missile technology, and chemical and biological weapons.

Failure to comply with these regulations may result in the imposition of criminal and/or civil fines and penalties, including jail time and monetary penalties, and employees will be subject to disciplinary action and/or termination.

I ask each of you to take this matter very seriously and to support me in this effort. If you have any questions concerning the legitimacy of a transaction or potential violations, please contact:

Insert Name
Title
Phone
E-Mail

Note: This Statement of Corporate Commitment to Export Compliance will be issued on an annual basis or if necessitated by personnel changes, changes in management, or regulatory changes.

[Responsible Official] is responsible for disseminating this Statement throughout the organization through *[Company's*] Export Compliance Program Manual updates, incorporation into training and presentations, and posting on the (*Company*] Intranet and Web site.

_____ (SIGNATURE) _____ (DATE)_____
President/CEO/Chairman

EXAMPLE OF EMPLOYEE ACKNOWLEDGEMENT

All employees are required to read and sign the following verification statement on an annual basis and submit to the Human Resources Office to be filed in their personnel file.

I, _____, hereby acknowledge that I received, on (DD/MM/YY) (Company) policy statement dated (DD/MM/YY) and signed by (Signing Official), regarding (Company) commitment to export control compliance. I have read such policy statement and will comply with (Company) export compliance policies and procedures in support of (Company) compliance efforts.

Employee Signature _____ Printed name _____

Title _____ Date _____

Providing Resources and Support

Management must provide staff with the compliance tools necessary to perform their jobs, including the appropriate training, budgets, and high-profile support. Management's commitment must be embedded in every aspect of the ECP, and management must maintain active and transparent involvement in that regard, realizing that export compliance is a process driven from the top.

Support for Training and Training Sessions

To ensure that sufficient resources -- time, money, and personnel -- are provided to the ECP, management should participate in periodic ECP resource and planning meetings. The objective of these meetings would be to discuss changes that are needed, deficiencies identified, enhancements, etc., of the ECP. Through this method, your company may continuously revisit resource allocation to ensure that the company's export compliance obligations are being met. Export compliance positions should have sufficient authority and discretion vested in them to garner the required backing to ensure compliance. Standards, responsibilities, and positions might be identified in this section of your ECP.

Resistance, Excuses, and Ways to Gain Support

Are you having a tough time getting management commitment? The reasons may vary. Sometimes it is money, time, or misunderstanding the need for their personal involvement. Regardless of the reason, the CEO or president may need some more persuasion. Some excuses are:

Example #1: "*An Export Compliance Program is a not required by the EAR.*"

> Explain that an ECP will help formalize procedures, centralize operations, and produce a more reliable supply chain for their customers so they are dependable and consistent. Explain all the requirements and the consequences for not completing them.

Example #2: "*Violations are a cost of business.*"

> Not true. When management is not concerned with complying with export regulations, compliance programs are under resourced, ineffective, and eventually violations will occur. Often times, the costs of the violations go beyond penalties and fines. Additional costs include hefty legal fees, damage to one's reputation, delays in the export process, and loss of future business.

Example #3: "*It won't happen to us.*"

> Compliance managers that are looking to gain support from senior management may want to use stories from the BIS publication, "Don't Let This Happen to You." Many organizations have successfully gained support after presenting to their superiors stories of familiar companies or competitors and their fines. The publication can be found at www.bis.doc.gov.

Example #4: "*Our Freight Forwarder will manage our export program.*"

> Export control compliance is not a task that should be outsourced to your freight forwarder. Freight forwarders can provide excellent expertise and guidance on logistics and may have some knowledge of your export business but the exporter is principally responsible for that task and certainly will be the first focus if any violation occurs. Your freight forwarder can act as a safeguard and review your export information but you are responsible for the accuracy of the information provided to your forwarder.

ELEMENT 2

RISK ASSESSMENT

Risks in export compliance are threats that can negatively affect your organization's reputation and export business, if ignored. The goal of this element is to identify preventable risks your company may face and then build safeguards to control for these risks.

Many companies fail to identify their risks early on and focus solely on getting orders out. This can create vulnerabilities in the compliance program and then require much more work later to correct. Start early and invest in a compliance program that assesses your organization's risks. Understanding these risks will help in building your specific export procedures in Element 3: Export Authorization. In the next section, we will use these results to help you build your procedures.

Go through each risk and read about how to identify it and ways to mitigate. Though this exercise cannot identify every risk you will face, it will give you a good start.

Whether you are new to export compliance or are a veteran of export compliance, the need to identify your vulnerabilities is great. Below are common risks that organizations will face when exporting and suggested ways to mitigate those risks. They have been organized into three main areas:

- Export Item
- Organization Operations
- Customer(s)

COMMON RISKS

EXPORT ITEM	ORGANIZATION OPERATIONS	CUSTOMER(S)
Export without a license Unauthorized release of sensitive information or controlled technology Servicing items located outside the U.S.	Weak or no compliance structure Lack of communication within the organization Poor relationships with export facilitators No or Underdeveloped Export Clearance Procedures	Unknown End-User or End-Use Unaware of diversion risk Violating Anti-boycott Laws

EXPORT ITEM

Take a close look at the type of item that you export - whether it's a physical item, technology, software, or even a service. These items could require an export license for various reasons. Before exporting, first confirm if the item requires a license, and if so, obtain one or use a license exception, if one is eligible.

Export without a License

Not all items require a license to export. Most do not. However, it is the responsibility of the exporter to determine if a license is required. Most often organizations without a formal export authorization process will inadvertently export items or release technology without following defined steps.

Having a clear and defined Order Review process is the best way to prevent items from being exported without proper authorization. Examine current methods of receiving orders and how they are processed. Topics to focus on:

- New and Existing customers
- Export Item is controlled by ECCN, Country of Destination or other regulations
- End-Use and End-Users
- Required Documentation
- Terms of sale

To help readers conceptualize the process, create a decision tree process to determine the appropriate export authorization for your organization's items (license required, license exception eligible, or no license required). More on this is included in Element 3.

Unauthorized release of sensitive or controlled technology

Sometimes, organizations may be unaware that their technology may first require an export license before releasing that technology to a foreign national, either here in the U.S. or abroad. These releases can happen at trade shows, via emails, demonstrations, or hiring foreign nationals to work with controlled technology. If you are hiring foreign nationals at your U.S. facilities and the foreign nationals have access to controlled technology, you should create a Technology Control Plan to safeguard sensitive information from unauthorized release.

To help prevent unintentional controlled technology releases, catalog your technology and any foreign nationals working for your organization. Centralize your hiring and human resource processes to ensure appropriate screening is completed prior to providing controlled technology to foreign nationals. Hold brown bag lunches and other training for technical engineers and research scientists to ensure they understand the organization's security procedures. Occasionally attend your engineer's routine monthly meetings to better understand ongoing projects and any possible export control compliance issues. More information on Deemed Exports can be found on BIS's web site at www.bis.doc.gov and then enter keyword Deemed Exports.

Servicing items located outside the U.S.

If you are servicing products that you did not export, you need a process to ensure the equipment was exported properly.

Before performing services, get answers to the following questions:

a) Are the parties or activities prohibited by export control?
b) Will proposed field service activities be subject to export controls?
c) Was the equipment to be serviced exported properly?
d) Are the necessary spare parts to be exported for prohibited end-uses or end-users?

Servicing items that have been exported without the proper authorization first must be reported to BIS Export Enforcement. A license may need to be obtained in order to service these items.

ORGANIZATION OPERATIONS

Weak or No Compliance Structure
Without a clear structure, compliance programs face lack of oversight, poor communications, and undefined roles. Having a strong structure helps organizations work out problems when they arise and prevent unauthorized exports from occurring.

Examine reporting structures for possible conflict of interest in lines of authority.
Example: Sales in charge of compliance or compliance at a lower tier with no access to management officers. There may also be conflicts of authority for the export compliance official who must report to multiple departments, for example, Legal and Operations. Aim to simplify the structure and reduce the burden for the compliance officials to report and address issues.

