Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual

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COMPLIANCE GUIDELINES:
How to Develop an
Export Management and Compliance
Program and Manual

HOW THESE GUIDELINES CAN HELP

These Guidelines were developed to assist companies in establishing, or enhancing, an Export Management and Compliance Program (EMCP). This document promotes good export compliance practices. It recommends principal components of a comprehensive and effective EMCP and provides information, tools, and templates to help companies develop an EMCP.

Using these Guidelines, a company will be able to accomplish two things:

- Develop an operational program that will manage a company's export decisions and export transactions in compliance with the Export Administration Regulations (EAR); and

- Develop a written EMCP guidelines document to ensure consistent instruction and operational application of a company's export policies, procedures, decisions, and transactions.

INTRODUCTION
Mapping Out Your Compliance Strategy

PUBLIC-PRIVATE PARTNERSHIP

The U.S. Government relies on the due diligence of exporters to help ensure national security. Concerns regarding security, homeland and international, as well as the proliferation of weapons of mass destruction and terrorism have heightened. It is through a strong public-sector/ private-sector partnership that the diversion of dual-use items for harmful and destructive purposes can most effectively be prevented. Dual-use items are items that have a commercial application and also can be of military, weapons-of-mass-destruction, or terrorist use. Given the breadth of commodities that may be so categorized, as well as the potential for issues with regard to parties to a transaction, it behooves companies in all industries to adopt an export compliance program, and the prescription herein may be applied to all industries that export or plan to export.

Nuclear, missile, biological, and chemical dual-use items that can, in the hands of hostile states and terrorists, be used for destructive purposes, represent one of the greatest security challenges facing the United States today. Today's threats are far more diverse and less predictable than in the past. Those hostile to the United States have demonstrated their willingness to take high risks to achieve their goals. Controlling and preventing the proliferation of such deadly weapons and their delivery systems, and reducing the number of those already in existence, is a national security priority.

Today's global marketplace is a very competitive and complex arena for businesses to navigate, and the threat of dual-use items being used for wrongful purposes is real. Companies, like yours, are the first line of our common national-security defense and are in the most strategic position to evaluate customers and export transactions. U.S. export controls help protect our country by keeping goods and technologies out of the hands of countries of concern, terrorists, and other persons who would use them against us. Violations of export control law can adversely affect U.S. national security, foreign policy interests, and U.S. business, and result in both criminal and administrative penalties.

Developing an effective EMCP is an invaluable way a company can contribute to U.S. national security and nonproliferation priorities while protecting vital company interests. Establishing an EMCP is not a guarantee that an export violation will not occur, but it minimizes the risk of noncompliance and is a map to consistent export compliance. These Guidelines promote good export compliance practices and have been developed to help companies like yours create an effective EMCP that will minimize the risk of noncompliance with export control laws.

EXPORT MANAGEMENT AND COMPLIANCE PROGRAM DEFINED

An EMCP includes both the operational export compliance policies and procedures an organization implements and a written set of guidelines that captures those policies and procedures. The purpose of an EMCP is to ensure: that the right export decisions are consistently being made; that employees know their export control responsibilities; that the right procedures are being followed; and that the right questions are being asked to ensure that exports are being made in compliance with U.S. Export Administration Regulations and, therefore, consistent with a company's best interests.

Every organization needs an EMCP that uniquely addresses their organization-specific requirements. An organization's EMCP should be appropriate to the scope of its export and reexport activities and to its business circumstances. There is no generic, off-the-shelf, one-size-fits-all EMCP that could completely cover the great variety of different industries and business characteristics. By developing an organization-specific compliance program that is appropriately tailored to the nature of an organization's export and reexport activities, an organization can implement an effective compliance program that works well. Factors such as the size of an organization, the end-use and sensitivity of products, the geographic location of business and customers, the relationships with business partners, volume of exports, product restrictions, and complexity of internal export processes will influence how an organization structures its operational EMCP.

Companies and other organizations decide what compliance measures are appropriate. As part of that decision analysis, it is recommended that they build a compliance program that addresses current requirements but can also grow and support future needs. A small company, for instance, because of its size may not see the value of including in their EMCP

compliance manual certain EMCP items mentioned herein; however, there are certain key elements that are recommended for all organizations, because those key elements serve as a foundation for accountability for any organization. By establishing good compliance practices from the beginning, you will have an EMCP program that evolves and grows along with the business, and is flexible to adapt to regulatory changes. Likewise, a small company may not necessarily believe that it needs to develop its own formalized training program. However, if the training program is developed as part of the foundation of the compliance program, it will be available when new personnel are added.

All compliance programs are different. As an example, some companies choose to designate a single employee responsible for the administration, performance, and coordination of export and compliance responsibilities. Other companies decentralize these responsibilities throughout the organization, but with corporate oversight to ensure essential compliance standards are maintained. The size, organizational structure, and production/distribution network of an organization are key determinants of where compliance functions and personnel should reside. Many centralize the administration of training, recordkeeping, dissemination of regulatory material, notification of non-compliance, and audits. However, the actual screening activities against various government lists (of foreign entities that should be avoided, certain end-use and end-user activities, and diversion risk) may be performed by personnel throughout the company (e.g., in sales and marketing, order entry, or shipping) where firsthand knowledge and information of customers is available.

How you decide to structure your compliance program will depend on your organization's operations. Your exports must, however, be made in compliance with the EAR. The following are the nine key elements identified by the Bureau of Industry and Security for any effective compliance program for an exporter of U.S.-origin dual-use items. These elements provide a foundation for the basic structure of your EMCP program, but they do not constitute an exhaustive list; your own list may be longer, reflecting the unique export operations of your organization.

- Management Commitment: Senior management must establish written export compliance standards for the organization, commit sufficient resources for the export compliance program, and ensure appropriate senior organizational officials are designated with overall responsibility for the export compliance program, in order to ensure

adherence to export control laws and regulations, and develop and nurture a pervasive corporate culture of compliance.

- Continuous Risk Assessment of the Export Program.
- Formal Written EMCP: A manual of policies and procedures with a sufficient level of operational detail to ensure effective implementation and day-to-day compliance.
- Ongoing Compliance Training and Awareness.
- Cradle-to-Grave Export Compliance Security and Screening: Screening of employees, contractors, customers, products, and transactions, and implementation of compliance safeguards throughout the export life-cycle, including for product development, jurisdiction, classification, sales, license decisions, supply-chain management, servicing channels, and post-shipment activity.
- Adherence to Recordkeeping Regulatory Requirements.
- Compliance Monitoring and Periodic Audits/Assessments.
- Internal Program for Handling Compliance Problems, including Reporting and Escalating Export Violations.
- Completing Appropriate Corrective Actions in Response to Export Violations.

Implementing an EMCP is a voluntary decision left to the discretion of every organization. The major benefit of implementing an effective EMCP is that it can minimize the risk of noncompliance with export regulations and can be considered a mitigating factor, with great weight, in determining administrative penalties in case of an export violation.

CHARACTERISTICS OF AN EMCP

An Export Management and Compliance Program answers …..

- **Why?**
- **What?**
- **When?**
- **Where?**
- **How?**
- **By whom?**
- **…your export control policies and procedures are to be implemented.**

An EMCP is a program that connects people and processes through a written set of operating guidelines **and** specific institutionalized procedures and safeguards that ensure employees know their export control responsibilities, that the right procedures are being followed, and that the right questions are being asked to safeguard against potential export control regulatory violations. Policies and specific step-by-step procedures should be well integrated, since the 9 core elements are interrelated and complement and feed into each other. Maintaining fluid communication between stakeholders in the export process is also essential in ensuring the effectiveness of an EMCP.

BENEFITS OF AN EMCP

Having an EMCP is a sound business investment. An EMCP takes individual decisions and pieces of information and builds them into an organized, integrated program to manage export-related decisions and transactions in order to ensure compliance with the EAR and license conditions.

An EMCP can:

- Reinforce senior management commitment to compliance with U.S. export laws and regulations to all parties within the organization.
- Provide management structure and organization for the processing of export transactions.
- Enhance accountability for export control tasks by identifying who is responsible for performing each part of the process and who is responsible for overall effectiveness of the EMCP.
- Provide compliance safeguards throughout a company's supply chain to ensure order processing due diligence checks and screenings produce consistent export decisions.
- Provide written instructions for employees to blend into their daily responsibilities to "screen" export transactions against general prohibitions of exports, re-exports, and selected transfers to certain end-uses and end-users.
- Serve as a vehicle to communicate red flag indicators that raise questions about the legitimacy of a customer or transaction.
- Provide personnel with tools to help them ensure they are performing their export control functions accurately and consistently in all nine of the key elements.

- Identify transactions that could normally be exported without a license, but because of the end-use or end-user, require a license.

- Streamline the process and reduce time spent on compliance activities when employees have written instructions, tools and on-going training.

- Protect employees through training and awareness programs from inadvertently violating the EAR.

HOW TO USE THESE GUIDELINES

These Guidelines are divided into sections as outlined in the Table of Contents. You can start at the beginning of the document and work your way sequentially through the information to the end. Alternatively, you can start with any EMCP section that requires the most work in your current compliance program, or start with the section that you feel poses the highest potential risk of vulnerability in your company. Wherever you decide to start, remember that your EMCP should be an integrated program – each component of your compliance program is just one piece of the larger whole and should build upon, and interconnect, with all other parts of your program.

