

Introduction to the EMS Guidelines

The events of the early 1990's in Europe and the former Soviet Union have resulted in a significant easing of the U.S. and multilateral export controls on West-East trade. At the same time, developments in other areas of the world, such as the Middle East, have underscored the importance of non-proliferation controls on chemical, biological, and nuclear weapons and missile technology.

The Commerce Department's Bureau of Industry and Security (BIS) has responded to the changing world events by focusing much of its attention on items and services that could be used to develop or deliver weapons of mass destruction. Regulations issued pursuant to the President's Enhanced Proliferation Control Initiative (EPCI) were published in 1991 and place greater emphasis on the end-use or end-user of exported items. As a result, exporters were informed they must be more vigilant in screening their customers and transactions.

Before the EPCI regulation changes, license requirements were identified primarily by checking the item and country of destination against the Commerce Control List (CCL). Items not specifically identified on the CCL as controlled to a given destination could, in most instances, be exported under a General License. The export of General License eligible items did not require prior approval from the Department of Commerce except for certain nuclear end-uses and persons denied export privileges.

Under the EPCI controls, a third element, the end-use/end-user, has become critical in determining whether an export requires a license. Under the non-proliferation regulations, items that might not otherwise require a license based upon a review of the CCL and country requirements, could require a license from the Department of Commerce because of the nature of the end-use/end-user.

The Export Management System (EMS) Guidelines were initially published in September 1992 to assist companies with the establishment of internal procedures for screening customers and export transactions. The Guidelines provided steps for exporters to determine whether a license is required because of item/country identification on the CCL. The Guidelines also focused on screening mechanisms that a company could use to determine whether an export required a license because of the nature of the end-use/end-user.

In March 1996, BIS published a complete rewrite of the Export Administration Regulations (EAR) which restructured and reorganized the EAR. The simplification dropped the term "General License." Items previously exported under the broadest of the old General License, General Destination or G-DEST, could now be exported under "No License Required" (NLR).

Those General Licenses that allowed export of items that would otherwise have required a

license are now called “License Exceptions.”

The 1997 version of the EMS Guidelines incorporated changes necessary to be consistent with the 1996 publication of the EAR.

The EMS 2004 adds the importance of knowing your customers with respect to the war against terrorism. As U.S. citizens, we are called to be vigilant and to add our eyes and ears to the efforts to find and stop those who want to do us harm.

In response to requests from the business community, BIS has prepared these detailed Guidelines to assist companies wishing to establish internal control procedures for vigilant screening of export/reexport transactions. The Guidelines provide ideas, examples of industry practices and tools that have proven effective in U.S. businesses that you can be customize and implement within daily operational procedures to ensure compliance with the EAR.

The information contained in the Guidelines is not meant to modify or interpret the EAR, and no licensing action should be taken based solely on what is contained in the EMS Guidelines.