Centralize or Decentralize?
Organizations with multiple office locations, domestic or international, are faced with the decision to centralize or decentralize their ECP. Some companies will choose to designate a single employee to administer and manage the program and coordinate the export compliance responsibilities with the other offices. However, the program also can be decentralized with the corporate office providing general guidelines but allowing each separate operating unit to act independently.

Do you have adequate resources? Compliance officials will need to assess current needs and request sufficient resources to keep their organizations in compliance. Buying software, taking trainings, and hiring new staff are all costs that need to be identified and justified. Without adequate resources, a compliance official will not be able to complete the necessary tasks to keep their compliance program running.

Organize your compliance program:

1. Describe the structure of your company. Include a narrative and organization chart indicating location of corporate headquarters, operating divisions, including manufacturing facilities, and domestic and foreign subsidiaries and affiliates.
2. Identify all domestic and foreign divisions/offices/facilities that will have a role in your export transactions.
3. Identify location(s) of where you would like to have export compliance manager(s). Highlight the proposed management line of authority for export control related activities. Clearly indicate how divisions/positions will be interrelated.
4. List the total number of employees you anticipate will be directly involved in export related functions.

5. How many orders do you anticipate to process monthly?
6. What do you anticipate will be the average time frame from acceptance of order to time of shipment?
7. Identify offices and personnel who are in the order processing chain.

Lack of Communication within the Organization – Potential Issues

- Units or co-workers not talking to each other
- Compliance is not at the table. Seems to be a hindrance to business
- Competitive nature at company may make it hard to collaborate
- Negative attitude of compliance generally

Leading the compliance effort can be a difficult task. Some people will not want to listen or follow. Others are apathetic. Often times we find that individuals in the company do not communicate and talk to each other about export compliance responsibilities. With better communication, companies could cut down on a lot of problems like making sure tasks are completed and coordinating with other units on their responsibilities. Also, companies that have a high level of competition within their units or with their subsidiaries may also have a lack of collaboration. Breaking these barriers is not easy. However, export compliance officials must find a way to build bridges and create open lines of communication. Having management support meetings or trainings can help get people together on these issues. Have active engagement by sending periodic emails and broadcasts. Element 5/Training provides other ways to do get your compliance message out. Find the right solution that fits your organization.

Poor relationships with export facilitators

- Is your freight forwarder difficult to deal with?
- Are you constantly involved in routed transactions?
- Has your company decided to rely on a third party to file and facilitate export activities?
- What ideal export program is ideal?
- What are some warning signs that the relationship is going down south?

Do it and forget it. This is the mentality that some exporters seem to have for certain duties or tasks related to export compliance. Exporters will often outsource their EEI filings, export classification, licensing, and other tasks to lawyers, consultants, freight forwarders, or other third parties. At times, these relationships work well but if left unchecked, errors can go unnoticed for a long period of time. Organizations need to perform audits on their export facilitators to make sure the EEI information is filed correctly, export classifications are up to date, and regulatory requirements are being performed accurately and timely.

BIS recommends that you know your freight forwarder and customers. Not doing so puts your organization at risk. An untested or unproven freight forwarder can mishandle your item and your documentation, possibly putting your organization at risk of penalty. This is the case in routed transactions, when the foreign principal party in interest instructs the U.S. principal party in interest (USPPI) to use a particular freight forwarder. The USPPI must document their due diligence to protect themselves from inaccurate Electronic Export Information entry, unauthorized shipping routes, and possible diversion.

Strengthen your relationship by holding regular meetings or conversations and establishing an understanding of roles and responsibilities. Organizations may look to contractual agreements to help supplement regulatory requirements for each party. For more information, read the publication "Freight Forwarder Guidance." See the link in the Reference section.

Nonexistent or Underdeveloped Export Clearance Procedures

Companies put themselves at unnecessary risk when they make export clearance decisions on the fly and do not have established procedures and checklists to follow. It is very important to create specific export clearance procedures for shipping departments to follow and have strong hold/release processes in place, in case the exports are questionable.

These procedures should review the following:

- Accuracy and completeness of shipping documents
- Proper notations and export authorizations
- Unusual or unknown shipping route
- Valid methods of transport
- Cleared proscribed party screening
- Unusual requests concerning labeling or shipment of goods

CUSTOMER(S)

As the exporter, it is your job to know the customer and the parties involved in facilitating the export. When receiving a new order or request for export items, a company should first examine the suitability of the customer and the end-users.

Unknown End-User

As an exporter, you are responsible for knowing your customers and for ensuring that your exports do not go to prohibited end-users. As a good compliance practice, you should include mechanisms in your procedures that verify the legitimacy of your customers and their transactions. You will need to incorporate different types of compliance measures within your ECP to address risk factors commensurate with different types of customer relationships.

Ways to establish credibility of the customer:

- Verify the legitimacy of the buyer by checking their:
  - Address by searching on Google Maps or Bing or Yahoo
  - Website
  - Email Address has company name in it
- Obtain an End-Use Statement
- Screen parties against all proscribed parties lists
- Adding language in the contracts, shipping documents to notify customers of export requirements
- Establish the business operations of customers and whether they are a reseller or product integrator

General Prohibition 4 and General Prohibition 5 restrict and at times, prohibit exporters from sending items to certain entities. A license may be required. Exporting without proper authorized is a violation. How do I mitigate this risk?

Identify who and what needs to be screened

Parties Involved

- Customer/Ultimate Consignee
- Intermediate Consignee
- Freight Forwarders
- Purchaser
- End-User

Address of the End-User or Ultimate Consignee

Unknown End-Use

Ways to establish credibility of the end-use:

How will the customer use the product? Verify the legitimacy of the stated end-use.

What can you do to verify end-use?

If misused, could the product be used for the following proliferation activities?

- Chemical Weapons
- Biological Weapons
- Nuclear Weapons
- Delivery systems of such weapons
- Technology to develop destructive systems

Are any back-up supporting documents required by the EAR? When?

What do I do if my customer does not want to provide us end-use information?

Has particular attention been paid to whether or not the product or service is intended for military use or subject to licensing?

Examples of Red Flags:

- End-use is inconsistent with customer's stated end-use objectives and nature of customer business.
- Quantity of product is not consistent with projected need
- No way to detect prohibited proliferation end-uses
- No mechanism or procedure to ensure compliance with end-use license conditions

Unaware of Diversion Risk

The diversion of dual-use U.S. origin items from authorized to unauthorized end-uses, end-users, or destinations, even inadvertently, undermines efforts to counter the proliferation of weapons of mass destruction, terrorism, and other threats to national and international security. Global "transshipment hubs"--i.e., countries or areas that function as major hubs for the trading and shipment of cargo--pose special risks due to their large volumes of export, transit, transshipment, and import and re-export traffic. Such hubs make transshipment trade particularly vulnerable to the diversion of sensitive items to unlawful purposes.

Diversion risk should be identified during the order process review. Compliance managers need to develop a hold and release process for shipments that are being sent to or through known diversion points and hubs.

As a last line of defense against diversion risk, develop shipping procedures and construct a checklist for shipping personnel to use prior to exporting items.

Violating Anti-boycott Law - EAR Part 760

The anti-boycott laws were adopted to encourage, and in specified cases, require U.S. firms to refuse to participate in foreign boycotts that are not sanctioned by the United States. They have the effect of preventing U.S. firms from being used to implement foreign policies of other nations which run counter to U.S. policy.

The anti-boycott provisions of the Export Administration Regulations (EAR) apply to the activities of U.S. persons in the interstate or foreign commerce of the United States. The term "U.S. person" is defined in EAR 772.

The scope of the EAR, as defined by Section 8 of the EAA, is limited to actions taken with intent to comply with, further, or support an unsanctioned foreign boycott.

Prohibited by Anti-boycott Laws

Conduct that may be penalized under the Tax Reform Act and/or prohibited under the EAR includes:

- Agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies.
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.
- Implementing letters of credit containing prohibited boycott terms or conditions.

Report Anti-boycott violations to http://www.bis.doc.gov/index.php/enforcement/oac?id=300.

