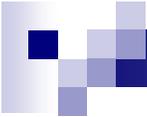


# Elements Of An Effective Export Compliance Program

**Renee Osborne**

Export Management & Compliance Division  
Office of Exporter Services  
Bureau of Industry and Security  
U.S. Department of Commerce



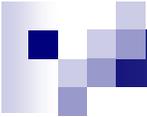
# Effective Compliance Defined

**An effective export management and compliance program includes the development, implementation, and adherence to standardized operational compliance policies, procedures, standards of conduct, and safeguards AND written guidelines that tell employees what is expected of them and provides management with a framework to evaluate whether:**

***What should happen, does happen and***

***What shouldn't happen, doesn't happen***

***... on a daily basis.***



# **Effective Compliance Defined**

**Develop, Implement, Standardize, Adhere**

**Operational + Written**

**Policies/Procedures**

**+**

**Standards of Conduct**

**+**

**Safeguards**

**+**

**Written Guidelines**

**=**

**Effective Compliance**



# How can a compliance program be helpful?

- **Provides:**

- Structure, organization, accountability
- Consistent compliance
- Procedures and tools to ensure accuracy
- Training and awareness

- **Reduces risk of violations of export controls.**

- **Smart business strategy.**

# The Foundation of All Effective Compliance

## Code of Federal Regulations

- ▶ 15 CFR 730-774
- ▶ E-CFR [www.gpoaccess.gov/ecfr/](http://www.gpoaccess.gov/ecfr/)

## Available On-Line

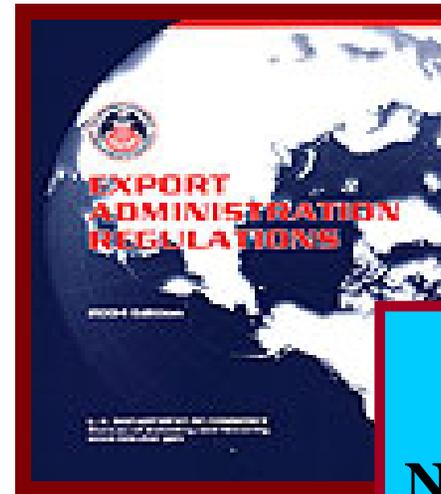
- ▶ [www.bis.doc.gov](http://www.bis.doc.gov)
- ▶ [www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

## Government Printing Office Order

- ▶ 866-512-1800 (toll-free)
- ▶ [http://www.access.gpo.gov/bis/ear\\_order.html](http://www.access.gpo.gov/bis/ear_order.html)

## National Technical Information Services

- ▶ <http://www.ntis.gov/products/export-regs.aspx>



**BIS  
E-Mail  
Notification**

**Part 732  
Steps  
For Using  
The EAR**

<http://www.bis.doc.gov>

**EXPORTER COUNSELING**  
(202) 482-4811, (949) 660-0144

**Bureau of Industry and Security**  
U.S. Department of Commerce  
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**POLICY INITIATIVES**

- [U.S. Export Control Initiatives](#)
- [India High Technology Trade](#)
- [China High Technology Trade](#)

**EXPORTER RESOURCES**

- NEW!** [Commodity Classifications](#)
- [Export Administration Regulations](#)
- [Commerce Control List](#)
- [Lists To Check](#)
- [BIS Online Training Room](#)

Sunday - July 5, 2009

**UPCOMING EVENTS**

July 21 - 22, Austin, TX



How To Develop an Export Management and Compliance Program

**BIS PUBLICATIONS**

- [BIS Annual Report 2007](#)
- [SNAP-R Exporter User Manual](#)
- [Don't Let This Happen to You!](#)

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U. S. Bureau of Industry and Security - Microsoft Internet Explorer provided by Bureau of Industry and Security

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## ADDITIONAL RESOURCES

- [Search](#)
- [Compliance Program Assistance](#)
- [Export Control Basics](#)
- [FAQs on Export Licensing](#)
- [Guidance on Reexports](#)
- [Advisory Opinions](#)
- [On-Line Submissions](#)
- [Report Suspected Violations](#)
- [Defense Priorities and Allocation System](#)
- [Reading Room](#)
- [Email Notification Service](#)
- [Resources](#)