If your organization is new to exporting, these Guidelines include information on how to develop an EMCP and provide recommendations on what you might want to include in your EMCP. These Guidelines can also help organizations that have an existing export program assess their compliance efforts and make enhancements to strengthen their overall program. In addition, the Guidelines provide a recommended structure for a compliance plan and include template language that, if applicable, can be cut and pasted and into your compliance manual and tailored and edited to meet your specific needs.

You may find as you go through the assessment of your compliance operations that there are policies, procedures, checks, and safeguards that are not part of your current compliance practices. We strongly recommend that you take time to evaluate these areas. The EMCP recommendations outlined in these Guidelines are based on many years of "best practice" experience of effective company EMCPs. The only regulatory requirement that your company is required to adhere to is to not violate the EAR. Unless specific guidance is provided in the Regulations, or as a condition on a license, how you accomplish compliance with the Regulations is left

to your discretion. When deciding whether or not to include any of the recommendations provided in these Guidelines, your decision should be based on whether or not it makes sense for your organization and what the possible risk associated with not including the recommendation is.

Given the diversity among organizations there is no single "best" compliance program. The Bureau of Industry and Security (BIS) acknowledges the variances and complexities within industry and is sensitive to the differences between large and small organizations. In addition, BIS understands resources available for compliance programs vary greatly and that the degree to which compliance measures are adopted will vary. These Guidelines have been developed to assist with the process of developing an effective EMCP and can be used by all, regardless of size, location, or corporate structure. These Guidelines represent "best practice" recommendations. By no means should the contents of these Guidelines be viewed as an exclusive or static recipe. BIS strongly encourages all organizations to use the information as a starting point to develop and implement compliance programs that uniquely and flexibly address individual organization needs and areas of risk.

OBTAINING ASSISTANCE

Export Management and Compliance Program Assistance

If you have questions regarding information provided in these Guidelines or would like assistance with the development of your Export Management and Compliance Program (EMCP) and/or written compliance manual, contact the Export Management and Compliance Division (EMCD) at:

Phone: (202) 482-0062

Fax: (202) 501-6750

Address: Export Management and Compliance Division
         Office of Exporter Services
         Bureau of Industry and Security
         U.S. Department of Commerce
         1401 Constitution Avenue, N.W., Room 2705
         Washington, D.C. 20230

General Export Control Assistance

For general export questions and assistance, you may contact the Bureau of Industry and Security's Outreach and Educational Services Division at:

Phone: (202) 482-4811 in Washington, D.C.
Phone: (949) 660-0144 in California

You can submit export questions to the following address:

https://www.bis.doc.gov/Forms/AskaCounselor.html in Washington, D.C.
https://www.bis.doc.gov/Forms/BISWestinquiry.html in California

The Bureau of Industry and Security website has information and guidance on export control policies and procedures. The website can be accessed at the following address: *http://www.bis.doc.gov*

Web-Based Assistance

Export privileges are denied by written order and each order affecting export privileges is published in the Federal Register. The Department of Commerce's Denied Persons List is posted on the BIS website. Other agency lists are also posted on the Internet and can be accessed via the BIS website. Companies should consider registering for BIS's e-mail notification program for regulatory and export related updates. Offered as a free service to exporters, the program provides exporters with a menu of information items to choose from. Items include:

- Changes to the Denied Persons List, Unverified List, or Entity List;
- Regulatory Updates
- New BIS Initiatives
- Press Releases
- Antiboycott Information
- Export Enforcement Information
- Export Licensing Information
- Defense Industrial Base Program Information
- Other Major Website Changes

Exporters receive automatic e-mail notifications from BIS when changes are made in these areas helping them to stay current on export control issues. Exporters can sign up for this service at the following BIS website address: *http://www.bis.doc.gov/Forms/EmailNotification.htm*

GETTING STARTED

Form a Task Force

Regardless of the size and complexity of your organization, we recommend that you form a task force of employees who have knowledge of your operations to help you define your new internal export-related processes for each of the nine key EMCP elements identified above under "Export Management and Compliance Program Defined."

The best way to identify key people in your organization who you would like to participate in the development of your export program is to start with your company's organization chart. At a macro level, identify all of the offices and divisions that you think could possibly participate in your export processes. This could include:

Accounting	Legal Counsel
Contracts	Licensing
Customer Service	Order Processing
Engineering/R&D	Physical Security
Field Services	Purchasing
Finance	Sales/Marketing - Export and Reexport
Human Resources	Shipping/Logistics
In-house Travel Agency	Systems Management
Information Technology	Website Maintenance Group

Members of your task force will be responsible for:

- Helping you define the parameters of your export program;
- Helping you to assess your current resources to determine what can appropriately be utilized in your export program;
- Helping you to develop all of your export and compliance processes;
- Helping you determine what your IT requirements are and what will be needed to support your new export program;
- Helping you flow chart your new export and compliance processes;
- Helping you draft step-by-step narrative procedures for your processes;
- Assisting you in training your employees on new processes;

- Serving as your future "maintenance engineers" when you conduct compliance audits; and
- Keeping you updated on changes over time.

Delineate Your Current Export Processes

Regarding your current export processes, ensure that you capture them in a comprehensive, detailed manner. At each step of the process you should ask "What happens next?" By posing this question, your Task Force can define step-by-step procedures for daily operational implementation for employees that will be involved in your export program. This process may also identify related "subset" or "interim" processes not captured. This initial phase of defining all your export-related processes is like drafting the plans for building a house. Once you have all of your processes defined in narrative and flow-chart form, you have your blueprint and can begin to build your compliance components, based on your ongoing risk analyses, into your export program brick-by-brick.

Define one process at a time with the help of the process knowledge expert(s) on your Task Force. When capturing the process, start where it begins, i.e., customer service, sales, research, administration office, etc., and follow it through to completion. Go through the entire process and identify each action and decision point. If you have a process that integrates both manual and electronic procedures, you will need to capture both. If your processes are very long, you may need to break them up into smaller flow charts.

At a minimum, you should go through each process at least two times to confirm that what you have captured is accurate. Once you have the process fully defined, you may then use a flow chart software package to formally document the process for inclusion in you EMCP Manual.

Define and Address Your Organization's Vulnerabilities

After documenting your processes, analyze them to assess the effectiveness of your existing overall compliance program. Determine if you have any vulnerable areas. Assess your internal controls. Internal controls may be in the form of second levels of approvals, comparisons of customers against the prohibited persons and entities lists, requirements for collection of specific end-use information, completion of check lists of actions to be taken prior to next steps, etc.

For example, in your order process flow, some of the key steps where internal controls should be implemented include, but are not limited to, a Denied Persons and Entity List check by your sales force before accepting a sales order; proliferation screen checks (nuclear, missile or chemical and biological weapons activity) prior to input of the order; boycott language and screening for financial bona fides by your Finance Department; "Red Flags," product/country license determination, Specially Designated Nationals or other sanctions list, and Entity List, screening by your Export Compliance Department; technical assessment for proper Export Commodity Classification Number and appropriate use of product by your Engineering Department; Deemed Export screening by your Human Resources/Personnel Department and Security Department; Denied Persons screening by your Shipping Department or Logistics prior to shipment, etc.

If you find that there are key areas in your processes where you have no internal controls, you need to assess the risk associated with the absence of a control at that step. For example, absent a check against the Denied Persons List in your Shipping/Logistics Department, are you at risk for shipping to a Denied Person who may not have been on the list at the order entry time, but has subsequently been put on the list? Only you can answer this question appropriately for your company. You have to determine – How lucky (risky) do you feel?

Once you've identified all of your areas of vulnerability, focus your resources on addressing the 'high risk' areas. High risk means an area that could result in a possible export violation resulting in penalties and/or prosecution.

Establish checks, safeguards, procedures, and oversight to eliminate all areas of vulnerability and risk.

Evaluating, auditing, and assessing are next in the cycle, whereby you decide how effective your safeguards are and how you might fine-tune them. Thus, the dynamic cycle of compliance brings you back where you began: assessing what you've got in place with a view toward identifying vulnerabilities, improving processes, and keeping up-to-date.

If you have any questions or concerns, contact us; we're waiting to assist you!

KEY ELEMENT 1:
Management Commitment

Objectives:

- To ensure active management involvement;
- To provide sufficient time, money and personnel to create and maintain an effective compliance program;
- To communicate clear commitment toward compliance with the EAR and U.S. export controls by senior management to all employees
- To build and nurture the concomitant corporate culture of compliance throughout the organization; and
- To evaluate and ensure the integrity of the export compliance program.

Procedure

Management commitment to export compliance is the single, most important aspect of an effective export compliance program. A serious commitment from management is necessary for a company to develop and implement an effective "best practice" export compliance program.

Be Actively Involved in Export Compliance

Communicate broadly and frequently that the policy of your company is that sales will not be pursued at the expense of compliance, and that export compliance is a better investment than export violation penalties. Each member of the management team should "walk the talk" and become actively involved in export compliance functions and assume responsibility for export compliance. Each member of the management team should understand when and how export laws and regulations affect the company and endorse the corporate internal controls that have been implemented to ensure compliance with these laws and regulations.

