

ELEMENT 3: DIVERSION RISK SCREEN

A system for assessing proposed transactions against a diversion risk profile (General Prohibitions Six & Ten).

OBJECTIVE: To establish procedures to adequately screen orders for diversion risk “red flag” indicators using a checklist.

When any of the following factors have been identified and follow-up inquiries have not satisfactorily resolved doubts, the firm may not proceed with the export in question before contacting the Bureau of Export Administration. The firm should set forth the basis for the concern regarding the proposed customer and inquire if there is information available on the reliability of the customer.

RED FLAG INDICATORS

- ◆ The customer or purchasing agent is reluctant to offer information about the end use (or end-user) of a 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.
- ◆ 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.
- ◆ The customer has little or no business background. An example of this is when financial information is unavailable from normal commercial sources and corporate principals unknown by trade sources.
- ◆ The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.
- ◆ The customer is unfamiliar with the product’s performance characteristics but still wants the product.
- ◆ Routine installation, training or maintenance services are declined by the customer.
- ◆ Delivery dates are vague, or deliveries are planned for out-of-the way destinations.
- ◆ A freight forwarding firm is listed as the product’s final destination.
- ◆ The shipping route is abnormal for the product and destination.
- ◆ Packaging is inconsistent with the stated method of shipment or destination.
- ◆ When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export, or reexport.
- ◆ Customer uses only “P.O. Box” address or has facilities that appear inappropriate for the items ordered.

- ◆ Customers' 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).
- ◆ Customer is known to have, or is suspected of having, unauthorized dealings with embargoed countries.

Section 736.2(b) (4-10) of the EAR states that firms may not export or reexport an item under NLR or a License Exception if they have "knowledge" that the customer will reexport or transfer that item without the appropriate authorization from the U.S. Government. The DR Screen is designed to help exporters avoid a violation of this and other sections of the EAR.

1. General Prohibition Six prohibits the export or reexport of items to embargoed destinations (Part 746 of the EAR) without the proper license authorization (license or license exception).
2. General Prohibition Ten prohibits proceeding with transactions with knowledge that a violation has occurred or is about to occur. A person/firm may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, any item subject to the EAR exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act, or any order, license, license exception, or other authorization issued has occurred, is about to occur or is intended to occur in connection with the item.

Screening Procedures

The EMS Administrator may wish to determine who is responsible for performing and documenting the Diversion Risk (DR) Screen.

Ideally, the DR Screen should be considered at all phases of the order processing system. However, it is most beneficial that the screen be performed immediately upon receipt of an order. It is also advantageous that it be performed any time the customer requests a change to an existing order or when new information about an order is available.

It is recommended that the DR Screen be performed on a transaction basis since a portion of the DR Screen relates to the appropriateness of the items being requested as well as the customer's shipping instructions. The screen should be performed using the "red flag" indicators and any relevant information contained in the firm's customer file. Since orders may be revised while in process, it is important that all employees involved in international sales and order processing activities be trained to recognize the "red flag" indicators.

The DR Screen may be documented on each order or in the firm's customer file whenever new information on the customer becomes available.

New information on a customer may come from many sources, including government, industry, media or from the customer itself, as when the customer changes activities, indicates a new end-use or end-user, requests a change in an existing order or furnishes replies to the firm's inquiries.

Documentation of Screen

The comprehensiveness of the documentation will depend upon the extent of the relationship between the firm and the customer and the sensitivity of the item(s) ordered. For example, a new customer should conceivably be examined with greater scrutiny than an existing well-known customer.

“Checklist” Documentation. Generally, it is adequate for the firm to create a standard document for the "red flag" indicators. The documentation should include the name and address of the firm being checked, notations of the presence or absence of “red flag” indicators, the name or initials of the person performing the check and the date the check is performed. (See Attachment 3-A for a sample checklist.)

The "red flags" noted in the DR Screen can be helpful in highlighting potential diversions to entities of proliferation concern.