**May 1, 2009**  
Houston Firm Settles Export Allegations  
[Press Release](#)

**April 29, 2009**  
BIS publishes an addition and revisions to the list of approved end-users and eligible items for the People's Republic of China under Authorization Validated End-User (VEU)  
[Press Release](#) | [Federal Register](#)

**April 29, 2009**  
BIS Publishes Proposed Rule on Reporting of Offset Agreements. Comments must be received by June 29, 2009.  
[Federal Register](#)

[More News Stories...](#)



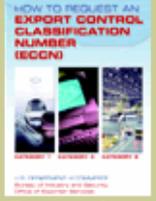
American Jobs  
American Values  
U.S. Department of Commerce

**BIS DOC**

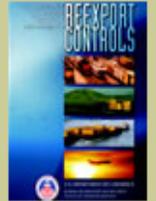
[Major Cases](#)



[Introduction to the Commerce Department's Export Controls](#)



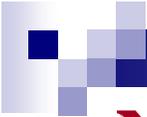
[How to Request an Export Control Classification Number \(ECCN\)](#)



[Guidance on the Commerce Department's Reexport Controls](#)

FOIA | Disclaimer | Privacy Policy | Information Quality

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# **NINE KEY ELEMENTS OF AN EFFECTIVE COMPLIANCE PROGRAM**

- (1) Management Commitment**
- (2) Continuous Risk Assessment**
- (3) Written Operational Guidelines**
- (4) Ongoing Compliance Training & Awareness**
- (5) Cradle to Grave Export Compliance Security**
- (6) Recordkeeping [EAR Part 762]**
- (7) Export Compliance Monitoring & Auditing**
- (8) Program for Handling & Reporting Export  
Compliance Problems & Violations**
- (9) Follow-Through and Corrective Action**

**9 ++  
Your  
Compliance  
Program  
May Have More  
Than 9 Core  
Elements**

## EXPORT ENFORCEMENT MITIGATING FACTORS

## KEY COMPLIANCE ELEMENTS

Appropriate Senior Organizational Officials are Responsible for Overseeing the Export Compliance Program	Management Commitment: Senior management must establish written export compliance standards for the organization, commit sufficient resources for the export compliance program, and ensure <b>appropriate senior organizational official(s) are designated with the overall responsibility for the export compliance program</b> to ensure adherence to export control laws and regulations.
Meaningful Risk Analysis is Performed	Continuous <b>Risk Assessment</b>
Formal Written Compliance Program	<b>Formal Written Export Management and Compliance Program:</b> Effective implementation and adherence to written policies and operational procedures.
Adequate Training Provided to Employees	Ongoing <b>Compliance Training</b> and Awareness
Internal/External Review or Audits	<b>Internal and External Compliance Monitoring and Periodic Audits</b>
Internal System for Reporting Export Violations	Internal Program for Handling Compliance Problems, Including <b>Reporting Export Violations and Taking Appropriate Corrective Action</b>
Remedial Activity is Taken in Response to Export Violations	
Screening of Customers and Transactions	Cradle to Grave Export Compliance Security: <b>Screening of employees, contractors, customers, products, and transactions</b> and implementation of compliance safeguards throughout the export life cycle including product development, jurisdiction, classification, sales, license decisions, supply chain, servicing channels, and post-shipment activity.
Recordkeeping	Adherence to <b>Recordkeeping</b> Regulatory Requirements



# KEY ELEMENTS

## **(#1) Management Commitment**

- (2) Continuous Risk Assessment**
- (3) Written Operational Guidelines**
- (4) Ongoing Compliance Training & Awareness**
- (5) Cradle to Grave Export Compliance Security**
- (6) Recordkeeping [EAR Part 762]**
- (7) Export Compliance Monitoring & Auditing**
- (8) Program for Handling & Reporting Export Compliance Problems & Violations**
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# THE TMC PRINCIPLE