Provide Required Resources to Develop, Implement and Maintain the Program

To ensure that sufficient resources -- time, money, and personnel -- are provided to the EMCP, each member of the Export Control Management

Team (ECM Team) should participate in monthly EMCP resource and planning meetings. The objective of the meetings would be to discuss changes that are needed, deficiencies identified, enhancements, etc., of the EMCP. Through this method, your company may continuously revisit resource allocation to ensure that the company's export compliance obligations are being met. Export compliance positions should have sufficient authority and discretion vested in them to garner the necessary respect to ensure compliance. Standards and positions might be identified in this section of your EMCP.

Senior management must provide these individuals with the compliance tools necessary to perform their jobs, including the appropriate training, budgets, and high-profile support. Management's commitment must be embedded in every aspect of the EMCP, and management must maintain active and transparent involvement in that regard, realizing that export-compliance is a process driven from the top, since it does not realize quick profits and is, instead, an investment in the company's sustainability and longevity.

Communicate Management Policy of Commitment to Export Compliance

Another way your company can demonstrate strong management commitment to compliance with export control regulations is by having your Chairman, Chief Executive Officer, or President personally establish and communicate your company's export control policy frequently and broadly. A written, formal statement of policy should be disseminated, at least annually, to all employees and should be included in the EMCP Manual. The message should communicate that export compliance requires a proactive, company-wide commitment that includes all levels of the company and that each employee plays a role in securing the integrity of the system. Employees should understand "the big picture" and also realize their own personal role and responsibility in guaranteeing export compliance. If not, they risk being the weak link that can bring the whole program down.

In general, the export compliance policy statement should be communicated to all employees, but must be sent to all employees who are directly or indirectly involved in export transaction-related functions.

Additionally, the statement should be communicated to contractors, during the contract process, who are acting on the company's behalf. This

would include consultants, interns, freight forwarders, distributors, sales representatives, joint venture partners, and any other contractor. It should be a condition of doing business with the company.

The dissemination of the Statement should be accomplished in a manner consistent with other priority management policy messages. The ECM Team should take every reasonable available opportunity to reiterate the importance of compliance. The ECM Team should communicate these messages to all employees, but should focus on those working under them who are involved in export functions and export compliance. Opportunities where senior management can reiterate its commitment to compliance, and thereby also build an essential corporate culture of compliance, include:

Annual Reports	Business Meetings
Company Communications	Compliance Posters
Ethics and Business Conduct Documents	In-house Publications
Company Intranet with Intermittent Postings	Company Web site
Mission Statements	New Employee Orientation
Press Releases	Procedures Manuals
Staff Meetings	Teleconferences
Training Sessions	Other CEO Addresses

The management policy commitment statement should include the following:

- Affirmation of the company's commitment to export compliance and commitment of appropriate resources to compliance;

- Explanation of the basic purpose of export controls. Export compliance is vital to protect the national security and foreign policy interests of the United States;

- Under no circumstances will sales be made contrary to U.S. export regulations and laws. Export compliance is good for business and compliance with export laws and regulations and the company's export policy will not be compromised for commercial gain;

- It is the responsibility of the company and its employees to be familiar and compliant with export controls. As a preventive measure to help employees understand possible noncompliance scenarios, specific risks as they relate to the company's products, technology, destinations and activities, should be listed;

- Unauthorized transfers of even low-level technology can potentially jeopardize national security or further the development of weapons of mass destruction;

- Description of penalties for non-compliance to include business fines and penalties, possible loss of export control privileges, and/or employee termination and imprisonment. Export compliance avoids fines and possible loss of export privileges and compliance avoids irreparable damage to the individual and company's reputation. So that the seriousness of export violations is understood, an example of penalties for a company that "willfully" or "knowingly" violates the Export Administration Act is potentially a $1,000,000 fine or five times the value of the export, whichever is greater, per violation. An employee committing the same violation is potentially subject to a $1,000,000 fine and up to twenty years imprisonment, per violation. Civil penalties of up to $250,000 and a denial of export privileges may be imposed in addition to or in place of any criminal penalties. In addition, note that employees can be terminated or disciplined further by your company, if they are involved in export non-compliance; and

- Any question concerning the legitimacy of a transaction or potential violation should be referred to the appropriate responsible official. You may note who specifically, or reference the appropriate section in your EMCP Manual regarding reporting and escalation.

Building management commitment and a pervasive compliance-oriented corporate culture go hand-in-hand, since compliance is essentially a top-down process. In order to build such an environment wherein employees feel that they are helping the company by voicing concerns regarding possible problems with export transactions, put in place appropriate incentives and rewards, including having an item in both performance plans and performance appraisals bestowing merit upon individuals who voice such concerns. The voicing of such concerns should also positively influence promotion decisions. A compliance-oriented culture can also be built and maintained through the implementation and exercise of all nine key EMCP elements.

Note who the responsible personnel are for this section of your EMCP; e.g.: The individual(s) responsible for updating the Policy Statement and for the annual dissemination of the Statement is: (name of person, title, phone number, e-mail). If the names of any individuals identified in the management policy statement change prior to the annual redistribution, the statement should be reissued. The individual responsible for posting this information on the company intranet is: (named of person, title, phone number, e-mail).

EXAMPLE OF A POSSIBLE MANAGEMENT POLICY STATEMENT

COMPANY LETTERHEAD

DATE:

TO: All Employees & Contractors

FROM: Name, President/CEO/Chairman

SUBJECT: Export Policy Statement

(Company) is committed to compliance with all export controls in the Export Administration Act and the Export Administration Regulations. This commitment extends to promoting strict compliance on an on-going basis with terms and conditions.

It is (Company) policy that all employees, comply with the United States export policies and regulations. Under no circumstances will exports be made contrary to U.S. export regulations by any individual operating on behalf of (Company).

Employees outside the United States may not re-export any commodity, technology, or software unless appropriate authorization has been obtained, and this includes foreign-produced items that are the direct product of U.S. technology and software and are subject to national security controls under the Export Administration Act.

No activities will be undertaken that are in violation of the United States policies which seek to control nuclear proliferation, missile technology, and chemical and biological weapons.

Failure to comply with these regulations may result in the imposition of criminal and/or civil fines and penalties, including jail time and monetary penalties, and employees will be subject to disciplinary action and/or termination.

I ask each of you to take this matter very seriously and to support me in this effort. If you have any questions concerning the legitimacy of a transaction or potential violations, please contact:

(Name, Title, Phone, E-Mail)

Note: This Statement of Corporate Commitment to Export Compliance will be issued on an annual basis or if necessitated by personnel changes, changes in management, or regulatory changes.

[RESPONSIBLE OFFICIAL] is responsible for disseminating this Statement throughout the organization through [COMPANY'S] Export Management and Compliance Program Manual updates, incorporation into training and presentations, and posting on the [COMPANY] Intranet and Web site.

_____ (SIGNATURE) _____(DATE) _____

President/CEO/Chairman

All employees are required to read and sign the following verification statement on an annual basis and submit to the Human Resources Office to be filed in their personnel file.

I, _____ , hereby acknowledge that I received, on (DD/MM/YY) (COMPANY) policy statement dated (DD/MM/YY) and signed by (SIGNING OFFICIAL), regarding (COMPANY) commitment to export control compliance. I have read such policy statement and will comply with (COMPANY) export compliance policies and procedures in support of (COMPANY) compliance efforts.

_____

Employee Signature, Title, Date

TOOL
Management Commitment Policy Statement

The following language was extracted from various compliance programs to give you an idea of various ways you might develop your Statement. For each key section of the Statement, there are a variety of different options. Of course, you should customize your company Statement in a way that will be most appropriate and effective for your company.

OPTIONS	INTRODUCTORY PARAGRAPH SAMPLE LANGUAGE
1	In support of national security, U.S. and global efforts to fight the battle against terrorism, and the legal responsibilities and business interests of this company, (COMPANY NAME) has implemented export control procedures that all company employees are required to follow. It is the policy of (COMPANY NAME) that all of its employees, departments, divisions, domestic and foreign subsidiaries, and affiliates must comply with U.S. Government export control laws and regulations. No transactions are to be conducted by or on behalf of (COMPANY NAME) contrary to U.S. export control laws and regulations. In particular, (COMPANY NAME) employees with export related job responsibilities must apply due diligence to ensure they abide by all U.S. export control laws and regulations and comply with (COMPANY NAME) export control guidelines, policies, and procedures as outlined in the company's Export Management and Compliance Program Manual. (COMPANY NAME) supports U.S. efforts to prevent proliferation of weapons of mass destruction. Special care must be taken to prevent any transaction with entities involved in the proliferation of weapons of mass destruction and prohibited activities involving missile, nuclear, chemical and biological warfare. (COMPANY NAME) employees with export responsibilities are required to have a working knowledge of export control laws and regulations, especially those governing their specific job functions, as well as a working knowledge of company export control policies and procedures.
2	It is the policy of (COMPANY) to comply with all U.S. Government export control laws and regulations. No transactions are to be conducted by or on behalf of (COMPANY) contrary to U.S. export regulations. This company supports U.S. efforts to fight the battle against terrorism and prevent transactions involving entities engaged in prohibited missile, nuclear, chemical and biological warfare activities. Therefore we have implemented export control procedures that you are required to follow. You can find these procedures in the Export Management System Manual published on our Intranet at (COMPANY INTRANET SITE). A hard copy is also available (PLACE).

