

ELEMENT 8: INFORMED LETTER/ENTITY LIST SCREEN

A method for screening all customers against the most current entities list (EL). (General Prohibition Five)

OBJECTIVE: To ensure that transactions involving U.S.-origin items subject to the EAR do not involve entities who are on the EL without proper review and documentation.

The Department of Commerce maintains export controls to limit the proliferation of chemical or biological weapons, nuclear weapons or explosive devices, and missile systems. General Prohibition Five (Part 736.2(b)(5) of the EAR) prohibits exports and reexport to certain end-users or end-uses without a license. In the form of Supplement No. 4 to part 744, BXA maintains an “Entity List” to provide notice informing the public of certain entities subject to such licensing requirements. These licensing requirements were implemented in 1991 as part of the Enhanced Proliferation Control Initiative (EPCI).

Section 744.1 provides that a license is required for exports and reexports to parties on the Entity List for specified items. For example, if the specified items are “all items subject to the EAR” then a license is required for all exports and reexports to the named party. However, if the Entity List specifies a narrower product category such as computers, then each export or reexport of a computer to that party requires a license. The license requirement for specified items exists regardless of the actual end-use. For items not specified in the list, you need to determine whether the end-use is a proliferation activity as described in part 744 of the EAR, which would require a license.

PROCEDURE: The EAR provide that the BXA may inform exporters individually or through amendment to the EAR, that a license is required for exports and reexports to certain end-users when there exists an unacceptable risk of use in or diversion to certain nuclear, missile, or chemical or biological weapons end-uses. The EMS Administrator may wish to establish a procedure for complying with the “Informed Letter” and EL. Because the list of entities is revised and updated on a periodic basis by adding new or amended notifications and deleting notifications no longer in effect, the EMS Administrator may wish to establish a procedure for monitoring daily *Federal Register Notices* or the BXA Webb site at <http://www.bxa.doc.gov>.

If matches occur between your customers and the EL or an “informed letter”, you will want to ensure that the orders to those customer are thrown off-line from the normal order flow and given special attention. It is suggested that a “hold” function be implemented within the first stage of the order processing flow that prompts a referral of all of those orders destined to these customers (exports and reexports) to the EMS Administrator. The EMS Administrator can then verify that the customer is still on the EL or the “informed letter” is still valid and determine the scope of the requirement, i.e. all items subject to the EAR, or specific items only, and whether a

license application must be submitted for the transaction based upon General Prohibition Five, Part 736 of the EAR.

DOCUMENTATION: You may want to create a document trail or proof that the daily check is in fact being performed on a continuous basis. It is suggested that a daily checklist be used that includes the initials of the individual performing the check, the date the check is performed and which source is used in performing the check, ie., EAR, Federal Register, BXA Webb site. See Attachment 8-A for a sample Entity List Screen.

ATTACHMENT 8-A
ENTITY LIST SCREEN CHECK

| NAME OF PERSON PERFORMING CHECK | INITIAL | DATE | SOURCE | CUSTOMER ON THE EL ----- INFORMED LETTER |
|---------------------------------|---------|---------|-------------|------------------------------------------------|
| J. Prudent | | 7/27/97 | 62 FR 26922 | YES____ NO ____ |

If “NO,” you may proceed with the transaction.

If “YES,” you may need to submit an application for an export license.

1. Document the party named on the Entity List/Informed Letter:

 SOURCE NAME ON ENTITY LIST


2. Then, determine and document whether a license is required for:


_____ all items subject to the EAR.

_____ only the following specified items: _____

An application was submitted on _____ as required above.

3. For “unspecified items,” you are obligated to comply with General Prohibition Five, “You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by Part 744 of the EAR.”

 What is the end-use for exports and reexports (of unspecified items)?

 Determine whether a license is required if the specific end-use is a proliferation activity as described in Part 744 of the EAR. **YES** _____ **NO** _____

If yes, file an application or an export license.

If no, proceed without filing an application or an export license.