**Without management buy-in and support, a company can never achieve an effective program of export compliance.**

**Management commitment requires managers to:**

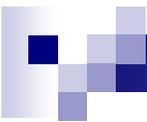
- **Communicate commitment to compliance by “walking the talk” and emphasizing that commitment via ongoing dialogue through different communication venues and forums.**
- **Be actively involved in export compliance and foster a compliance oriented culture.**
- **Provide a sufficient level of resources to develop, implement, and continuously improve a compliance program.**



**T** Top / Time

**M** Management / Money

**C** Commitment / Concern



# MANAGEMENT COMMITMENT

**Effective compliance programs require managers that...**

- **Lead by example.**
- **Communicate the importance of compliance to the organization.**
- **Commit sufficient resources.**
- **Train employees in their compliance responsibilities.**
- **Instill in all employees the commitment to do the right thing.**
- **Encourage employees to exercise due diligence and speak up if something seems wrong.**
- **Foster a compliance culture free from retribution or retaliation.**
- **Commit to compliance at all levels of the organization.**
- **Monitor compliance activity and enforce compliance standards.**



# KEY ELEMENTS

✓ Management Commitment

## **(2) Continuous Risk Assessment**

**(3) Written Operational Guidelines**

**(4) Ongoing Compliance Training & Awareness**

**(5) Cradle to Grave Export Compliance Security**

**(6) Recordkeeping**

**(7) Export Compliance Monitoring & Auditing**

**(8) Program for Handling & Reporting Export  
Compliance Problems & Violations**

**(9) Follow-Through and Corrective Action**

# STRATEGIC RISK MANAGEMENT

## Anticipate the Risk

- Assume the worst can happen at any time.
- Anticipate the next happening.
- Play it out. Think it through.
- Figure out what you don't know about your supply chain.

## Assess the Risk

- What is the likelihood of the event?
- What is the magnitude?

## Act Against the Risk

- Establish a strategy to mitigate the risk.
- Maintain a holistic view of the risk and solution.

## Adopt a Plan

- Develop processes and procedures.
- Identify roles and responsibilities.



### Be Prepared...

Risk assessments rarely conclude that everything is under control.



# STRATEGIC RISK MANAGEMENT

## **Prioritize Risks and Develop A Mitigation Action Plan**

- Understand your risk tolerance. This may impact how risks are prioritized.
- Consider the (1) likelihood of occurrence, (2) severity of consequences, and controls already in place.
- The risks that pose the greatest threat that have no controls in place should take priority consideration for developing mitigating action plans.

## **Present Results to Senior Management**

## **Obtain Approval to Implement Mitigation Plan**

## **Monitor and Reassess**



# KEY ELEMENTS

- ✓ Management Commitment
- ✓ Continuous Risk Assessment

## **(3) Written Operational Guidelines**

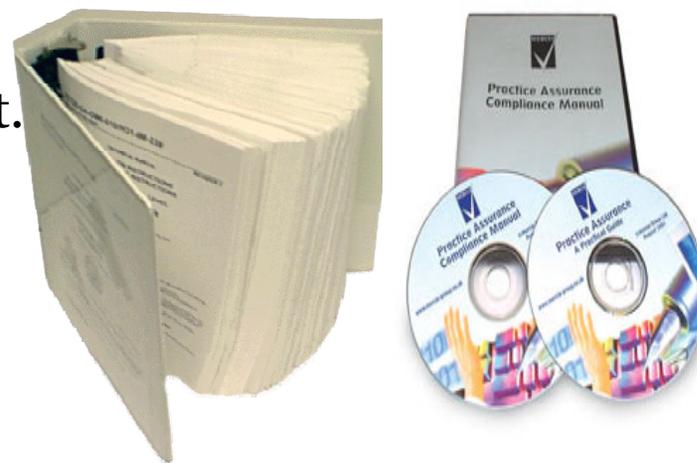
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- (9) Follow-Through and Corrective Action

# YOUR WRITTEN COMPLIANCE MANUAL

## Operational + Written

**Policies/Procedures + Standards of Conduct + Safeguards + Guidelines  
= Effective Compliance**

- ▶ Your written compliance manual provides a “map of compliance” for employees to follow and is the basis of your compliance training program.
- ▶ Includes compliance policies and procedures. Step-by-step procedures answering the question “and then what happens.”
- ▶ Tailored to both the Corporate and the Business level. Roll down template.
- ▶ Ensure clearly written, concise, and complete.
- ▶ Include appropriate content & point-of-contact.
- ▶ Widely distribute and ensure accessible.
- ▶ Kept current and up-to-date.