OPTIONS	INTRODUCTORY PARAGRAPH SAMPLE LANGUAGE
3	All [COMPANY] personnel involved in exports and reexports, traffic, and related functions are required to comply with the policies and procedures outlined in [COMPANY'S] Export Management and Compliance Program Manual. Under no circumstances will exports be made contrary to U.S. Export Administration Regulations. No transactions are to be initiated with individuals on the Denied Persons List or with any firms owned by or associated with those parties. The Denied Persons List identifies parties who have been denied export privileges. No exports will be made to parties on the Entity List or any other person or organization that is suspected to be involved in activities covered under the Enhanced Proliferation Control Initiative. This initiative is designed to prevent the proliferation of missile technology and nuclear, chemical, and biological weapons. Employees outside the United States may not reexport any commodity, technology, or software unless appropriate authorization has been obtained. This includes foreign produced items that are the direct product of U.S. technology and software or foreign made items that are subject to national security controls of the United States as designated by the Commerce Control List. No exports or reexports will be shipped without authorization to any country that is subject to an embargo or other controls by the United States. No exports or reexports will take place with any person or organization on the Special Designated Nationals or Terrorists List issued by the Office of Foreign Assets Control. No in-transit shipments may be made through a prohibited country without proper authorization. All employees involved in exports and reexports, traffic and related functions are required to report requests for products or services that are in support of unsanctioned foreign boycotts in accordance with the United States regulations.
4	A critical success factor for (COMPANY) is our ability to establish an infrastructure capable of serving our customers. A key element in this infrastructure is the (COMPANY'S) ability to export products while complying with U.S. export control laws and regulations. To achieve compliance with U.S. export control laws and regulations, (COMPANY) has developed an export management and compliance program, which is formulated to assure that (COMPANY) exports and reexports are not made contrary to company policies and procedures and the Export Administration Regulations. Export compliance is the responsibility of all (COMPANY) personnel. (COMPANY) is committed to export compliance by ensuring that compliance is an important aspect of our corporate culture and that the requirements and disciplines to comply are integrated into every employee's job and our business processes. It is expected that (COMPANY) employees and contract personnel will be trained in the requirements, policies, and procedures to ensure (COMPANY) compliance to prevent even inadvertent violations.

OPTIONS	INTRODUCTORY PARAGRAPH SAMPLE LANGUAGE
5	It is the policy of (COMPANY) to fully comply with all laws and regulations governing the export of its products, services, software and technical data. Each employee, therefore, must be dedicated to ensuring such compliance with government regulations. All sales, service, shipping, accounting and other personnel that may be involved in export, therefore, shall be familiar with the (COMPANY) policy. Particular attention should be taken when releasing technical information to foreign nationals, electronic transmission of data/software and when hand carrying exports.
6	It is the policy of (COMPANY) and its subsidiaries to conduct business in compliance with all applicable export control laws and regulations. An export management and compliance program, of which this policy statement is a part, is designed particularly to ensure compliance with U.S. export controls.
7	The United States has a statutory and regulatory system for controlling and monitoring the international movement of the United States goods and technology. Among other things, the system is designed to minimize the risk of diversion of such items to locations where they will not be in furtherance of the interests or policies of the united States. It is of the utmost importance of the interests of (COMPANY) that the laws and regulations governing the movement of equipment and technology be followed. This will allow (COMPANY) to maintain its good corporate citizenship status avoid inadvertent violations, costly errors, and the possible disruption to business. Commitment to these policies is a daily exercise. All of those in the company who are involved in the international movement of goods and technology must vigilantly maintain and adhere to this commitment on a continuous basis as they go about their everyday duties and responsibilities for the company.
8	(COMPANY) must apply for and receive an official export license prior to shipping (COMPANY TECHNOLOGY/PRODUCT) to any customer outside of the United States. To obtain such a license, (COMPANY) is required to gather and report certain information about the product, the distributors and the end-user customers who seek to purchase and utilize the (COMPANY TECHNOLOGY/PRODUCT). The Commerce Department's Bureau of Industry and Security (BIS) is the agency to which we must apply for our export licenses. In addition to the BIS, export control officials of the Departments of State, Defense, and Energy may also review our application and make recommendations for approval or denial of our application. Once a license is approved and granted, it comes to us with a number of conditions requiring (COMPANY), its distribution partners and user-customers to perform certain record-keeping and notification tasks. These conditions also limit the use of (COMPANY TECHNOLOGY/ PRODUCT) to the applications stated on the license. The license also makes clear that the (COMPANY TECHNOLOGY/PRODUCT) may not be re-sold or re-exported to another party without first obtaining a new export license and that the loss or theft of the product is to be promptly reported to U.S. government officials.

OPTIONS	INTRODUCTORY PARAGRAPH SAMPLE LANGUAGE
9	As a global company which operates in the United States, (COMPANY) is governed by U.S. export control rules and regulations regarding the export and/or reexport of products, spare parts, accessories, software, training materials, and technical data. It is the policy of (COMPANY) that under no circumstances will sales be made contrary to U.S. export control laws and regulations or the policies and procedures of (COMPANY'S) Export Management and Compliance Program. We must remember that exporting our products is a privilege, not a right, granted by the U.S. government. This is critical for (COMPANY) because, typically, more than (X) % of our sales is international. Although most of our products do not require licenses prior to shipment to most countries, many of the (PRODUCTS) are now more tightly controlled because of concerns regarding the proliferation of chemical and biological weapons, missile technology and nuclear weapons. Accordingly, (COMPANY), as an exporter, must assume even greater responsibility for screening its customers and transactions. Careful review of both the end-use and the end-users involved with our international transactions is required to ensure export control compliance.
10	It is the policy of (COMPANY) to fully comply with all laws and regulations governing the export of its products, services, software and technical data. Each employee, therefore, must be dedicated to ensuring such compliance. All sales, service, shipping, accounting and other personnel that may be involved in export, therefore, are required to be familiar with and review regularly the (COMPANY) Export Management and Compliance Program to ensure compliance with government regulations. Particular attention should also be taken when releasing technical information to foreign nationals, electronic transmission of data/software and when hand carrying exports. Failure to comply with these regulations may result in the imposition of criminal and/or civil fines and penalties, including incarceration for individuals and suspension of export privileges for (COMPANY). Under no circumstances shall (COMPANY) personnel sell or ship any product contrary to United States export laws or shall these laws be compromised for commercial gain. Neither sales nor shipments are to be made to any individual or firm appearing on the Denied Persons List or to any firms owned by or associated with the individuals for firms therein listed. In addition, regulations are in effect pursuant to the President's Enhanced Proliferation Control Initiative which places emphasis on the end-use and or end-user of exported items. As a result, we need to be vigilant in screening our customers and transactions. It is, therefore, more important than ever that the "Know Your Customer" guidelines (available from _____) are understood and implemented in order that [COMPANY] can meet the required "know" standard. In particular, no transactions will be held when dealing with companies and countries which may be concerned with the proliferation of nuclear, missile, and chemical/biological related processes and/or weapons. [COMPANY'S] Export Management and Compliance Program Manual summarizes and refers to the applicable laws and regulations and company policies and procedures. A copy of the Manual is posted on the company Intranet at (WEBSITE).

OPTIONS	DUAL-USE RISK STATEMENT
1	(INFO ON COMPANY TECHNOLOGY/PRODUCT)........ Because of its potential uses in weapons and weapons systems, the U.S. Government is rightly concerned that commercial products incorporating (COMPANY TECHNOLOGY/PRODUCT) not be diverted to military use by enemies of the United States. Therefore, the export of (COMPANY TECHNOLOGY/PRODUCT) is subject to government-specified controls. These controls are very precise and compliance with them is mandatory, not voluntary. No employee has the authority to act contrary to this Policy, nor direct, authorize, or condone violations of the Policy by any other employee.
2	The United States government strictly regulates all exports of U.S. products, technology, and software and the movements of U.S. origin commodities between foreign countries. Export controls are used to regulate the export and reexport of dual-use materials; commodities that have both a civilian and military application. These controls are in place to prevent the distribution of dual-use technology that can compromise national security. Some of (COMPANY) products can be adapted for (PROVIDE USE) and are strictly controlled to prevent diversion to those interested in proliferating weapons of mass destruction or terrorist supporting entities. In today's world and the ongoing efforts of the global war on terrorism, the need for heightened awareness of the control and use of these types of products is more critical than ever before.