“Customer Profile” Documentation. A well-documented customer file noting each customer's usual activities and orders would be helpful in screening new orders. Such a file would be updated whenever new information on a customer became available. Any information indicating a risk of diversion and all correspondence with the Bureau of Export Administration would be noted in the customer file. New customers would be screened, and a file created, before placing the new customer on the firm's approved customer list.

It is recommended that new customers be screened against the "red flag" indicators as well as other screens described in other Elements within the EMS Guidelines, ie., Denied Persons Screen, Non-Proliferation Screens, Antiboycott Compliance Screen. (See Attachment 3-B for a sample “Customer Profile” Screen.)

NOTIFICATION

In instances where company personnel suspect that unauthorized or illegal activities may have taken place, or that the customer is asking them to participate in such activities, the EMS Administrator should contact the Department of Commerce's local Export Enforcement Offices or call the Export Enforcement office in Washington, D.C. at (202) 482-1208 or 1-800-424-2980. (Please refer to Administrative Element 6.)

ATTACHMENT 3-A
DIVERSION RISK CHECKLIST

PERSON PERFORMING SCREEN _____
PERSON'S INITIAL _____
DATE PERFORMED _____

NAME OF CUSTOMER BEING CHECKED _____
ADDRESS OF CUSTOMER _____
___NEW CUSTOMER ___ESTABLISHED CUSTOMER

When any of the following Red Flag Indicators have been identified and follow-up inquiries have not satisfactorily resolved doubts, you should not proceed with the export in question. Contact the U.S. Department of Commerce's local Export Enforcement Office or call the Export Enforcement office in Washington, D.C., at (202)482-1208 or 1-800-424-2980.

- ✓ The customer or purchasing agent is reluctant to offer information about the end use (or end-user) of a product. **YES___NO___**
- ✓ 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___**
- ✓ 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___**
- ✓ Routine installation, training or maintenance services are declined by the customer. **YES___NO___**
- ✓ Delivery dates are vague, or deliveries are planned for out-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__
- ✓ 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'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__**
- ✓ Customer is known to have, or is suspected of having, unauthorized dealings with embargoed countries. **YES__NO__**

ATTACHMENT 3-B
CUSTOMER PROFILE SCREEN

CUSTOMER NAME: _____

CUSTOMER ADDRESS: _____

NEW CUSTOMER: YES ___ NO ___ ESTABLISHED CUSTOMER: YES ___ NO ___ If
yes, number of years affiliated with the customer ___

PRODUCTS ORDERED: _____

CUSTOMERS BUSINESS ACTIVITY: (reseller, manufacturer, University
etc,...) _____

◆ **DPL CHECK:**

Is the Customer listed on the DPL? (Screening Element 1 of the EMS Guidelines)

YES _____ NO _____

◆ **DIVERSION RISK SCREENING**

Is it known or are there indications that the customer is at risk for diversion? (Screening
Element 3 of the EMS Guidelines Red Flag Indicators)

YES _____ NO _____

◆ **NUCLEAR SCREENING**

Is it known or are there indications that the customer is involved directly or indirectly in
any nuclear activities? (Screening Element 4 of the EMS Guidelines)

YES _____ NO _____

◆ **MISSILE TECHNOLOGY (MT) SCREENING**

Is it known or are there indications that the customer is involved directly or indirectly in
the design, development, production or use of missiles? (Screening Element 5 of the EMS
Guidelines)

YES _____ NO _____

◆ **CHEMICAL & BIOLOGICAL WEAPONS SCREENING**

Is it known or are there indications that the customer is directly or indirectly involved in
the design, development, production, stockpiling or use of chemical or biological

weapons? (Screening Element 6 of the EMS Guidelines)

YES_____ NO_____

◆ **ANTIBOYCOTT COMPLIANCE SCREENING**

Is it known or are there indications that the customer is involved in any of the activities listed in screening Element 7 (Antiboycott Screen) of the EMS Guidelines.

YES_____ NO_____

IMPORTANT: If the answer to any of the above questions is "yes," contact your EMS Administrator.

Profile check performed by:

Initials_____Date_____