# KEY ELEMENTS

- ✓ Management Commitment
- ✓ Continuous Risk Assessment
- ✓ Written Operational Guidelines

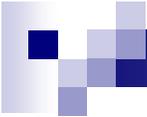
## **(4) Ongoing Compliance Training & Awareness**

- (5) Cradle to Grave Export Compliance Security
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- (7) Export Compliance Monitoring & Auditing
- (8) Program for Handling & Reporting Export Compliance Problems & Violations
- (9) Follow-Through and Corrective Action



# FORMAL EDUCATION & TRAINING

- ▶ **Assess your organization's current training program.**
- ▶ **Conduct a training needs assessment.**
  - Identify the high risk training needs.
  - The competence required of specific jobs in your supply chain.
  - Who needs to be trained.
  - What the content must cover.
- ▶ **Develop a training plan:**
  - Learning objectives.
  - How much time to devote to the training.
  - What types of training methods to use.
  - Timeline for conducting training.
  - Frequency for each course (initial and recurring).



# FORMAL EDUCATION & TRAINING

- ▶ **Define Your Training Program**

  - Senior Management & Board of Directors

  - Orientation for All New Employees

  - Intermediate For Key Personnel in Export Operations

  - Advanced For Export Compliance Staff

  - New Regulation/New Product/New Process/New Program

  - Issue Identification / Remedial Training

- ▶ **Tailor Approach to Audience**

- ▶ **Use Various Methods** – formal training, on the job training, face-to-face, Webinars, online training, audio conferences, video conferences, etc.

- ▶ **Focus Resources on Areas of Greatest Risk**

- ▶ **Be Creative. Think Outside the Box. Be Memorable.**

# IDEAS FOR

## COMPLIANCE TRAINING AND AWARENESS

- ▶ Posters
- ▶ Handbooks
- ▶ Company Newsletters
- ▶ Payroll Inserts
- ▶ Employee Contracts
- ▶ Positive Incentive Program
- ▶ Intranet
- ▶ Internet
- ▶ Television
- ▶ Videos
- ▶ E-Mail
- ▶ Voice Mail
- ▶ CD Roms
- ▶ Bulletin Board
- ▶ Checklists



### TRAINING PROGRAM EXAMPLES

- Internal/External Classroom Training
- Compliance Consultant Training
- Off-Site Compliance Conference
- Modular Computer Training Courses
- Interactive Video Training Program
- Ethical Decision-Making Scenarios
- Board of Director Briefings
- Management Specific Training
- Functional Procedures Staff Level Training
- Compliance Awareness Day/Week
- Brown Bag Lunch Series
- Thought For the Day Computer Screen
- Roundtable Compliance Meetings
- Compliance Forum / Blog
- Management Compliance Walk-Thru



# KEY ELEMENTS

- ✓ Management Commitment
- ✓ Continuous Risk Assessment
- ✓ Written Operational Guidelines
- ✓ Ongoing Compliance Training & Awareness

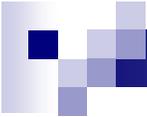
## **(5) Cradle to Grave Export Compliance Security**

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# CRADLE TO GRAVE



- Your compliance responsibilities begin before the sale.
- Manage the process from the first point of regulatory risk, through the entire supply chain process.
- Get the up-front decisions [Jurisdiction, Classification, and License Determination] right.
- Monitor post-shipment activities including license condition compliance, re-exports and transfers, and servicing and returns.



# **SUPPLY CHAIN MANAGEMENT**

## **Where Due Diligence Matters Most**

### **▶ The Three Ds**

Define, develop, and document a procedure for processing all orders.

### **▶ From Start to Finish**

The process should start at the point where an order is received and follow the route through the shipment of the products.

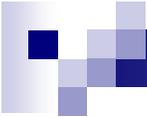
### **▶ Checks and Balances**

The process should include safeguards and multi-level approvals to ensure procedural requirements are followed.

### **▶ Screening**

Include screening of prohibited parties at key decision points.