For more information: http://www.bis.doc.gov/index.php/enforcement/oac#boycottlaws

Summary of Risks and Ways to Mitigate

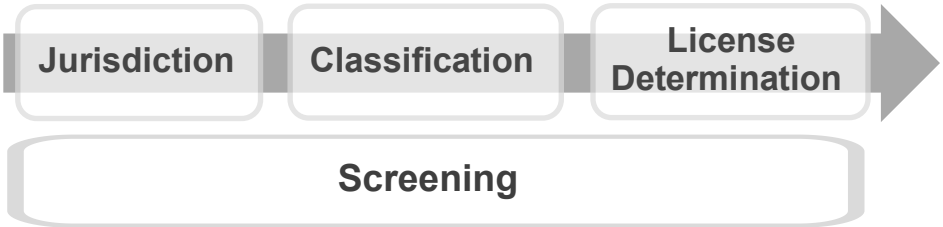
This list is not all-inclusive. It might be most helpful to new exporters to help understand the possible risks involved in each phase of the exporting process and ways to mitigate those risks. Some of these risks and ways to mitigate may repeat throughout the process.

COMMON RISKS	TOOLS TO MITIGATE RISKS	RESOURCES TO WRITE PROCEDURES
Export without a license	Develop a License Determination Matrix	Element 3
Unauthorized release of sensitive information or controlled technology	Understand Deemed Exports and Technology Control Plan, view the online training module	http://www.bis.doc.gov/index.php/forms-documents/doc_download/899-bis-de-module-h-video
Servicing items located outside the U.S.	Develop a License Determination Matrix	Element 3
Weak or no compliance structure	Build more decision making tools, check lists, automate processes, assign roles and responsibilities	Element 1 Element 4
Lack of communication within the organization	Develop Training Program and Written SOPs Get Senior Management Involved	Element 3 Element 1 Element 5
Poor relationships with export facilitators	Publication: Freight Forwarder Guidance Review of Compliance Activities, Shipping Documents Conduct audits of Electronic Export Information AES Best Practices	www.bis.doc.gov Element 6 FTR 30.3(c), EAR 758.3 See References for link
No or underdeveloped export clearance procedures	Create Export Authorization Process	Element 3
Unknown End-User or End-Use	Develop Screening Process Publication: Know your Customer Request an end-use statement Use Consolidated Screening List	Element 3 EAR Part 732, Supplement 3 BIS-711 See “References” for link
Unaware of Diversion Risk	Use Destination Control Statement Publication: Best Practices for Transshipments	EAR Section 758.6 See “References” for link
Violating Anti-boycott Laws	Detect and Report Anti-boycott issues	EAR Part 760

ELEMENT 3

EXPORT AUTHORIZATION

If your exports include items on the Commerce Control List (CCL) other than EAR99 items, then Element 3 may be the meat of your ECP. Even if you only export items classified as EAR99, the screening portion of this element is crucial for you. The goal is to build procedures, processes, process flows, and decision tables to help guide employees to make consistent and correct export decisions. There are four parts to this element:



With each part, you will be looking to answer these main questions:

- Which agency has jurisdiction over my exported item(s)?
- Is my item subject to the EAR?
- What is the correct classification for my item(s)?
- How does my organization determine if an item requires a license to export?
- What screening processes does my organization have to prevent it from violating General Prohibitions 4 and 5?

Think about what approval processes you will implement to ensure that all compliance measures have been performed prior to export.

Jurisdiction – Always the first consideration for export control decisions is to confirm which agency has jurisdiction over your export. BIS has information on its website www.bis.doc.gov to assist in determining the order of review for jurisdiction decisions.

Classification – Once jurisdiction has been determined, for items subject to the Commerce Department's Export Administration Regulations (EAR), the specific export control classification number (ECCN) for your item(s) must be confirmed. This will require technical specifications of the item and comparing those to the technical descriptions included in the CCL. If you cannot self-classify your item, you can request BIS to formally classify an item for you.

License Determination – Once you have determined an item's ECCN and noted the reasons for control for that item, you can look up in the EAR Country Chart (Supplement 1 to Part 738) whether a license is

required to the ultimate destination. Be aware though, that there may be a license exception available for certain exports of that item which you can verify by reviewing the license exceptions in EAR Part 740 and the specific ECCN notations for that item.

Screening

Your final action in this area is critical. That is screening all parties to your export transaction against the U.S. proscribed parties lists prior to exporting. This is best done at the initial time an order comes in and subsequently prior to export. For large volume exporters, screening parties using software programs available by many vendors may be preferable. The Commerce Department does provide a mechanism to screen parties on the BIS web site that consolidates the export control proscribed parties www.bis.doc.gov. A consolidated screen list search tool can be found at http://apps.export.gov/csl-search

Below are a number of considerations that you should think about prior to finalizing your screening process.

- How to best implement within your organization's business operations
- When best to complete screening
- Frequency (New/Old Customers)
- Where and how to maintain screening record results and for how long
- How to resolve false positives
- Cost of purchasing software to accomplish versus manually completing
- Assessing or auditing screening to ensure it is working properly

Whether it is a potential screen hit, license determination concern or question, or the presence of a red flag or questionable transaction, it is critical to create a mechanism for stopping, holding, and releasing questionable transactions. These processes should be well established and known to all staff. As part of these processes, have written guidance on the importance for all staff to be able to place a stop or hold on any questionable transaction, and also who has the authority to review and ultimately release or stop an export altogether. As companies expand their consumer base, suppliers, export facilitators, and other relationships, screening will become even more critical.

Resources:

Classification Request Guidelines: http://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/classification-request-guidelines

Essentials of Export Controls online training: http://www.bis.doc.gov/index.php/compliance-a-training/export-administration-regulations-training/online-training-room?id=285

- Module 2: Classifying your Item and Determine if you Need a License
- Module 5: License Application and Supporting Documentation
- Module 6: Export Clearance and Recordkeeping

In the section "Templates", there are sample checklists for the following:

- Item Classification Sheet
- Export Authorization Sheet
- License Determination Matrix
- Diversion Risk and Red Flags Checklist

ELEMENT 4

RECORDKEEPING

Recordkeeping Requirements in Part 762 of the Export Administration Regulations (EAR)
Part 762 of the EAR describes:

- how long to keep records
- what type of records are required to be kept
- how to reproduce documents if required
- which documents are exempted from retention

There are some documents that may not be required by regulation but it may be in your best interest to maintain these. For example: Internal documentation that describes the technical decision to classify one of your items in a specific ECCN and who made these decisions, would be extremely critical to maintain in your export control records. Another example would be disputes of due diligence between you and your freight forwarder or screening that was conducted for your customers. These documents will help prove your due diligence.

Common Barriers

Organizations should understand their current business environment and the barriers to managing record assets. By first recognizing the barriers, you can address these to effectively manage your records. Common barriers include:

- Poor development
  - Absent or incomplete procedures and training
  - Not evaluating the current and future needs in storage and type of storage
- Poor support
  - Insufficient resources to follow procedures
  - Failure of management to communicate the need and importance
- Poor execution
  - Late adoption
  - No follow-up or audit of processes

Create a System to Manage Records

Whether paper or electronic, each medium has its strengths and weaknesses. Evaluate both - with paper you have to think of copies, physical storage, offsite storage, archiving, destruction costs and time. With electronic records, your IT department will be key to ensure easy access, retrieval and maintenance.

How Long to Retain Records

In Section 762.6 of the EAR, parties are required to keep export records for *five years from the latest date of export or reexport activity* from the U.S. The latest date of such export or reexport activities include:

- the date of any known reexport, transshipment, or diversion of such export
- the date of any termination of the transaction, whether formally in writing or by other means
- in the case of records pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person receives the boycott-related request or requirement

See below page for a list of the records the EAR requires to be kept: http://www.bis.doc.gov/index.php/forms-documents/doc_view/1209-762

Assign Roles and Responsibilities

First, analyze the day-to-day activities that involve exports and re-exports and create a list of documents that must be kept, based on the requirements of the EAR. The types of records to maintain will depend on the nature of the company's activities and how they are controlled under the EAR.

