Elements Of An Effective Export Compliance Program

Tom Andrukonis, Director
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 <u>AND</u> written guidelines that tell employees what is expected of them.

How can a compliance program be helpful?

- **Provides:**
    - ☐ Structure, organization, accountability
    - ☐ Consistentency
    - ☐ 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/

Available On-Line
► www.bis.doc.gov
► 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

National Technical Information Services
► http://www.ntis.gov/products/export-regs.aspx

EXPORT ADMINISTRATION REGULATIONS

BIS E-Mail Notification

Part 732 Steps For Using The EAR

EXPORTER COUNSELING
http://www.bis.doc.gov
(202) 482-4811, (949) 660-0144

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

About BIS | News | Policies | Licensing | Enforcement | Seminars & Training | Int'l Programs | Defense Industrial Base Programs | SNAP-R

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
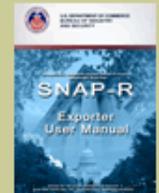
Exporter User Manual

Don't Let This HAPPEN TO YOU!

Don't Let This Happen to You!

Local intranet

File   Edit   View   Favorites   Tools   Help

⇐ Back   ⇒   Search   Favorites   Media

Address   http://bis-webstg1/index.htm   Go

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

Resource Links

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

FOIA | Disclaimer | Privacy Policy | Information Quality

BIS DOC

Major Cases

EXPORT CONTROLS

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

Local intranet

KEY ELEMENTS OF AN EFFECTIVE COMPLIANCE PROGRAM

(1) **Management Commitment**

(2) **Continuous Risk Assessment**

(3) **Written Export Mgt & Compliance Program**

(4) **Compliance Training**

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

(6) **Recordkeeping**

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

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

(9) **Implementing Corrective Actions**

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

(9) Follow-Through and Corrective Action

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

(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**
(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.

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**
(7) **Export Compliance Monitoring & Auditing**
(8) **Program for Handling & Reporting Export Compliance Problems & Violations**
(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 <u>and</u> procedures. Step-by-step procedures answering the question "and then what happens."

► Ensure clearly written, concise, and complete.

► Include appropriate content & point-of-contact.

► Widely distribute and ensure accessible.

► Kept current and up-to-date.
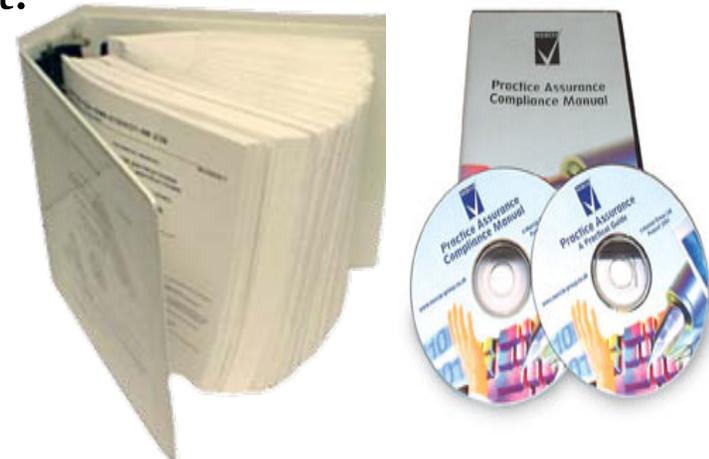
KEY ELEMENTS

(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

(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**

Knowledge Is Power!

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

(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

(7) Export Compliance Monitoring & Auditing

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

(9) Follow-Through and Corrective Action

CRADLE   TO   GRAVE
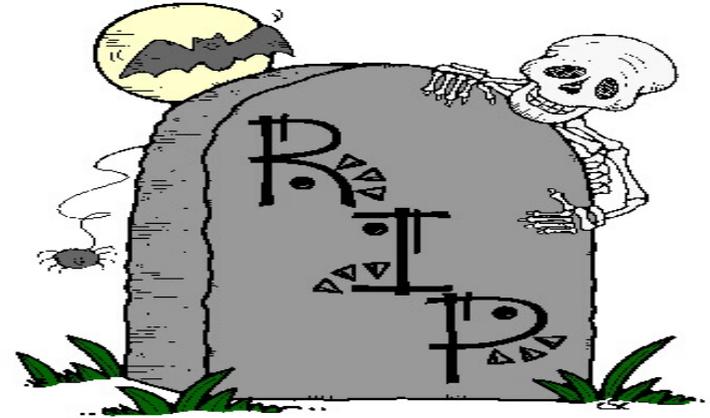
- Your compliance responsibilities begin before the sale.

- 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.

► Strenuously audit, audit, audit.

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

(7) Export Compliance Monitoring & Auditing

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

(9) Follow-Through and Corrective Action

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**
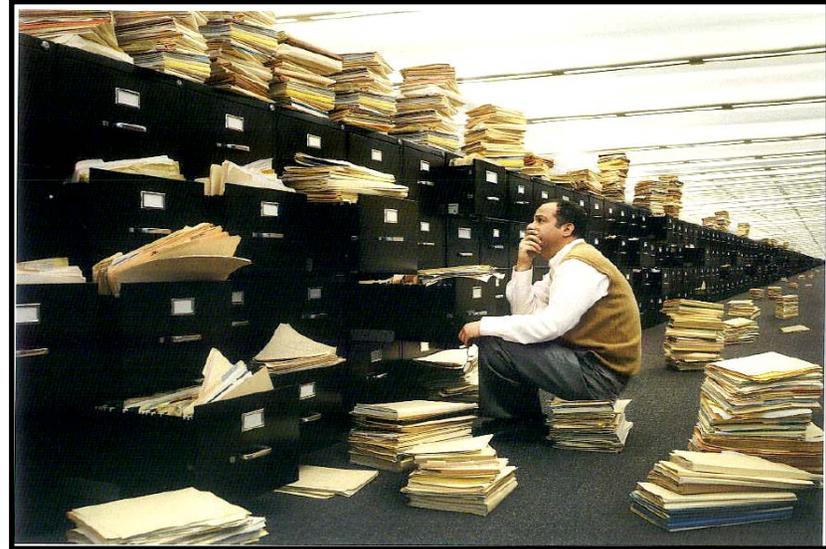
RECORDKEEPING CONSIDERATIONS

► 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.

► 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.

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

(7) Export Compliance Monitoring & Auditing

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

(9) Follow-Through and Corrective Action

ANATOMY OF AN AUDIT

☐ Identify business units and personnel to be audited.

☐ Develop a tracking log for document requests.

☐ Prepare audit templates such as interview questions, transactional review checklist, audit report format, etc.

☐ 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

(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**
(7) **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 investigation procedures to be followed.

► Policy and procedures for taking remedial action.

► Follow-up procedures to management.

► Follow-up notification to reporting employee.

► Process for capturing compliance issues and reporting back to the organization.

EXTERNAL NOTIFICATION

If external notification may be necessary:

► Immediately cease activities of concern. Quickly make a

► Inform appropriate stakeholders of potential
   violation and advise employees to save all documents.

► Disclose possible violation promptly.

► Conduct a thorough investigation and risk assessment.

► Determine mitigating factors.

► Determine if other violations may exist.

► Centralize communications.

PRIORITIZE !

1st : Take Stock Of Your Organization's
Current Business Processes and Compliance Efforts
* Embed Into Existing Programs & Procedures
* Identify & Address Highest Risk Areas

2nd : Focus on Ensuring Policies & Procedures Are Effective
and Reflect Operational Reality

3rd : Document Policies and Procedures and Train Employees

4th : Continuously Monitor, Improve, and Evolve

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

THANKS FOR YOUR ATTENTION!