### **▶ Training, recordkeeping, and audits are critical.**



## **COMPLIANCE CONSIDERATIONS WHEN DEVELOPING YOUR SUPPLY CHAIN SECURITY**

- ▶ Document who is responsible.
- ▶ Train stakeholders to recognize questionable transactions.
- ▶ All stakeholders should have the ability to put a questionable order on hold.
- ▶ Develop criteria for holding/stopping an order.
- ▶ Develop criteria for when an order on hold can be released.
- ▶ Separate personnel stopping and releasing an order.
- ▶ Develop a process for capturing issues.
- ▶ Strenuously audit. It's your most important audit trail.



# KEY ELEMENTS

- ✓ Management Commitment
- ✓ Continuous Risk Assessment
- ✓ Written Operational Guidelines
- ✓ Ongoing Compliance Training & Awareness
- ✓ Cradle to Grave Export Compliance Security

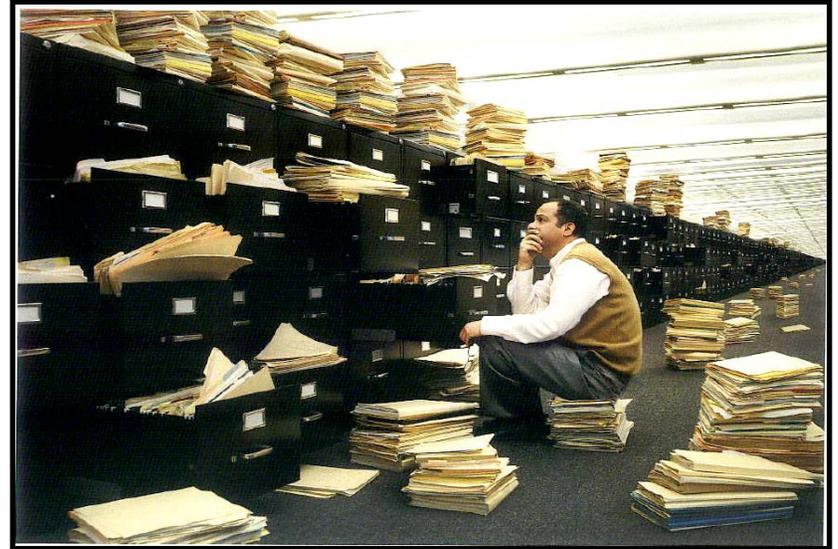
## **(6) Recordkeeping**

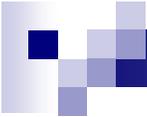
- (7) Export Compliance Monitoring & Auditing
- (8) Program for Handling & Reporting Export Compliance Problems & Violations
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# RECORDKEEPING

## **PART 762 DESCRIBES...**

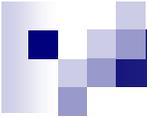
- **Who and What is Subject**
- **What You Have To Retain**
- **What You Don't**
- **Storage and Maintenance Requirements**
- **Requirements For Producing Records**
- **Format Requirements, Original & Reproduction**
- **Specific Guidance On Reproduction**
- **Retention Period**
- **Destruction Requirements**





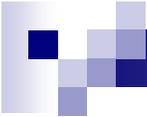
# RECORDKEEPING CONSIDERATIONS

- ▶ Effective records-retention procedures and easy retrieval is critical for effective recordkeeping. Develop a formal records management program. Designate program-level records officers.
- ▶ Conduct an analysis of all export business activities to identify records to be maintained in addition to those outlined in the regulations.
- ▶ Given the nature of business today, every employee involved in the export program of a company becomes a records manager.
- ▶ Identify the physical or virtual location where those records are kept.
- ▶ Conduct an up-front assessment of barriers to managing records in your company. Address/mitigate barriers.



## **RECORDKEEPING CONSIDERATIONS**

- ▶ Recordkeeping policy should address responsibilities and standards for hard copy, electronic media, websites, management information systems, personal electronics, e-mail correspondence, and documents in personal and shared workspace.
- ▶ Provide annual training and develop an ongoing awareness program.
- ▶ Records should be easily retrievable. System should allow for easy collection of all records for one transaction.
- ▶ Records-management should be a key consideration in all IT initiatives. Hardware and software dependency, indexing requirements for retrieval, migration of software formats, and archive/storage.
- ▶ Maintain a back-up system for all electronic files.
- ▶ Ensure records-retention is clearly defined in contractual agreements, e.g., with freight forwarders, brokers, distributors, etc.
- ▶ Conduct frequent spot-check audits.