Then, from this list, develop procedures on the recordkeeping responsibilities and standards. Create written procedures and assign individual(s) the following responsibilities:

- who, how and where will the documents be kept
- who, how, and when will records be inspected for completeness, accuracy, and quality
- detailed log or index of records including record-retention requirements in contracts with freight forwarders, brokers, and distributors

A company should clearly allocate responsibilities for recordkeeping among personnel in line-business units, records management, system administration, and elsewhere. Publicly identify those designated with recordkeeping responsibility, and ensure oversight and chain-of-command exists.

Finally, consider developing ongoing training and awareness programs to ensure individuals involved in the process can effectively create, retrieve, and manage records. This emphasis will encourage employees to treat records as a company asset.

Reproducing Original Records

Reproductions of original records may be maintained (if the nine conditions in Section 762.5 are met), but the reproductions must be complete, accurate, and legible. Whether stored in a paper, microfilm, or through electronic digital storage techniques systems, the record must be capable of being reproduced onto paper. The copy must record and reproduce all marks, information, and other characteristics of the original record and be legible.

Shift to Electronic Communication and Documents

As organizations use electronic communication and forms more, record management has shifted from traditional paper filing to electronic storage. Companies are then faced with the challenge of managing overwhelming volumes of information and records. It is essential then that every employee involved in the export business of the company becomes educated on how to:

- identify critical and important documents
- share and retrieve documents
- properly dispose of hard drives, thumb drives and other portable media devices
- maintain a back-up system

An organization should ensure that all required records are captured and correctly filed to allow for efficient search and retrieval by conducting periodic audits of the recordkeeping system. Documents should be kept in easily retrievable form and location. The filing system, whether hard copy or electronic, should allow easy matching, for any particular transaction, specific invoices, Automated Export Systems (AES) records, delivery notes, air waybills, bills of lading, packing slips, and records such as technical data logs. Regular internal reviews of recordkeeping will ensure proper practices and procedures are followed.

Manage the risk of losing records by evaluating the physical storage site and control procedures for disposal of records. Involve information technology specialists -- they design the safeguards of an organization's electronic records and systems and know how data is stored and purged. Also, remember that disposal of hard-drives should be part of your compliance considerations; hard-drives should be sanitized first (see DOC/NIST "Guidelines for Media Sanitization") before being sold or disposed of. See the publication at http://www.nist.gov/manuscript-publication-search.cfm?pub_id=917935.

For electronic systems, ensure information systems have sufficient capacity to support effective records management. Record management requirements often are not considered early enough in the design or capital planning stages of information technology development. More often, records management is considered after implementation and too late to incorporate specific recordkeeping requirements into systems design. If records exist in electronic form, a company should take record management into consideration when building new or enhancing existing systems to ensure that all appropriate records are captured and changes in technology do not make records obsolete. Organizations should take into consideration hardware and software dependency, indexing requirements for retrieval, migration of software formats, and requirements for refreshing storage media. Indexing and other expedient search techniques should be used for documents whether they are stored electronically or in paper form.

Maintain a back-up system for electronic storage and implement measures that will assist recovery of information and other electronic communications on your organization's computer systems and electronic mail facilities should there ever be a failure in your main system.

Request for Documents by the U.S. Government (USG)

Certain USG agencies may inspect these records whenever they deem necessary and have the option to cite an exporter that fails to have or to produce requested records. If a company has a policy to retain records for longer than the government-required time for document retention, and the government requests those older records, the company may not destroy them. The collection of documents in an audit request can be daunting, particularly if a company does not have a systematic method of filing records or for cross-referencing in its record system.

Documenting Certain Communications with Foreign Nationals

One of the greatest risks of inadvertent violations of export laws and regulations occurs during informal technical exchanges with foreign national employees, subcontractors, visitors or customers through telephone, facsimile, electronic mail, or in person. An organization that has controlled technology

and software and either employs foreign nationals or has frequent meetings with foreign nationals should create and maintain a Technology Control Plan (TCP). A TCP should be incorporated into the organization's export compliance program and include:

- physical security plan
- an information security plan
- personnel-screening procedures
- corporate commitment
- training and awareness programs
- self-evaluation program

Recordkeeping of foreign-national visitors at an organization's facility, for example, would document all foreign-national visits and any special conditions attached to the visits. The record would indicate:

(1) The visitor's name and nationality;
(2) The name and affiliation of the organization represented;
(3) The date of the visit;
(4) Persons visited;
(5) Purpose of the visit with specific emphasis on products or services discussed; and
(6) A summary of the visit, including any issues or circumstances of note.

Instituting this type of recordkeeping would serve to heighten employees' awareness that such communications are risk areas for potential export violations, thereby minimizing the risk of an inadvertent violation.

Documenting Certain Communications with the U.S. Government

Companies should also develop and implement a system to document all conversations with government officials involving interpretations or other guidance on export control issues. These records can provide continuity in performing future export compliance functions, and may assist the company in defending its actions, if necessary. It is recommended that organizations require employees to direct all questions on interpretation or other guidance to the organization's export-compliance manager and that conversations on behalf of the organization with the U.S. Government on these issues be conducted by the company's export-compliance manager.

Various Government Agencies Recordkeeping Requirements

Remember that various governmental agencies have recordkeeping requirements that may apply to your transactions. Such agencies include:

- DOC: BIS requirements in the EAR - Part 762
- DOC: Census requirements in Foreign Trade Regulations - 15 CFR 30.66(c)
- Department of State: Directorate Defense Trade Controls requirements in the ITAR – CFR Part 122.5,
- U.S. Treasury: Office Foreign Assets Control - 31 CFR Part 501
- Department of Homeland Security: Customs Border and Protection - CFR Part 163.

ELEMENT 5

TRAINING

A good training program is critical to having an effective compliance program. Employees are often consumed in their day-to-day tasks and have little time devoted to export compliance. Export compliance managers need to get their attention and cooperation. In designing the training program, look to tailor the message as specifically as possible to help various staff members understand their role and how they need to contribute.

Characteristics of a good training program:

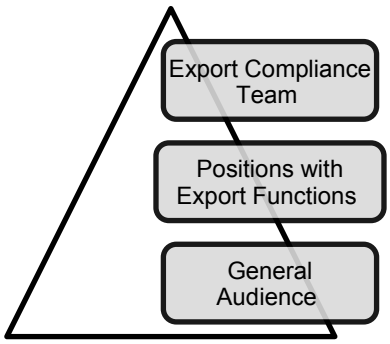
- Provides job-specific knowledge based on need
- Communicates the export responsibilities for each employee
- Holds employees accountable for export training through assessments

Also, a training program should include periodic reviews and revisions to discuss the changes in an organization's products and services, end-uses or end-users, and changes in the EAR. Organizations need to be on top of those changes and communicate the impacts of each to their employees.

Without a solid training program, employees are left to make export decisions, unaware of their consequences or of better alternatives. When possible, try to include incentives for good export compliance behavior rather than using only scare tactics.

Levels of Training Based on Need

Depending on the knowledge and skills needed to perform their job, employees should receive different levels of export control training. At the bottom of the pyramid to the left, the training is aimed to teaching the basics of export controls. Generally, this is provided to all employees and given as a periodic refresher course to those with little or no exposure to exports. The next level – positions with export roles – could include folks that are involved in technical or engineering backgrounds that have access to controlled technology in the organization, shipping and receiving personnel, human resources, sales staff, among others.



At the top of the pyramid, the Export Compliance Team would consist of the export compliance manager and his or her supporting staff. The training for this group clearly needs to be extremely detailed and include not only the organization's export compliance processes but training on all export control regulations that could impact the organization's exporting activities. This training very possibly could require training on other countries import and export regulatory requirements

to ensure strong knowledge of the requirements related to imports, re-exports and transfers after an export has occurred. The compliance manager and his/her team also need to include training on what potential future needs may be necessary for their organization so they can be forward leaning and plan ahead.