OPTIONS	PENALTIES STATEMENT
1	All employees should remember that violations of the Export Administration Regulations can result in severe penalties and denial of exporting privileges as follows: **Administrative Penalties:** Each violation of the export control regulations can result in the imposition of civil penalties amounting to the greater of $250,000, or twice the value of each transaction. **Denial of Export Privileges:** Violations of the Export Administration Regulations or the conditions of an export license may result in the denial of export privileges. This denial can restrict the ability of the company to engage in export or reexport transactions or restrict access to items subject to the Export Administration Regulations. **Criminal Penalties:** Violators can be fined $1,000,000 and/or up to 20 years in prison. **Voluntary Self-Disclosures:** BIS generally grants a reduction of at least 50% of the calculated penalty. {COMPANY) is committed to the adherence of the policies and procedures outlined in the Export Management and Compliance Manual and requires all employees to support that commitment. Failure by any employee to strictly adhere to (COMPANY'S) Export Management and Compliance Program constitutes grounds for disciplinary action, including termination of employment.
2	Penalties for violations of U.S. export control laws and regulations may be imposed by law and may include substantial fines and/or imprisonment. In addition, violations could subject (COMPANY NAME) to administrative action, including the denial of export privileges. Accordingly, (COMPANY NAME) will view the failure of any employee to comply with this policy statement as a serious violation of company policy and the employee will be subject to disciplinary action. Disciplinary action may include warning, reprimand, probation, suspension, reduction in salary, demotion, or dismissal. Violations will be dealt with promptly, and serious violations will be dealt with severely.
3	Penalties can be imposed on both businesses and individuals for violating U.S. Export Regulations. These may include partial or complete denial of export privileges, civil penalties (fines) and/or seizure of equipment. Criminal penalties for willful violations of U.S. Export Regulations may include fines of up to $1,000,000.00 and imprisonment for up to a period of 20 years. These sanctions are defined in Section 764.3 of the Export Administration Regulations.

OPTIONS	PENALTIES STATEMENT
4	In the event of noncompliance, (COMPANY) and its employees may be subject to criminal and administrative sanctions, including substantial fines, the revocation of export and importing privileges and prison terms. A greater cost to (COMPANY) from noncompliance may be the distraction and resources required to respond to an investigation that detracts from our ability to focus on our obligations to our customers.
5	Penalties for violation of export regulations may be imposed by law and may include substantial fines and/or imprisonment. In addition, (COMPANY) may be subject to administrative action, including the suspension, revocation or denial of the export or import privileges. Accordingly, (COMPANY) will view the failure of an employee to comply with this policy statement as a serious violation of company policy and the employee will be subject to disciplinary action up to and including termination of employment at the sole discretion of the (COMPANY).
6	All (COMPANY) employees are required to comply with the policies and procedures outlined in the export management and compliance manual. Any employee who has knowledge of facts or incidents, which he or she believes may violate this policy, whether intentional or accidental, is required to report the matter promptly to (EXPORT COMPLIANCE MANAGER). Violations of U.S. export laws can subject (COMPANY) and its employees to severe penalties, including fines, denial of export privileges, and even imprisonment. Any employee who violates such laws, or who knowingly permits a subordinate to violate such laws, will be subject to appropriate disciplinary action, up to and including dismissal.
7	We, as a company, must ensure that all systems, spares, and technology which are exported use the correct export license authority. Export noncompliance is very costly. In the event of noncompliance, (COMPANY) and its employees could be subject to both criminal and administrative sanctions which may include substantial fines and/or prison terms and, most importantly, (COMPANY) could lose its privilege to export. Furthermore, in the event of noncompliance, (COMPANY) will take all appropriate disciplinary actions, up to and including termination of employment.

OPTIONS	WHERE TO DIRECT QUESTIONS
1	I ask each of you to take this matter very seriously and to support me in this effort. If you have any questions concerning the legitimacy of a transaction or potential violations, please contact: (Name, Title, Phone, E-mail).
2	Any employee having reason to suspect the legitimacy of a transaction or concern that a violation of the United States export regulations has occurred or is about to occur is required to report their concern's immediately to a member of the Trade Control and Compliance Organization or (COMPANY) legal team.
3	Any questions concerning the legitimacy of any transaction, violation, or potential violation of the United States laws and regulations governing exports and reexports should be immediately referred to the (Name, Title, Telephone Number)or in his absence these individuals are available, referrals should be made to (Name, Title, Telephone Number).
4	Any questions concerning this policy, its application to a specific situation or the legitimacy of an export transaction, should be addresses to (Name, Title, Telephone Number, E-mail).
5	Questions concerning export regulations should be directed to the (Name, Title, Telephone, E-mail) of the (COMPANY), who is designated as the (POC). Should any (COMPANY) employees become aware of violations of the U.S. export regulations on the part of or at any (COMPANY) facility, they should report such violations according to Company policy and procedure, as detailed in the "Reporting" section of our EMCP.

OPTIONS	WHERE TO DIRECT QUESTIONS
6	All questions concerning whether a proposed sale, shipment or other transactions, domestic or international, complies with export laws shall be immediately referred to the following designated responsible officials:

QUESTIONS ON:	DIRECT TO:
Noncompliance or Possible Non-Compliant Activity	Person/Contact Info
(COMPANY) Export Management and Compliance Program Manual	Person/Contact Info
Legal Interpretation of the Export Laws and Regulations	Person/Contact Info
General Company Export Information	Person/Contact Info
General Export Information	Bureau of Industry & Security U.S. Department of Commerce (202) 482-4811

OPTIONS	WHERE TO DIRECT QUESTIONS
7	It is important to remember that compliance is the responsibility of every (COMPANY) employee. Therefore, any questions regarding export compliance and how it impacts your specific job, questions concerning the legitimacy of a transaction or any violations or possible violations should be immediately reported to (RESPONSIBLE OFFICIAL & CONTACT INFO.).
8	(COMPANY'S) Export Management and Compliance Program Manual contains (INFO.). (RESPONSIBLE OFFICIAL(S)) is/are responsible for ensuring that the Manual is updated, maintained, distributed, implemented and supported by all divisions within the company. Successfully managing (COMPANY) Export Management and Compliance Program is critical to the continued success and prosperity of our company.

KEY ELEMENT 2:
Risk Assessment

To help identify vulnerabilities and eliminate risks of EAR violations, begin with the following steps:

- Chart your order flow from receipt of a request through shipment of ordered items and location of transaction document files.

- Develop a narrative that describes the movement of the request and the responsible personnel who take action on the request at various steps.

- Identify vulnerable steps where there is risk of EAR violations occurring.

- Implement EMCP screens that will eliminate the vulnerabilities.

- Determine frequency of checks to be performed throughout the flow process.

- Establish "stop," "hold" and /or "cancel" criteria to prevent transactions from moving forward when checks fail.

- Include decision instructions that tell users of the checks what actions they are to take when checks "fail."

- Establish "release" criteria for transactions that have been stopped and escalated for further review.

- Identify all document file paths that make up the entire transaction story.

It is recommended that companies develop a comprehensive formal flow chart and narrative description of their order process. The order processing flow chart/narrative is like a map. It should start at the point where an order is received and follow the process through the shipment of product. Other items that are exported in nontraditional ways such as hand-carried items and technical data may require separate flow charts and/or narratives. The analysis required to break down the aggregate order process into step-by-step procedures via a flow chart(s) and narrative(s) will enable companies to identify areas of vulnerability or omission and, in turn, identify where internal controls should be implemented to minimize the risk of noncompliance. Such a visual or

descriptive tool can be used to educate employees about the overall order process, the compliance measures in place, and, most important, help employees understand their individual role and responsibility in the process as well as what should happen before and after their contribution.

The order processing system, whether it is manual or automated, should have "hold" functions, sign-off procedures, and accountability built into it to assure all orders receive the appropriate control checks prior to shipping. Within the system, order processing checks should be conducted for each of the screening elements (see section on Screening). An order processing system should have redundancies built in. For example, a check of the Denied Persons List should be conducted by sales personnel at the initial stage of contact with the customer, as well as by compliance personnel prior to entering the order, and then prior to shipment, due to possible regulatory changes. In addition, screening should be performed on all intermediate parties involved in a transaction. This is particularly true for Denied Persons Screening. This is to ensure that shipments to bonded warehouses and free trade zones are disposed of as authorized, thereby reducing the possibility of diversion.

It is important to clearly define: 1) preventative controls to minimize vulnerabilities prior to order entry; 2) in-process controls that will place a "hold" on a transaction necessitating a secondary review; and 3) after-process controls that would alert you to system failures. See screening procedures in Key Element 5, below.

Each individual with responsibility for performing a control check(s) should be held accountable for orders processed. Some method of verifying the performance of the checks should be implemented, whether by requiring documentation of completion of the checks for reviewing purposes, preventing the flow from moving to the next level, or some other means used to ensure compliance. Also, see screening procedures in Key Element 5, below.

TOOL
Defining the Parameters of Your Export Program with a View Toward Assessing Risk and Identifying Vulnerabilities

The questions in the following tool are designed to help your Task Force think through how best to structure your EMCP based on your company's unique characteristics. This information will help you build an EMCP that addresses your export compliance risks. All of the questions highlight factors that are important to consider as potential points of vulnerability as you develop an EMCP. By defining your export operations, you can assess potential areas of risk where you will need to build in specific policy and procedural compliance safeguards. Significant risk factors include volume of exports, end-uses, end-users, other intermediary parties to transactions, location of customers, product sensitivity or restrictions, and the order processing system. Working through the questions should also help you identify other company-specific vulnerabilities. Information that this exercise generates can be included in the relevant sections of your written compliance manual.

A. COMPANY PROFILE: Define Your Proposed Export Structure

- Describe the structure of your company. Include a narrative and organization chart indicating location of corporate headquarters, operating divisions, including manufacturing facilities, and domestic and foreign subsidiaries and affiliates.