# KEY ELEMENTS

- ✓ Management Commitment
- ✓ Continuous Risk Assessment
- ✓ Written Operational Guidelines
- ✓ Ongoing Compliance Training & Awareness
- ✓ Cradle to Grave Export Compliance Security
- ✓ Recordkeeping

## **(7) Export Compliance Monitoring & Auditing**

**(8) Program for Handling & Reporting Export Compliance Problems & Violations**

**(9) Follow-Through and Corrective Action**

# AUDIT

## **CRITERIA**

What Should Be [Manual]

## **CONDITION**

*“What Is” Based on Review*

## **EFFECT**

*So What? Consequences*

## **CAUSE**

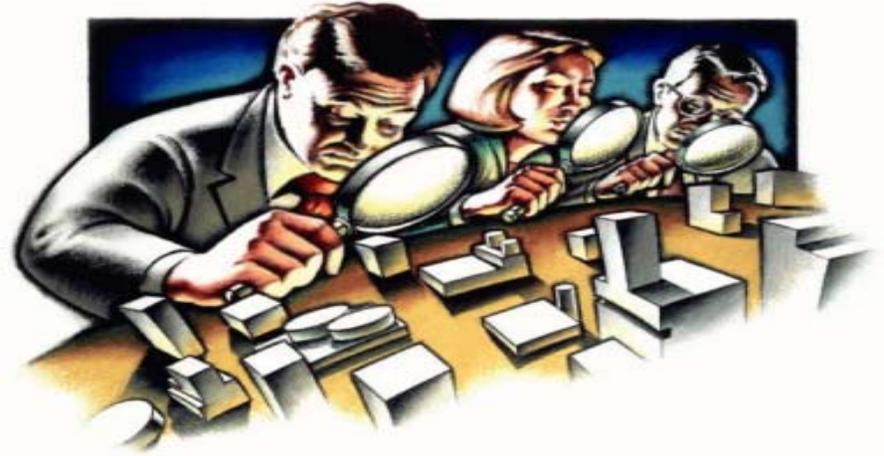
*How Did It Get That Way?*

## **RECOMMENDATIONS**

*What Should Be Done*

## **CORRECTIVE ACTION**

*Report, Action, Follow-Up*

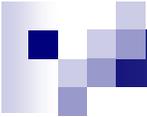


## **Timing and Frequency**

- Annual or Semi-Annual
- First or Second Quarter
- More Frequent for High Risk

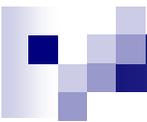
## **Who?**

- Business Units
- Trade Compliance Team
- Independent 3<sup>rd</sup> Party



# ANATOMY OF AN AUDIT

- Identify business units and personnel to be audited.
- Send e-mail notification to effected parties.
- Develop a tracking log for document requests.
- Prepare audit templates such as interview questions, transactional review checklist, audit report format, etc.
- Each business unit should provide their written procedures related to export compliance before the audit.
- Personnel at all levels of the organization, management and staff, should be interviewed to compare written procedures with actual business practices.
- Identify gaps and inconsistencies.



# ANATOMY OF AN AUDIT

- Write draft audit report.
  - Executive Summary [Purpose, Methodology, Key Findings]
  - Findings and Recommendations [Organize in Priority Order]
  - Appendices [Interview List, Document List, Process Charts]
- Conduct post audit briefing for affected business units to discuss audit findings and recommendations. Provide draft report. This is an opportunity for business units to address inaccuracies in report.
- Obtain commitment from business units for corrective action. Include in final audit report.
- Brief executive management on audit findings and recommendations.
- Track corrective actions. Within the year, audit corrective actions.