Example: A Two-Tier Training Program

Level 1: All employees

TOPICS	RESOURCES
Definitions of export Approval process of exports Violations License conditions and exceptions	Videos on BIS and Census's website On-line webinars Annual Training conducted by
Red Flags! National security concerns Company specific concerns Company product end-uses	
Contact person for export compliance Consequences for violations Incentives for prevention and resolution	

Level 2: Export Compliance Team

In addition to the above training,

- Specific organization compliance processes, requirements, and responsibilities
- Export regulations from all impacting agencies (EAR, ITAR, FTR, OFAC) – overview including any updates since last training
- BIS seminars or other outside training programs
- Other detailed training in specific areas of export regulations relevant to the organization
  - Anti-boycott
  - Deemed Exports and technology releases
  - Screening parties
  - Company specific diversion risks
  - Recordkeeping requirements

Optional: Hold employees accountable for training

Some companies are now holding employees accountable after the training is completed. Employees are asked to sign certificate at the end of training, that states he or she is responsible for understanding the information taught in the training. Failure to comply will result in disciplinary action set at the discretion of the export compliance manager. Another way to hold employees accountable is to put training as a requirement in their performance plans.

Resources for export regulatory training materials:

1. http://www.bis.doc.gov/index.php/compliance-a-training/export-administration-regulations-training/online-training-room
2. http://www.bis.doc.gov/index.php/compliance-a-training/current-seminar-schedule
3. http://www.census.gov/foreign-trade/aes/exporttraining/videos/index.html
4. http://www.census.gov/foreign-trade/aes/meetingsandpresentations/index.html
5. http://www.export.gov/regulation/index.asp

ELEMENT 6

AUDITS

To keep a compliance program running smoothly, the system and its parts must be tested and recalibrated. Export compliance managers will need to keep the program dynamic – altering the program with changes in operations, products, and export control regulations. Audits assess the effectives of current processes and check for inconsistencies between these and day-to-day operations. The export compliance manager should assemble a team to assist in conducting the audit. Based on available resources, this team will then need to decide what type of audit to conduct and the scope of the audit. At the end of this element, there are a series of checklists to help you plan, perform, and present the results of your audit. The audit team should be given complete autonomy and flexibility to identify compliance deficiencies, potential areas of risk, and then make recommendations to address them.

Types of Audits

Specific Unit/Functional Level
Specific Unit or Functional Level audits are more focused audits that look at specific areas of the export process such as recordkeeping or shipping procedures. These audits involve reviewing sets of transactions and determining how well they were executed in relation to established procedures.

These assessments can be conducted on a more frequent basis than a program level audit as they focus on a smaller area of the export process. Most importantly, these specific functional level audits can successfully focus attention at the business unit level and risk areas at an early stage, affording the opportunity to correct vulnerabilities before they develop into bigger problems.

Program Level
At the corporate-level, organizations should schedule internal audits to be conducted at least on an annual basis that involve a comprehensive assessment of their export compliance program. These larger annual audits should include both a review of the organization's export procedures as well as reviewing selected export transactions and how each business unit handled these in relation to the current compliance procedures. Below are examples of items that should be reviewed in an audit:

- Export Authorization
  - Screening practices and internal controls for compliance
  - Order processing system
  - Process for authorizing or clearing exports
  - Use of licenses and license condition compliance
- Corrective action and follow-up procedures

- Deemed Exports and technology releases
  - Procedures for foreign national visits or employment
  - Review of technology controls and technology transfers, including via e-mails
- Review of recordkeeping practices
  - Spot-check of export-related documents

See the Audit Module at the end of this publication for additional guidance and hints on auditing an Export Compliance Program (ECP).

Using External Audit Expertise

If resources allow, it is a good business practice to periodically utilize an outside auditor. External audits can provide an unbiased, third-party evaluation, and validation, of an organization's overall export compliance program and practices.

Share Findings and Follow-up

Prior to finalizing your audit report, share your findings and recommendations with your business unit contacts to verify details and ensure buy in at this unit level. Make any final modifications and then ensure the final audit report is provided to all affected program offices, business units, and management officials. Maintain these annual audit reports for at least five years. For those areas that include recommendations for revisions to procedures or corrective actions, include specific time tables and an implementation plan for management to approve. Include an additional report to management and staff once these corrective actions are completed and recheck that each has been implemented and is working properly. Every identified vulnerability or procedural problem found is also a learning opportunity to enhance your organization's ECP. Incorporate these lessons in your training and export awareness programs.

Checklists

Plan

- Identify business units and personnel to be audited.
- Send e-mail notification to affected parties.
- Develop a tracking log for document requests.
- Prepare audit templates such as interview questions, transactional review checklist, audit report format, etc.

Perform

- Gather written procedures from each business unit prior to the audit.
- Interview personnel at all levels of the organization to compare written procedures with actual business practices.
- Identify gaps and inconsistencies from written procedures to interviews.

Present

- Write draft audit report.
  - Executive Summary
    - Purpose
    - Methodology
    - Key Findings
  - Findings and Recommendations
    - Organize in Priority Order
  - Appendices
    - Interview List
    - Document List
    - Process Charts
- Brief the affected business units on the audit findings and recommendations.
  - Allow business units to address inaccuracies in report.
  - Obtain commitment from business units for corrective action.
  - Include time-frames within the report.
- Brief executive management on audit findings and recommendations.
- Track corrective actions and within a year, audit corrective actions.

ELEMENT 7

HANDLING EXPORT VIOLATIONS & TAKING CORRECTIVE ACTIONS

Detect and Act Early

An essential part of an organization's export compliance program are procedures which provide clear guidance to all employees concerning what actions to take in the event of suspected incidents of export-related noncompliance. This is an area that is often not thought of or included in export compliance programs because management feels like they have a good system in place and the organization would never have an infraction of export control regulations. Early detection and fast responses to resolve the noncompliance issue is key to minimizing your organization's exposure.

An early detection program for identifying suspected incidents of export-related noncompliance includes:

1. Creating internal and external reporting procedures for suspected violations of noncompliance that is supported by management,
2. Specific outlined internal processes to follow to investigate, confirm there indeed is a noncompliance issue, and correct the issue as needed,
3. Establish disciplinary actions for noncompliance with your organization's compliance policies and with U.S. export laws.

Support from Senior Management is Critical

For any notification program to work, employees, including contract employees, must feel that management at all levels of the organization are truly committed to export compliance. This commitment must be effectively communicated, often and broadly. Employees should not only be encouraged to report suspected export violations but also know that management views reporting suspected violations as an integral part of the organization's compliance program and an important part of the responsibility and duty of each employee.

Management should also ensure that employees have adequate training, knowledge, and resources to comply with the organization's compliance program. They are responsible for monitoring compliance of the employees they supervise, enforcing compliance standards consistently, and reporting incidents of noncompliance to the proper management level.

Create a Safe Environment

The most important thing management can do to foster a culture of compliance within their employees is to lead by example. Employees must have a high level of assurance that export compliance is

management's overriding concern in all export decisions and will never be sacrificed for profit or personal gain. It is critical that employees know that they will be free from retribution or retaliation from other employees or management if in good faith they raise questions or concerns about compliance. In fact, employees who have both the conscience and confidence to step forward when actions are suspect are one of the best defenses an organization has to ensure that it does not break any export laws.

Encourage Employees to Report

It should be made part of employee performance plans and evaluations, stating that employees are expected to raise concerns when they see a possible problem. Additionally, employees who speak up should be lauded, perhaps in a monthly compliance newsletter, even if the problem reported resulted in no specific confirmed violation, but perhaps led to modifying the organization's export procedures.

Management must convey to employees that in addition to knowing the legal and ethical responsibilities that apply to their jobs, it is an employee's duty to speak up if they are unsure about the proper course of action or need advice, if they believe another employee is doing, or may be about to do, something that violates the organization's compliance program, or if they believe that they have personally been involved in noncompliant activity. Management must instill within all employees the personal commitment to do the right thing.