- Identify all domestic and foreign divisions/offices/facilities that will have a role in your export transactions.

- Identify location(s) of where you would like to have export compliance manager(s). Highlight the proposed management line of authority for export control related activities. Clearly indicate how divisions/positions will be interrelated.

> **NOTE:** Examine reporting structure for possible conflict of interest in lines of authority. This information will be used to develop your management and oversight structure and procedures, and define accountable personnel responsible for export control functions.

- List the total number of employees you anticipate will be directly involved in export related functions.

> **NOTE:** Does the number of proposed export employees reflect a sufficient level of compliance resources allocated to handle the volume of export/reexport transactions and issues anticipated in your export program?

- How many orders do you anticipate to process monthly?
- What do you anticipate will be the average time frame from acceptance of order to time of shipment?
- Identify offices and personnel who are in the order processing chain.

> **NOTE:** There are various risk factors associated with different order entry processes. You should make sure that you take these into consideration as you document your procedures in your EMCP program.

B. BUSINESS ACTIVITY PROFILE: Define Your Proposed Export Activity

- Describe your industry sector.
- Describe your business type.
  - Manufacturer
  - Retailer
  - Distributor
  - Trading Company
  - Purchasing Agent
  - Original Equipment Manufacturer (OEM)
  - System Integrator
  - Servicing Agent
  - Freight Forwarder
  - Other

> **NOTE:** You will need to consider the unique compliance issues associated with your specific industry sector and business activity. There are varying risk factors associated with industries that produce sensitive dual-use products.
>
> Also, there are compliance considerations associated with different business types. For example, if you are a freight forwarder, it is critical that you have written communication between you and your customer defining the export transaction roles and responsibilities. A distributor will need to ensure the accuracy of the commodity classification of the products to be exported.

- Do you plan to perform field services? If so, answer the questions listed below.

    - What types of services will be performed by your company?
    - Will you provide installation services?
    - Will you service your equipment under a maintenance contract?
    - Will proposed field service activities be subject to export controls?
    - How will services subject to export controls be handled under your compliance program?

NOTE: You will need to include compliance measures in your EMCP to address service activities. If you are servicing products that you did not export, you need a process to ensure the equipment was exported legitimately. Remember to be alert for prohibited activities and persons.

- How many orders do you anticipate to process monthly?
- What do you anticipate will be the average time-frame from acceptance of order to time of shipment?

NOTE: When defining your export activity, you need to consider various risk factors associated with specific industry sectors, unique business activity, and resource allocation.

- Do you expect to invite overseas entities to send representatives to your U.S. facilities for periodic training, including for product updates/ enhancements you hope to market?

NOTE: When considering inviting foreign nationals to your U.S. facilities, please also consider EAR regulations in the EAR Part 734.2(b)(2)(ii) and 734.2(b)(3).

SOME POSSIBLE BUSINESS VULNERABILITIES:

- Unaware of product's dual-use risks.
- Not assessing compliance risks for new product lines and new business activities.
- Unclear roles and responsibilities between different business partners in the export process.
- Lack of compliance safeguards throughout the entire export process.
- Lack of discernment between sensitive and non-sensitive business transactions.
- Lack of discernment regarding risk for various business activities.
- Failure to perform denied persons screening for field services.
- Failure to ensure that serviced equipment has been exported legitimately.
- Parties to the export transaction unaware of their compliance responsibilities.
- Spare parts exported for prohibited end-use and/or end-users.
- Level of export business activity exceeds compliance resources.
- Lack of "big picture" consideration in assigning compliance resources.

SOME POSSIBLE GENERAL EMCP VULNERABILTIES:

- Foreign-owned businesses in the United States may not understand or comply with U.S. Export Regulations.
- Foreign trading companies, especially located abroad in Free Zones, may not carefully discriminate between end-users.
- Lack of communication of compliance policies and procedures.
- Disconnected compliance policies, procedures and practices in large decentralized corporations with unique business interests and activities.
- Disconnected compliance policies, procedures, and practices between domestic and foreign business units.

(continued)

SOME POSSIBLE GENERAL EMCP VULNERABILTIES:

- Placement of compliance functions in Marketing and Sales Department can result in conflicting interests between profit and compliance.
- Absence of management commitment to export compliance.
- Absence of management oversight and accountability in compliance program.
- Insufficient allocation of resources to ensure effective compliance.
- Unclear identification of responsible personnel and accountability.
- Inadequate due diligence performed prior to mergers and acquisitions related to export compliance.
- Absence of a compliance culture.
- Lack of commitment to continuously develop compliance program in relation to market and business expansion.
- Reliance on outdated or incomplete information.

C. CUSTOMER PROFILE: Define Your Potential Export Customer Base

- Will you be selling to:
  - Resellers:
    - Distributor
    - Sales Agent
    - Systems Integrator
  - End-users:
    - Civilian Consumer
    - Government Entity
    - Military Entity
    - Manufacturer
    - Original Equipment Manufacturer
    - Bank

N.B.: These categories are not necessarily mutually exclusive; i.e., some producers of civilian products may also be government-related entities.

- Exporter/Customer Relationship(s):
  - Wholly-owned Subsidiary
  - Independent Entity
  - Established Customer
  - New Customer
  - Customer is Unknown (i.e., internet customer)

Do you anticipate that your customer base will be repetitive sales to the same customer(s) or single transactions to customers that you do not have an established business relationship?

> **NOTE:** As an exporter, you are responsible for knowing your customers and for ensuring that your exports do not go to prohibited end-users. As a good compliance practice, you should include mechanisms in your procedures that verify the legitimacy of your customers and their transactions. You will need to incorporate different types of compliance measures within your EMCP to address risk factors commensurate with different types of customer relationships.

SOME POSSIBLE CUSTOMER VULNERABILITIES:

- Not establishing the bona fides of customers.
- Inadequate up-front customer questionnaire and screening resulting in incomplete customer profile.
- Not assessing the legitimacy of export transaction.
- Self blinding to pertinent customer information.
- Communication regarding compliance responsibilities not cascading down to all stakeholders in the export transaction.
- Lack of procedures to ensure that customers receive and understand license conditions and commensurate obligations.
- Distributors unaware of commodity classifications of various products as well as restrictions related to the products.
- Unaware of military versus civilian end-use and end-user restrictions.
- Customer requests that violate U.S. Antiboycott Laws.

(continued)

SOME POSSIBLE CUSTOMER VULNERABILITIES:

- Unaware whether or not the customer's integration of product into larger system is controlled by U.S. Export Regulations.

- Misperception that well-known companies do not require compliance consideration.

- Not employing higher levels of compliance screening for unknown customers.

D. COUNTRY PROFILE: Define the Potential Location of Your Customers

Reference: *http://www.access.gpo.gov/bis/ear/pdf/740spir.pdf*

- Do you plan to market to customers in:
  - Country Group A
  - Country Group B
  - Country Group D
  - Country Group E

- Do you know whether your customers will reexport? If so, will the new destination have different EAR licensing policies and requirements?

NOTE: There are different license requirements for different countries. As your international marketing plan evolves, you should make sure you are aware of the various licensing policies for different countries. Reference: *http://www.access.gpo.gov/bis/ear/pdf/738.pdf*

This information should be used in developing your item and country compliance check section in your EMCP.

SOME POSSIBLE COUNTRY VULNERABILITIES:

- Exporting any goods or technologies to a terrorist-supporting country and/or embargoed country without a license.
- Not aware that there are different license requirements for different countries.
- Re-export restrictions not communicated to customers.
- Company compliance policies and procedures do not address country policy.
- Not keeping up-to-date with changes in the Export Administration Regulations.
- Not keeping compliance programs up-to-date with country policy regulatory changes.
- No procedures for complying with license exception parameters.
- Language barriers can compromise export compliance integrity.
- Inconsistencies between U.S. and foreign country policy.
- False sense of comfort fostered by doing business in a friendly allied country.
- Unaware of those countries that are transshipment countries of concern.
- U.S. country policies are not reflected in internal export compliance transaction procedures.

E. COMMODITY PROFILE: Define Your Potential Products For Export

- Proposed export(s):
    - Commodity
    - Software with Encryption
    - Software without Encryption
    - Technical Data with Encryption
    - Technical Data without Encryption
    - Service (i.e., repair, financing, freight forwarding, legal, technical, engineering, architectural assistance, etc.)
- What are the export commodity classification numbers (ECCNs) for each of your exports?
  Reference: *http://www.bis.doc.gov/licensing/Do_I_NeedAnECCN.html*

NOTE: Your commodity classification is a critical decision process. Export decisions and requirements are based on your ECCN and General Prohibitions. As part of your EMCP, you will want to document the process for determining your ECCN(s). In addition, you need to include a decision process for determining the appropriate export authorization (license, license exception, or no license required).

As part of this process, you should maintain decision support documents. In addition, you need to include maintenance procedures that will capture future product and EAR changes that will affect your ECCN(s).

This information should be used in developing your item and country compliance section in your EMCP.