# KEY ELEMENTS

- ✓ Management Commitment
- ✓ Continuous Risk Assessment
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- ✓ Ongoing Compliance Training & Awareness
- ✓ Cradle to Grave Export Compliance Security
- ✓ Recordkeeping
- ✓ Export Compliance Monitoring & Auditing

**(8) Program for Handling & Reporting Export Compliance Problems & Violations**

**(9) Follow-Through and Corrective Action**

# COMPLIANCE ORIENTED CULTURE



**Employees**

**that have both  
the conscience and confidence**

**to step forward**

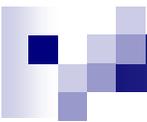
**when actions are suspect**

**are one of the best defenses a company has  
to minimize the risk of noncompliance.**



# INTERNAL NOTIFICATION

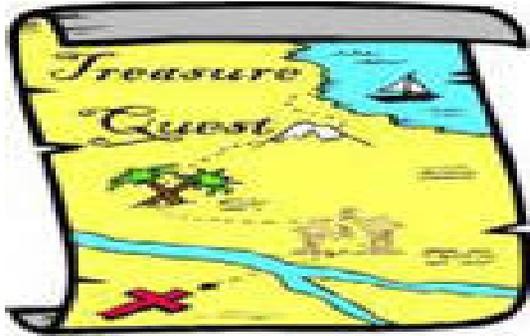
- ▶ Policies and procedures defined for business-unit, division, and corporate headquarters level reporting. Communication should roll up & roll down.
- ▶ Policy should state no reprisal action will be taken unless report made with knowledge it was false.
- ▶ Clear guidance to employees on how to report violations, suspected violations, or to obtain advice on compliance requirements. Policies and procedures should be addressed in employee compliance training.
- ▶ Compliance management chain clearly defined and empowered.
- ▶ One report mechanism should be anonymous. All should ensure confidentiality of communications.
- ▶ Publicize reporting mechanisms widely – posters, wallet size cards, etc.



# INTERNAL NOTIFICATION

- ▶ Defined criteria for when to conduct an investigation.
- ▶ 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.
- ▶ Process for capturing compliance issues and reporting back to the organization.





# **CUSTOMIZE A ROADMAP THAT MAKES SENSE FOR YOUR COMPANY**

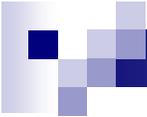
**Strategy  
(Policy)**

**Compliance Manual  
(Procedures)**

**EFFECTIVE  
COMPLIANCE**

**Education &  
Awareness**

**Monitor &  
Follow Through**



# PRIORITIZE !

- 1<sup>st</sup>** : Take Stock Of Your Organization's Current Business Processes and Compliance Efforts
  - \* Embed Into Existing Programs & Procedures
  - \* Identify & Address Highest Risk Areas
- 2<sup>nd</sup>** : Focus on Ensuring Policies & Procedures Are Effective and Reflect Operational Reality
- 3<sup>rd</sup>** : Document Policies and Procedures and Train Employees
- 4<sup>th</sup>** : Continuously Monitor, Improve, and Evolve

Remember to bring key stakeholders, including overseas managers & lawyers, into the process at the beginning. Consider advisory group.

Expect pushback and resistance – listen but don't be derailed. Consider value focus message, not just regulatory.



**First,  
Get Help**

**Second,  
Capture  
What Is**

# METHODOLOGY TO HELP YOU GET STARTED

## HOW TO DEVELOP, OR ENHANCE, YOUR EXPORT MANAGEMENT & COMPLIANCE PROGRAM

**Third,  
Define  
What's  
Missing**

**Fourth,  
So What?**

**Fifth,  
Prioritize**

**Sixth,  
Fix it**

**1  
Form a  
Task Force**

**2  
Identify All of Your  
Export-Related  
Processes**

**3  
Flow Chart  
The  
Processes**

**4  
Write Step-by-Step  
Narrative for each  
Process**

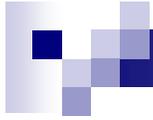
**5  
Test and Validate  
The Processes**

**6  
Assess Where  
Vulnerabilities  
Are**

**7  
Assess Your High  
Risk Areas**

**8  
Prioritize High  
Risk Areas**

**9  
Establish Checks  
and Safeguards  
To Eliminate Risks**



**QUESTIONS?**