Internal and External Reporting Procedures

As part of an organization's export compliance program, all staff should be given clear instructions on how suspected incidents of export-related noncompliance should be reported. Suspected incidents can be reported in a variety of places in an organization including an export compliance office, legal department, or ethics hotline. The office or individual(s) assigned the responsibility for taking reports should be publicly identified. The name, room number, telephone number, and e-mail address of the notification office or person(s) should be made available to all employees, especially those involved in export-related activities. In addition, you may want to consider providing a mechanism or venue through which employees can make reports anonymously and can be assured that those reports will be confidential and shared on a 'need-to-know' basis.

Written procedures should be developed and included in your export compliance program explaining the internal procedures to be followed by the appropriate personnel when a suspected incident of export related noncompliance has been reported. Think through as many contingencies as possible ahead of time, and delineate appropriate and detailed procedures. At a minimum, this should include:

- criteria for when to conduct an investigation on a potential noncompliant activity;
- how to determine the scope of the investigation;
- the specific investigation procedures (who, what, where, when, how);
- investigative report documentation requirements;
- management notification procedures if noncompliance is confirmed;
- documentation requirements of remedial actions taken;
- notification procedures to the reporting employee regarding the outcome of the investigation; and
- reporting procedures to management regarding corrective actions taken.

Submitting a Voluntary Self-Disclosure

When noncompliance is confirmed, written procedures should also be developed for external reporting procedures to the U.S. Government. The Commerce Department's Bureau of Industry and Security (BIS) has a Voluntary Self-Disclosure program under which the disclosure will be considered as a great weight mitigating factor in any export enforcement administrative action. However, in order to be considered "voluntary," disclosures must be made prior to the time the U.S. Government obtains knowledge of either the same or substantially similar information from another source and initiates an investigation or inquiry of its own. The lesson here is to disclose as quickly as possible to get the great weight mitigation. If you know you will need time to do a comprehensive assessment to identify any other noncompliance, make an initial voluntary self-disclosure, and then submit your complete disclosure once you have completed your internal review.

In addition, the voluntary disclosure must be made with the full knowledge and authorization of senior company management. To make a voluntary disclosure, submit it to the Director of BIS's Office of Export Enforcement (OEE), as described in Section 764.5(c)(7) of the EAR. It is helpful to establish one point of contact within your organization on the self-disclosure to avoid confusion in communicating with OEE.

Corrective Actions

Once noncompliance is confirmed, an obvious but crucial response by the export compliance team is identifying the root cause of the noncompliant activity and ensuring you have identified all instances of the noncompliance to include in the self-disclosure. Additionally, the compliance team needs to develop corrective actions to ensure the noncompliance does not recur. These corrective actions should be implemented as quickly as possible and monitored to make sure they are working properly. In addition, the internal identification of noncompliance and the corrective actions your organization took to remedy the situation, is an excellent "lessons learned" training opportunity. Fold these lessons back into your export compliance training program.

To maximize mitigation of any potential administrative fine, include in your self-disclosure what corrective actions have been taken to help avoid any recurrence and any other mitigating factors that may exist. If you have an export compliance program in place that includes all the elements BIS recommends, that too is a great weight mitigating factor and should be specifically highlighted in your self-disclosure.

ELEMENT 8

BUILD AND MAINTAIN YOUR EXPORT COMPLIANCE MANUAL

Getting Started:

First and foremost, if you have not been directed by senior management to create a formal export compliance manual for your organization, get that support and buy-in before doing so. Explain the benefits for your organization, such as protection against unintended export violations which could disrupt day to day business, large administrative fines and costly company time to resolve, and damage to the organization's reputation.

In addition, a written export compliance manual will help employees know their specific responsibilities and how they integrate with other parts of the organization helping speed export processes and thus delivery of your products and services to customers. Finally, make sure management knows you will need them to be an example for the organization and that you will need them to sign a statement to the entire organization stressing their support and commitment to export compliance.

Second, get support from management to establish an export compliance team. You may know much of what your organization does, but having experts inside different parts of your organization will help tremendously in capturing the specific day-to-day export processes and identifying with them any export compliance vulnerabilities that can be addressed in your written export compliance manual. This group will also be invaluable to help write or review specific parts of your manual. They can also serve to help get buy in at the working level within each of these specific units and down the road they can also help to revise your manual as you review it annually to ensure it is kept current and relevant.

Ready to write:

Depending on the size or your organization, and the extent of your export operations, your written manual could range from a dozen or so pages to 100 or more. The most important aspect here is to keep it relevant to your organization. Make sure the manual is easy to understand and follow, and captures the day-to-day operations and procedures so, for example, a new employee would have no problem understanding the flow and processes involved.

Start with writing an introduction which would include why export compliance is important to your organization. Following that, write a management commitment statement for your president or CEO to send to all employees and be captured as the first part of your written manual. With your team, examine your organization's export risks and identify those in your risk assessment section. In this section as well, include all personnel responsible for export compliance and their responsibilities.

Review the other elements and with your team flesh out what those specific processes and procedures are, or should be. Very often you can borrow from existing procedures that are already in place but may have never been captured in one written document. Where possible, create flow diagrams accompanied by written description, making it easier for staff to understand. Once you have drafted your written export compliance manual, have your team proof read to fill in any gaps or fine tune the procedures. You also may want to select a few people outside your team to review the draft manual as well to get their opinion and suggestions for areas that might not be clear. Keep in mind, that creating this written compliance manual will most likely take several months to complete.

Ready to publish:

You want your written export compliance program manual to have an official corporate look, so take time to ensure the overall appearance shows the importance of this document. Once it is edited and cleared by management, ensure it is advertised to all employees and where it is available on the organization's internal electronic files. In addition, make sure the management commitment statement includes a highlight of who is the empowered contact person for staff to contact if they have any questions or feedback on the manual and/or export control concerns generally.

Finally, don't park your export compliance manual and forget about it. Make a calendar assignment to do periodic reviews of the manual with your team to ensure it is dynamic and kept up-to-date. Many changes in your organization or in the export regulations may create the need to make revisions even before your periodic review schedule.

AUDIT MODULE

EXPORT COMPLIANCE PROGRAM

The audit module is a tool to help exporters develop or revise their Export Compliance Program. Each element is broken down and has an option to Add (+), Update or Revise (Δ), Not-applicable (N/A) or is currently in Operation (✓). Each organization has unique requirements and will need to assess their own export activities and export programs. This tool combines best compliance practices from U.S. organizations, auditing practices, and Export Administration Regulations (EAR) requirements. Keep in mind, the audit module cannot include every possible requirement or activity necessary. Please see the EAR for complete details.

Element 1: MANAGEMENT COMMITMENT
Element 2: RISK ASSESSMENT
Element 3: EXPORT AUTHORIZATION
Element 4: RECORDKEEPING
Element 5: TRAINING
Element 6: AUDITS
Element 7: HANDLING EXPORT VIOLATIONS & TAKING CORRECTIVE ACTIONS
Element 8: BUILD AND MAINTAIN YOUR EXPORT COMPLIANCE MANUAL

Legend for Each Element:

✓	Currently in Operation
+	Add to ECP
Δ	Update or Revise
N/A	Not-Applicable

Element 1: MANAGEMENT COMMITMENT	✓	+	Δ	N/A
The Management Commitment Statement is a formal statement signed by a high level executive officer (CEO, President, Owner, etc.) that clearly communicates the organization's commitment to export controls.				
Management Commitment is strong and supportive.				
The statement explains why corporate commitment is important from your organization's perspective and/or national security.				
The statement contains a policy statement that no sales will be made contrary to the Export Administration Regulations.				
The statement conveys the dual-use risk of the items to be exported.				
The statement designates and includes contact information for a person, if there are questions on the legitimacy of a transaction, possible violations, or if there needs to be a change in the ECP.				
The statement is distributed to all employees and is easily accessible online or by print.				
Each individual must sign an employee acknowledgement page after reading the statement.				
Management commitment is communicated on an ongoing basis, but not limited to one or more of the following: • Company publications • Company awareness posters • Daily operating procedures • Orientation programs • Refresher training • Electronic training modules • Employee procedures manuals • Other means, e.g., bulletin boards, in meetings, etc.				