- Are there any dual-use risks or export restrictions related to your products?
  Reference: *http://www.access.gpo.gov/bis/ear/pdf/738.pdf*
  - AT – Anti Terrorism
  - CB – Chemical & Biological Weapons
  - CC – Crime Control
  - CW – Chemical Weapons Convention
  - EI – Encryption Items
  - FC – Firearms Convention
  - MT – Missile Technology
  - NS – National Security
  - NP – Nuclear Nonproliferation
  - RS – Regional Stability
  - SS – Short Supply
  - UN – United Nations Embargo
  - SI – Significant Items
  - SL – Surreptitious Listening

NOTE: You should develop internal control procedures to ensure compliance with any unique requirements associated with the applicable reasons for control.

- Based on your ECCN(s) and the country chart included in Part 738, Supplement 1 of the EAR, what are the appropriate export authorizations for your products?
  Reference: *http://www.access.gpo.gov/bis/ear/pdf/738spir.pdf*

  - License Required
  - Eligible for License Exception(s)
  - No License Required

> **NOTE:** This information should be used in developing your item and country compliance check section in your EMCP.

- Will you hire foreign nationals at your U.S. facilities?

> **NOTE:** If the foreign nationals that you hire have access to technology, you may be subject to the "deemed export" rule. Reference: *http://www.bis.doc.gov/DeemedExports/DeemedExportsFAQs.html#1*

- Do you plan to export anything subject to other agencies' jurisdiction, e.g., U.S. Department of State, Department of the Treasury's Office of Foreign Assets Control, U.S. Department of Justice, Department of Interior, Food and Drug Administration, U.S. Maritime Commission, or Nuclear Regulatory Commission. Reference: *http://www.access.gpo.gov/bis/ear/pdf/730.pdf*

> **NOTE:** If your exports are subject to other agency regulations, you should include guidance in your EMCP compliance manual on how to comply with the respective regulations.

SOME POSSIBLE COMMODITY VULNERABILITIES:

- Unaware that product classification is needed to legitimately export.
- Failure to determine appropriate export authorization of your products.
- No company policy or procedures for accurately classifying products.
- Lack of technical expertise to properly determine the export commodity classification number.
- Inaccurate classification of EAR99.
- Inaccurate classification.
- Not understanding products dual-use risk.
- Unaware that technology released to foreign nationals in the United States may require a license.
- Not maintaining up-to-date classification decisions on products.
- Unaware of which U.S. Government Agency has jurisdiction over products.
- License conditions tied to specific commodity requirements not conveyed to responsible parties.
- Not incorporating measures within your compliance program to detect inconsistencies between product characteristics and the customer stated end-use.

F. END-USE PROFILE: Define Potential End-Uses of Your Products

- How will your customers use your products:
    - As capital equipment?
    - For resale to retail customers?
    - For resale to manufacturers or OEMs for own use?
    - For incorporation into the manufacture of new products for resale?
    - For Servicing?
    - For system integration activities?
    - Other?

- If misused, could your products be used for the following proliferation activities?
  - Chemical Weapons
  - Biological Weapons
  - Nuclear Weapons
  - Delivery systems of such weapons
  - Technology to develop destructive systems

NOTE: As an exporter, you are responsible for knowing your customers and for ensuring that your exports are not used for prohibited end-uses. As a good compliance practice, you should include mechanisms in your EMCP procedures that verify the legitimacy of the stated end-use and that the end-use makes good business sense. The variables outlined above are important factors in assessing your export program's potential areas of vulnerability and risk.

SOME POSSIBLE END-USE VULNERABILITIES:

- Typical product end-use is inconsistent with customer's stated end-use objectives.
- Typical product end-use is inconsistent with nature of customer business.
- Is the quantity of product requested from customer consistent with a typical customer's projected needs.
- Lack of end-use information.
- No safeguards incorporated in compliance program to detect prohibited proliferation end-uses.
- Failure to communicate end-use license conditions to responsible parties.
- Not having an on-going mechanism to ensure compliance with end-use license conditions.
- Not conducting an end-use risk assessment.
- Failure to include compliance measures to ensure deemed export parameters outlined in a company's Technology Control Plan are followed.
- Not keeping up with end-use restrictions as outlined in the Export Administration Regulations.
- Lack of policies and procedures to address what should happen when company becomes aware that the customer's authorized end-use of the product has changed.
- Compliance measures are not commensurate with end-use risks.

G. ORDER PROCESSING PROFILE: Describe Your Potential Process for Receiving Orders

- Describe in detail the steps of your proposed export order process.
- Specifically, how will your export orders be received?
    - In Person
    - Electronic Processing System
    - Phone
    - Fax
    - Regular Mail
    - Electronic Mail
    - Internet
- Will the orders follow separate processing routes (i.e., by geography, product line, or complete unit vs. spare part?)
- Identify the location(s) where orders will be received.
- Identify the location(s) where your order records will be maintained.
- How many orders do you anticipate to process monthly?
- What do you anticipate will be the average time-frame from acceptance of order to time of shipment?
- Identify offices and personnel who are in the order processing chain.

NOTE: There are various risk factors associated with different order entry processes. You should make sure that you take these into consideration as you document your procedures in your EMCP program.

SOME POSSIBLE ORDER PROCESSING VULNERABILITIES:

- Lack of any defined procedures.
- Lack of sufficient compliance safeguards throughout the process, i.e. screening at key points.
- Procedures inconsistently followed.
- Inconsistent compliance controls.
- Insufficient information for transaction analysis.
- Processes lack discernment between treatment of non sensitive and sensitive items and countries.

(continued)

SOME POSSIBLE ORDER PROCESSING VULNERABILITIES:

- Communication breakdown resulting in compliance errors.
- Lack of accountability and oversight throughout processes.
- Inadequate resources for volume of order activity.
- Lack of integration between manual and electronic order processing systems.
- No consideration given to length of processing time related to frequency of screening.
- Exclusion of experts in all key departments in the order process evaluation.

H. SHIPPING PROFILE: Describe Your Potential Export Shipping Patterns

- Describe how you intend to deliver your product?
  - From U.S. location (s) directly to customer.
  - From U.S. location (s) via intermediate party to customer.
  - From U.S. location to warehouse for further distribution to customers.
  - Utilizing freight forwarder(s).
  - Via mail, e-mail, fax, phone, internet.
- Who, in your company, will be responsible for (and has the expertise) for completing export documentation?
- What approval process will you implement to ensure that all compliance measures have been performed prior to shipment?
- How will you track the receipt of shipment?

NOTE: You need to include procedures in your EMCP compliance manual on how you will communicate export control requirements and special instructions to the shipping department or third party shipper.

SOME POSSIBLE SHIPPING VULNERABILITIES:

- Lack of shipping procedures.
- Inaccurate shipping information communicated, i.e., license authorization used, ECCN, etc.
- Insufficient export documentation.
- Unclear definition of roles and responsibilities between parties to the transaction.
- Insufficient compliance safeguards throughout the shipping process.
- Inadequate physical security measures implemented during the shipping process.
- Parameters of license and license conditions not conveyed to parties involved in the transaction.
- Preprinted shipping documents with NLR stated.
- Lack of tracking system.
- Omission of destination control statements.
- Unverified end destination address.
- Lack of accountability and oversight throughout processes.

I. U.S. PERSONS ACTIVITIES PROFILE: Identify U.S. persons overseas who are involved in the activities described in Part 744 of the EAR.
Reference: *http://www.access.gpo.gov/bis/ear/pdf/744.pdf*

In assessing the risk of various activities, develop a risk matrix, such as the following:

LOW RISK	MODERATE RISK	HIGH RISK
Stable, well-known customer base in a localized environment.	Customer base changing due to branching, merger or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few high-risk customers.	A moderate number of high-risk customers.	A large number of high-risk customers.
No Internet sales.	Internet sales predicated on verification of customer bona fides and customer screening.	Wide array of Internet sales and services.
No history of voluntary disclosures or enforcement action. No evidence of apparent violation or circumstances that might lead to a violation.	A small number of voluntary disclosures resulting in warning letters or civil monetary penalties. Evidence that corrective action taken to implement safeguards that will minimize future noncompliant activity.	Multiple voluntary disclosures and/or enforcement actions resulting in administrative and/or criminal penalties. No evidence that measures in place minimize future noncompliant activity.
Management has fully assessed company's level of risk based on customer base, product lines, and supply chain management and implemented a formal export management and compliance program. Understanding of risk and strong commitment to export compliance is communicated throughout the organization on a regular basis.	Management exhibits a reasonable understanding of the key aspects of export compliance and its commitment is generally clear and has been communicated throughout the organization, but it may lack a compliance program to address that risk on a continuous basis.	Management does not understand, or has chosen to ignore, key aspects of export compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.

LOW RISK	MODERATE RISK	HIGH RISK
Management has implemented a compliance program that includes policies, procedures, controls, and information systems; documented the compliance program; and train employees on a regular basis regarding their compliance responsibilities.	Management has implemented a compliance program that addresses some but not all aspects of an effective compliance program; the program is not documented; employees are generally aware of their export compliance responsibilities.	Management has not implemented an export management and compliance program.
Staffing levels are adequate to effectively implement a compliance program.	Staffing levels appear generally adequate, but some deficiencies are noted and there is no back-up capacity.	Management has failed to provide appropriate staffing levels to handle compliance workload.
Authority and accountability for compliance functions are clearly defined.	Authority and accountability are defined, but some refinements are needed.	Authority and accountability for compliance have not been clearly established.
Training is appropriate and effective based on the company's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance.	Training is conducted and management provides adequate resources given the risk profile of the organization but some areas are not covered within the training program and some personnel are not included in the communication chain for up-to-date information.	Training is sporadic and does not cover important regulatory and risk areas.
Export control regulatory requirements are fully understood by all key stakeholders in the company's export program.	Export control regulatory requirements are fully understood only by certain key stakeholders in the company's export program.	Company unaware of export control regulatory requirements.

