



Real World Export Compliance

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Export Management & Compliance Systems (EMCS)

Bureau of Industry and Security's fancy name for an Export Compliance Program

9 Core Elements of an Effective EMCS

- 1) Management commitment
- 2) Continuous risk assessment
- 3) Written policies and procedures
- 4) Compliance training and awareness
- 5) Cradle to grave export compliance security
- 6) Solid recordkeeping procedures
- 7) Internal and external monitoring and internal audits
- 8) Procedures for handling of problems and violations
- 9) Corrective action procedures



Logistics Provider

- Freight Forwarder
 - Ocean / FMC – OTI License
 - NVOCC / FMC-OTI License
 - FMC/DOT
 - SED/AES Filings
 - Fraud Issues
 - Insurance / Cargo & Liability
- Customs Broker
 - U.S. Department of Treasury \$\$\$\$



Knowledge / Due Diligence

- Treasury Department
- Country Embargoes
- Denied Company List
- Denied Client List
- Final Destination of Products



Knowledge

- Know where your goods will be used
- Diversionary Clause to confirm your efforts
- Diversionary issue clearly stated in your terms and conditions of sale
- Diversionary issue confirmed in your quotation/Proforma Invoice & Purchase Order Acknowledgement



Antidiversion Clause

To help ensure that U.S. exports go only to legally authorized destinations, the U.S. government requires a destination control statement on shipping documents. Under this requirement, the commercial invoice and bill of lading (or air waybill) for nearly all commercial shipments leaving the United States must display a statement notifying the carrier and all foreign parties (the ultimate and intermediate consignees and purchaser) that the U.S. material has been licensed for export only to certain destinations and may not be diverted contrary to U.S. law. Exceptions to the use of the destination control statement are shipments to Canada and intended for consumption in Canada and shipments being made under certain general licenses. Advice on the appropriate statement to be used can be provided by the Department of Commerce, an attorney, or the freight forwarder.

The minimum antidiversion statement for goods exported under Commerce Department authority is: "These commodities, technology, or software, were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited."



Export Recordkeeping

- The retention period for all records is 5 years from the date of export, re-export, or any other termination of the transaction
- As defined in Section 762.6 of the EAR



Basic Records Required to Maintain

- Bills of Lading, Express Bills of Lading, Way Bills or Airway bills
- Pro forma Invoices (if applicable)
- Commercial Invoice (s)
- Purchase Orders
- Packing Lists & Packing Declarations
- Fumigation Certificates
- Supplier's affidavits or Certificates of Origin
- Company issued U.S. Certificates of Origin (CO)
- Company issued NAFTA Certificates of Origin (NAFTA CO)
- Supplier issued NAFTA or other Certificates of Origin
- Shipper's Export Declarations (SED) or AES generated SED printout
- Shipper's Letter of Instructions (SLI)
- Past bills of materials or cost value statements showing historic changes on products and parts
- Declaration of export destinations
- Applications for a permanent export or an in-transit license and supporting documents
- Applicable export license documentation. End-user statements.



Controlled Commodities

- Required Special Government Permission in the form of an Export License
 - Nature of the Commodity
 - Dangerous
 - Short Supply
 - Destination of the Goods
 - General Embargo
 - Commodity Specific Embargo
 - Application of the Goods
 - Dual Use Items



Summary

- Know the Regulations
- Know your Customer
- Know the Destination
- Only use Licensed Logistics Providers
- Keep Good Records
- Create a Compliance Manual



Export Compliance Program (ECP) – Key Points

- 1) Consignee – check lists – know your customer – use software or USDOC system to screen parties involved in the transaction
- 2) Export license? – Required? – Destination, end user, commodity, dual use? – ITAR?
- 3) Export declaration – value complete information – tax I.D. number correct – ECCN? – HTS classification – correct QTY/unit of measure? – related or unrelated?
- 4) Signed power of attorney given to freight forwarder or shipper's letter of instruction
- 5) Diversionary clause on commercial documents?



ECP – Key Points Cont.

- 6) Record Keeping – everything a minimum of 5 years
- 7) Training for exporters staff
- 8) Contact U.S. Department of Commerce and B.I.S. with questions
- 9) Primary Export Compliance people named in your compliance program
- 10) Report any requests that may be in violation of the EAR (Export Administration Regulations) including potential anti-boycott language to your internal export compliance team.



Have You Ever?

- Lowered the value of an order/item because the customer asked you to?
- Given a power of attorney to a transport company you did not know because they told you they had to have it to get a shipment moving?
- Been on the receiving end of an e-mail that suggested that a bribe was made overseas to get something done or to win a piece of business?
- Received a request to certify/document that goods you ship are NOT of a particular country of origin/manufacture?



Have You Ever?

- **Classify something with a different number/description than what was 100% accurate?**
- **Assumed a purchased item was being imported by your vendor only to find out that your company was the importer of record?**
- **Been told by your customer or vendor that they can get a better deal on freight and just to cooperate with their chosen provider?**
- **Shipped a carnet shipment with 2 different transport companies (one for the export and one for the return)?**



Do We Need a License? Can We Ship This Order to That Company/Person?

1) Exporter receives a request from a distributor in the U.A.E. to ship an order to Dubai. Exporter ships the order and invoices the distributor in the U.A.E. marking the paperwork and cargo with made in the USA language and providing a certificate of origin also showing the goods as made in the USA. Exporter paperwork does not contain the diversionary clause as stated in the Export Administration Regulations (EAR). One year after the original sale to the distributor in the U.A.E. that distributor makes a sale to a customer in Iran and ships the cargo to the Iranian customer also invoicing the Iranian customer in their system in the U.A.E. Does exporter have export compliance liability in this case? Yes or No?



Do We Need a License? Can We Ship This Order to That Company/Person?

2) Exporter has a potential distributor visit your facility about buying some of your products to supply to customers in Asia. The visitor is a Chinese national and after long discussions, the customer decides NOT to have the exporter manufacture a certain product that is controlled for export by the United States. Basic technical information is relayed verbally to this representative from the exporter about the manufacturing process, but no written documents, drawings or technical information in hard copy form are exchanged. The Chinese National leaves and returns to China. Does the exporter have any export control liability in this situation? Why or why not?



Do We Need a License? Can We Ship This Order to That Company/Person?

3) The exporter is preparing a shipment to a customer in Qatar. The exporter checks the company and its principal ownership against the denied parties/denied persons list and neither the company nor the individuals appear on the list. The exporter makes the shipment. One week after the shipment departs the USA the company in Qatar and its principal ownership appear on the denied parties/denied persons list. Is the exporter in violation of export controls? Yes or No?