Element 2 & 3: RISK ASSESSMENT & EXPORT AUTHORIZATION

(Export item)	✓	+	Δ	N/A
Export items have an accurate and current ECCN (Export Control Classification Number).				
Designate an individual to determine jurisdiction, classification, and licensing responsibilities.				
Written procedures describe how items are classified on the CCL (Commerce Control List) whether by a technical expert, the manufacturer of the item, or by BIS.				
Written procedures describe the process for seeking commodity jurisdiction determinations.				
A matrix and/or a decision-tree table for product/country license determinations are utilized.				
Written procedures are in place for necessary license conditions follow-ups.				
Instructions specify who, when, where, and how to check each shipment against the matrix.				
Written procedures exist for appropriate shipping authorizations, and how to determine if: • a license is required, • a license exception is eligible (specify which), • no license is required (NLR.)				
For service or repair of items located outside the U.S., a process is in place to determine if a license is required.				
For controlled technology: Safeguards are in place to control the item.				
For foreign nationals: Deemed export license(s) and a technology control plan are in place.				

Element 2 & 3: RISK ASSESSMENT & EXPORT AUTHORIZATION *(cont'd)*

(Organizational Operations)	✓	+	Δ	N/A
The compliance structure is clear and roles are defined.				
Centralized operations: Have the corporate office administers compliance program				
Decentralized operations: Separate operating units administer compliance program.				
Adequate resources are available to run an effective program.				
Good communication exists within the organization.				
Checks and safeguards are in place within the internal process flows.				
Assigned personnel are responsible for all checks.				
Written procedures are in place to ensure that product/country license determination guidance is current and updated for exports, re-exports, and transfers.				
Good working relationship with freight forwarder(s).				
Written procedures exist for routed transactions where the Electronic Export Information can also be obtained easily.				
Export clearance procedures are well-defined.				
The organization has an active BIS SNAP-R account and/or other government accounts to apply for Commerce licenses and/or commodity classifications.				
The organization is receives updates to the EAR by and monitors the Code of Federal Regulations for updates.				
Monitor the Federal Register for proposed and finalized rules.				

(Customer)	✓	+	Δ	N/A
The customer database is current and updated frequently.				
Screening is performed for all customers and includes the customer/company's name, address, associated persons.				
Written procedures describe when, how often, and what screening is performed and by whom.				
Responsible personnel/positions are identified for ensuring screening of customers and their activities which include prohibited end-users.				
Screening processes are recorded for each transaction.				
Prior to exporting, exports and re-exports of all items subject to the EAR are monitored determining whether or not the items are destined for a prohibited end-user.				
Compliance of consignees, end-users and other parties involved in export transactions are monitored and reported, if destined to a proscribed party or destination.				
If matches occur to a proscribed party and/or destination, a "hold" function is present to prevent shipments from being further processed.				
A checklist is documented and maintained on file for each and every order, including backlogs.				

(Customer- *cont'd***)**	✓	+	Δ	N/A
Processes exist for Product/Country Licensing Determination.				
Each transaction is screened to determine whether there are any license requirements which include exports, re-exports, or transfers of specified items to specified end-users as well as an unacceptable risk of use in, or diversion to, prohibited proliferation activities.				
The order process and other linking processes include a description of administrative control over the following documents: Electronic Export Information, Shipper's Letter of Instruction (SLI), Airway bills (AWB), Bills of Lading, Invoices.				
Order processes link internal flows displayed visually in a series of flow charts that include from receipt of order to actual shipment.				
If no product/country license determination exists, a "hold" function stops the order until a decision is made as to license requirements.				
A supervisor or Export Compliance Administrator signs-off on procedures implemented at high risk points.				
The following checks, but not limited to, are included in the internal screening process (Consolidated Screening List):				
• Denied Persons				
• Entity List				
• Unverified List				
• Specially Designated Nationals List				
• Boycott language				
• Embargoed/Sanctioned Countries				
• Nuclear End-Uses				
• Certain Rocket Systems and Unmanned Air Vehicles End-Uses				
• Chemical and Biological Weapons End-Uses				
• Diversion Risk Check				
Other trade-related sanctions, embargoes, and debarments imposed by agencies other than the Department of Commerce are checked.				
Department of Treasury (Office of Foreign Assets Control): • Specially Designated Nationals List				
• Foreign Sanctions Evaders List				
• Sectoral Sanctions Identifications (SSI) List				
• Palestinian Legislative Council (PLC) List				
• The List of Foreign Financial Institutions Subject to Part 561 (the Part 561 List):				
• Non-SDN Iranian Sanctions Act List (NS-ISA)				
Department of State: • Nonproliferation Sanctions				
• AECA Debarred List				

Element 4: RECORDKEEPING	✓	+	Δ	N/A
A system is in place to manage records, including record retention.				
Written procedures have detailed step-by-step instructions on what employees are expected to follow.				
Records, in physical-hardcopy and/or electronic form, are retained and maintained in a secured location.				
A designated employee(s) (Name, Contact info) is responsible for management and maintenance of recordkeeping as well as a designated back up person (s).				
Records are maintained per organizational policy (minimum 5 years).				
Employees have access to all the appropriate systems, tools, databases, and records to perform their responsibilities that ensures compliance with recordkeeping procedures.				
Employees understand the importance of their roles related to the overall recordkeeping requirement.				
A Technology Control Plan (TCP) is maintained, if needed.				
A log is maintained for all visitors to the facility.				
Establish procedures on how to properly dispose sensitive medium for more information see "DOC/NIST "Guidelines for Media Sanitization"				
Obtains copies of export documents from freight forwarders.				
The procedure includes a list of records to maintain (not exclusive):				
• SNAP-R (Simplified Network Application Process-Redefined)				
• Export Licenses (Commerce/State/OFAC)				
• Accompanying attachments, rider or conditions				
• Commodity Classifications				
• Commodity Jurisdiction letters				
• Advisory Opinion letters				
• BIS-648P (Notification of Delivery Verification Requirement)				
• BIS 711 Statement by Ultimate Consignee and Purchaser				
• End-user Certificates				
• Copy of all shipments/AES filings				
• Commercial Invoices				
• Sales Orders				
• Shippers Letter of Instruction (SLI)				
• Description of items(s)				
• ECCN(s)				
• License Exceptions or Exemptions				
• Schedule B number(s)/HS numbers				
• Air Waybills and/or Bills of Lading Value of shipments				

Element 5: TRAINING	✓	+	Δ	N/A
Export control training is based on job specific needs and at different levels.				
Employees are informed on their training requirements and told what trainings to take and how often (i.e. quarterly, yearly).				
Attendance logs are used for documentation which includes agenda, date, trainer, trainees, and subjects.				
A qualified individual (s) (name, position) is designated to conduct training and to update the training materials.				
If the primary responsible person is unable to perform the responsibilities, a secondary person is designated to back-up the primary designee.				
Responsible persons are trained to understand the interconnection of their roles with other ECP processes and where they fit in the overall export transaction/ compliance program.				
Training materials are accurate, consistent and current with operational company policy, procedures and processes.				
A training schedule is accessible which includes date, time, and place.				
The organization trains in a "Formal" structured setting, and agendas and modules are used.				
The organization trains in an "Informal" less structured basis, where verbal, daily, on-the-job exchanges are used.				
As export regulations change, periodic reviews and revisions to the training program are conducted.				
Training program includes, but not limited to:				
• Orientation for new employees				
• Definitions of exports and the export regulatory requirements				
• Organizational structure of export-related departments and functions				
• Message of management commitment - Policy Statement				
• The purpose and scope of export controls				
• National security concerns				
• Organizational/Company specific concerns				
• Red flags				
• Licenses, conditions and exceptions				
• Deemed exports and hand-carry items				
• Report of potential violations, escalation process, and corrective action requirements				
• Regulatory changes and new requirements				
• Back-up personnel training				
• Destination restrictions				
• Item restrictions				
• End-Use and End-User Prohibitions				
• New customer review procedures				
• Violations				
• Refresher courses and updates to the schedule				
• Identification and description of non-compliance?				

Element 6: AUDITS	✓	+	Δ	N/A
Procedures are performed as written and the compliance program is ongoing.				
Qualified individual (or auditing group) is designated to conduct internal audits.				
Use of a standard audit module or self-assessment tool.				
Specific unit/functional level audits are performed.				
Program level audits are performed.				
A schedule for audits (annually, semi-annually, quarterly) is defined.				
The audit process is described step-by-step.				
Potential conflict of interest between the auditor and the division being audited are addressed.				
Best practices are shared with other divisions in the company to improve effectiveness and efficiency of export controls and promote consistency of procedures.				
Briefings to management and relative business units on audit findings are provided in a timely manner.				
Written report(s) of the audit and corrective actions are shared.				
If possible/available, external audits are performed.				
The audit may include the following but not limited to:				
• Methodology of the audit				
• All key export-related personnel are interviewed				
• Sampling of the completed screens performed during the order processing and/or new (or annual) customer screening				
• Screening practices and internal controls for compliance				
• A procedure to stop/hold transactions if problems arise				
• Accurate product/license determinations and export authorizations are consistent with the current EAR and Federal Register notices				
• Export control procedures and the ECP manual are consistent with EAR changes that have been published				
• Flow charts of the various processes for each Element				
• Clear, open communications among all export-related divisions				
• Records of past audits maintained to monitor repeated deficiencies				
• List or process of corrective actions, if needed				
• Written report/results of each internal audit				

Element 7: HANDLING EXPORT VIOLATIONS AND TAKING CORRECTIVE ACTIONS	✓	+	Δ	N/A
Management creates a safe environment and fosters a culture of compliance.				
Management acknowledges the findings of potential violations.				
Internal and external procedures notify company management if a party is suspected of export-related non-compliance.				
The organization has an anonymous reporting mechanism for employees.				
Appropriate incentives, rewards, requirements are in place to recognize employees who report suspected export violations.				
Organizational policy/guidelines address accountability and consequences for noncompliant activity.				
A 24-hour mechanism notifies the compliance management of possible export violations or problems.				
There are established disciplinary actions for noncompliance within the organization's compliance policies and with U.S. export laws.				
Compliance guidelines include policy and procedures for follow-up reporting to management and the reporting employee.				
Compliance guidelines provide defined criteria for when a formal internal investigation is required.				
Internal procedures are in place to notify the appropriate U.S. Government officials (e.g. Commerce/State/Treasury, etc.) when non-compliance is determined.				
A central corporate point-of-contact has been defined for all communications with the U.S.G.				
There are clear guidelines for Voluntary Self-Disclosures (VSDs).				

Element 8: BUILD AND MAINTAIN YOUR EXPORT COMPLIANCE MANUAL	✓	+	Δ	N/A
An organizational official is charged with ECP oversight and ongoing commitment to the program.				
Written procedures clearly describe detailed step-by-step processes that employees are expected to follow and contingencies are addressed.				
The written ECP is developed and maintained with input from all the corporate stakeholders in the export process.				
Consistent written and operational procedures exist.				
All ECP tasks are clearly summarized and consistent with detailed information in other corresponding elements.				
Written procedures describe how information will flow among all the elements to help ensure ECP effectiveness and accountability.				
The written procedures are reviewed for update at least annually and when significant changes occur.				
Management is directly involved through regularly scheduled meetings with the various units responsible for roles within the ECP.				
Management has implemented a team of ECP managers who meet frequently to review challenges, procedures, and processes and who also serve as the liaison with those who perform the ECP responsibilities.				
If the primary responsible persons are unable to perform the assigned responsibilities, a secondary person is designated to back-up the primary designees.				
A table/list identifies individuals, their positions, addresses, telephone numbers, e-mail addresses, and their respective export transaction and compliance responsibilities for both domestic and international sites.				
Responsible persons understand the interconnection of their roles with other ECP processes and where they fit in the overall export compliance system.				
Adequate resources (time, money, people) are dedicated to the implementation and maintenance of the ECP.				
The ECP is available and easily accessible for both employees and managers.				

Template 1: ITEM CLASSIFICATION SHEET

Item Description	
Technical Specifications	
Agency Jurisdiction	
ECCN Classification Decision	
Contacts Made to Determine Item Classification	
Name/Title of Technical Decision Maker (Engineer)/Date	
Name/Title of Approving Manager/Date	
End-Use of the Item (Civilian or Military?)	
Request for Evaluation Due to EAR Change Made	
Evaluation Decision **Date** **Name/Title of Product Engineer**	

Template 2: EXPORT AUTHORIZATION SHEET

ITEM		
Description		
ECCN or Other Classification		
Country of Destination		
LICENSE DETERMINATION		
Is license required? License Number	Is license exception eligible? License Exception	No license required Check here
Reviewed by:	Initials	Date
SCREENING		
Party Screening Complete	Initials	Date
End-use military?		
Prohibited End-use?		
End-use statement?		
EXPORT REPORTING		
ITN (if not needed, exemption or exclusion citation)		
Compliance Documents needed:		
Other Documents needed:		

Template 3: LICENSE DETERMINATION MATRIX

PRODUCT NUMBE	COUNTRY	ITEM DESCRIPTION	AGENCY JURISDICTION	ECCN OR CLASSIFICATION	LICENSE REQUIREMENTS

Template 4: DIVERSION RISK & RED FLAGS CHECKLIST

KNOW YOUR CUSTOMER		
The customer or purchasing agent is **reluctant to offer information** about the end use (or end-user) of a product.	Yes	No
The customer has **little or no business background**. For example, financial information unavailable from normal commercial sources and corporate principals unknown by trade sources.	Yes	No
The customer is willing to **pay cash** for a very expensive item when the terms of the sale call for financing.	Yes	No
The customer is **unfamiliar** with the **product's performance characteristics** but still wants the product.	Yes	No
The customer **declines** routine installation, training, or maintenance services.	Yes	No
When questioned, the buyer is **evasive or unclear** about whether the purchased product is for domestic use, export, or reexport.	Yes	No
Customer uses only **"P.O. Box" address** or has facilities that appear inappropriate for the items ordered.	Yes	No
Customer is known to have, or is suspected of having, unauthorized dealings with **embargoed countries**.	Yes	No
KNOW YOUR PRODUCT		
The product's capabilities do not fit the buyer's line of business: for example, a small bakery places an order for several sophisticated lasers.	Yes	No
The product ordered is **incompatible with the technical level** of the country to which the product is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.	Yes	No
Customer's order is for **parts known to be inappropriate**, for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought).	Yes	No
DELIVERY		
Delivery dates are **vague**, or deliveries are planned for o**ut-of-the way destinations**.	Yes	No
A **freight forwarding firm** is listed as the product's final destination.	Yes	No
The **shipping route is abnormal** for the product and destination.	Yes	No
Packaging is inconsistent with the stated method of shipment or destination.	Yes	No
Add company-specific indicators here.	Yes	No
Add the new red flag indicators that are pending.	Yes	No

REFERENCES

Know Your Customers
http://www.bis.doc.gov/index.php/component/content/article/23-compliance-a-training/47-know-your-customer-guidance

Destination Control Statement – EAR Part 758.6

Online Training Room
http://www.bis.doc.gov/index.php/compliance-a-training/export-administration-regulations-training/online-training-room

Consolidated Screening List
http://apps.export.gov/csl-search

BIS "Best Practices for Industry to Guard Against Unlawful Diversion through Transshipments Trade"
http://www.bis.doc.gov/index.php/forms-documents/doc_view/625-best-practices

Voluntary Self-Disclosure
http://www.bis.doc.gov/index.php/enforcement/oee/voluntary-self-disclosure

AES Best Practices
http://www.census.gov/foreign-trade/aes/documentlibrary/bp/aes_bestpractices.html

Freight Forwarder Guidance
http://www.bis.doc.gov/index.php/forms-documents/doc_view/620-new-freight-forwarder-guidance

U.S. Department of Commerce
Bureau of Industry and Security

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