LOW RISK	MODERATE RISK	HIGH RISK
Strong quality control methods are employed within the supply chain.	Limited quality control methods are employed within the supply chain.	No quality control methods are employed within the supply chain.
Compliance considerations are incorporated into all export policies and procedures.	Compliance considerations are often overlooked but not in high-risk areas.	Compliance considerations are not incorporated into numerous areas of the organization, or do not adequately cover high-risk areas.
Effective policies for screening transactions are in place.	Policies for screening transactions exist but are not properly aligned with the company's level of risk.	Policies for screening transactions and new accounts do not exist.
Compliance systems and controls effectively identify and appropriately report potential problems and violations.	Compliance systems and controls generally identify potential problems and violations, but the systems are not comprehensive or have some weaknesses that allow for inconsistent reporting.	Compliance systems and controls are ineffective in identifying and reporting problems and violations.
On a periodic basis, determined by the company's level of risk, all export and compliance processes are audited.	Export and compliance processes are audited but not often enough based on the company's level of risk.	Export and compliance processes are not audited.
Compliance systems and controls quickly adapt to changes regardless of how frequently or infrequently those changes occur.	Compliance systems and controls are generally adequate and adapt to changes.	Compliance systems and controls are not current and are inadequate to comply with and adapt to changes.
Independent testing of the company's compliance program effectiveness is in place. An independent audit function tests compliance with regard to systems and procedures.	Independent testing occurs on an infrequent basis.	Company has never had systems and procedures independently tested.

LOW RISK	MODERATE RISK	HIGH RISK
Problems and potential problems are quickly identified, and management promptly implements meaningful corrective action.	Problems are generally corrected in the normal course of business. Management is reasonably responsive when deficiencies are identified.	Errors and weaknesses are not self-identified. Management is dependent on regulatory findings or responds only when violations are cited or penalties assessed.
Overall, appropriate compliance controls and systems have been implemented to identify compliance problems and assess performance.	In general, no significant shortcomings are evident in compliance controls or systems.	Significant problems are evident. The likelihood of continued compliance violations or noncompliance is high because a corrective program does not exist, or extended time it needed to implement such a program.

IN ASSESSING AND MITIGATING RISKS AND VULNERABILITIES, ESTABLISH AND SUPPORT EXPORT-COMPLIANCE POSITIONS IN YOUR COMPANY. THESE POSITIONS MAY INCLUDE THE FOLLOWING:

Senior Export Manager: A senior company official to act as an export officer and be ultimately responsible for the final approval of all export transactions. This official must ensure that strong oversight is maintained over all the departments involved in exporting an item. It is imperative that the sales decision be in accordance with the company's export management and compliance program requirements and as such the responsibility of a senior official of the company. Individuals who have performance missions which include sales or sales quotas may have a different objective than an officer who bears the responsibility of protecting the reputation and ensuring the "good name" of the company.

EMCP Administrator: Employee responsible for assessing and ensuring that all exports are in full compliance with U.S. export control laws and regulations. This manager can also serve as the policy and licensing liaison with the U.S. Government.

ECM Team: (refer back to Management Element and tie all positions throughout workbook to here....list them.)

Product Division Classification Engineers: Employees responsible for classifying company commodities. These persons work with the EMCP Administrator to determine the appropriate export authorization. These employees are the **Technical Experts** who can be called upon to provide technical expertise, on an as-needed basis, on specific products and their dual-use capabilities.

Product Division Approving Manager: Employee is a member of the ECM Team and attends monthly Management Meetings. This employee oversees the classification decisions and records retention requirements of the EMCP for their specific Product Division.

Technology Export Manager: Employee responsible for classifying company technology and software and assessing whether or not a proposed technology (or software) export requires a license. This person can also serve as the company's policy and licensing liaison with the U.S. Government on technology export matters.

Sensitive Commodities and Countries Export Tracking Manager: Employee responsible for classifying sensitive company products, overseeing, and tracking all company exports of sensitive, high-risk commodities and/or to high risk destinations. This would include tracking compliance of all license parameters and conditions.

Foreign Visit/Travel and Foreign National Employee Coordinator: Employee responsible for coordinating and managing foreign visits and foreign travel. Coordinator would also be responsible for internal oversight of foreign national employees.

Export Counsel: Lawyer responsible for providing legal export guidance.

Location of Personnel

In order to avoid potential conflicts of interest, export compliance personnel should generally be positioned in the company so their sources of salary and evaluations are separate from the businesses that they monitor. Similarly, export compliance personnel must be positioned at the appropriate levels in the organizational structure to enforce export compliance in the face of other potentially conflicting business pressures. For example, without the appropriate level of management commitment to compliance, tension can exist between sales and marketing personnel and export compliance personnel. Sales personnel pursue a specific mission to generate revenue for the company – a mission that could conflict with compliance efforts. All efforts should be made, therefore, to assign export responsibility outside of the sales function, or in addition to it.

Decide whether and how to centralize or decentralize compliance functions, and develop strategies to support your stakeholders, enhance communication, and heighten coordination of export compliance activities to minimize the risk of export non-compliance.

KEY ELEMENT 3:
A Written EMCP

To ensure export, re-export, and transfer decisions are consistent with the export controls, it is strongly suggested that companies develop a set of formal written policies and procedures -- an *Export Management and Compliance Program* Manual -- that provides sufficient safeguards at each key step in the supply chain management to guard against sales of sensitive or dual-use technology to unauthorized parties or for unauthorized activities. The policies and procedures should be applied throughout the entire organization of the company, including any separate divisions and subsidiaries, and cover in step-by-step detail, each of the nine key EMCP elements. By documenting in writing the company's export policies and procedures in a Manual and providing training on its export management and compliance program, a company can have a comfortable level of assurance that employees know what is expected of them and understand how their actions contribute to ensuring that the company's compliance program works.

The Manual should serve as the standard operating procedure guidelines for all company employees. A written Manual is also critical to ensuring consistent training and education for employees throughout a company. There are three key areas companies want to consider when developing a Manual:

- Appropriate content;
- Wide distribution; and
- A mechanism for keeping the information up-to-date.

Large companies may consider developing a corporate-level Manual with the company policies and procedures that apply to all units of the organization. However, each individual business unit would need to build upon the corporate-level Manual by describing the policies and procedures that are tailored to the specific business operations and compliance requirements of the individual business unit. All individual compliance Manuals should be reviewed and cleared by the highest level export compliance authority in the company to ensure that the Manual is consistent with overall company policy and procedures.

Build and maintain your EMCP Manual by eliciting the input and expertise of the members of your EMCP Task Force (see Introduction, above). Since your Task Force members represent the corporate stakeholding entities involved in the export process, they'll provide essential process-specific perspectives which will make and keep the EMCP Manual relevant and useful. Ensure fluid backward and forward links of communication between members of the Task Force through developing strategies with them, keeping each other updated, supporting them in all ways possible, and involving them in all nine key elements of the EMCP. In so doing, it will also clarify to all in the company that compliance is a collaborative endeavor, and the corporate culture of compliance will be commensurately enhanced.

Written Policies and Procedures: Content

Effective export management and compliance program Manuals document export control and compliance policies and procedures including policies and procedures for:

- Interactive day-to-day management and oversight, including the statement of management commitment to export compliance from the President or CEO;
- Contact list of export compliance managers and employees including their individual areas of responsibility;
- Organizational chart showing the export management and compliance structure;
- Standards of conduct and ethics;
- Assessing levels of risk associated with export transactions;
- Maintaining the written EMCP Manual;
- Training for all employees engaged, either directly or indirectly, with exports;
- Order processing;
- Licensing of exports and reexports;
- Staying informed of updates on export control laws and regulations;
- Product classification, including all current product classification and product/license matrices;
- Technical data retention and security;
- Adherence to product/country conditions;

- Shipping procedures;
- Tracking all orders;
- Offshore procurement;
- Sample forms and instructions for filling them out and how to process;
- Screening all inquires, orders, parties to transactions, and activities to ensure compliance;
- Evaluating interactions with foreign national customers and employees;
- Foreign travel requirements;
- Generating and maintaining complete documentation for all export transactions;
- Auditing/assessing program operations;
- Detecting and reporting noncompliant activity, and taking corrective action; and
- Summaries of applicable export laws and regulations.

Distribution and Updates

It is recommended that a company distribute its Manual widely, especially to those employees who have export management and compliance functions and responsibilities. This can easily be achieved by posting the Manual on a company intranet or on a shared company network drive. Additionally, it may be distributed in hard copy, and, bearing in mind that the effectiveness and usability of a Manual is predicated on how up-to-date the Manual is, you may decide to notify folks regarding updates to the Manual as soon as they become available.

The crux of a company's compliance program is the integrity of the individual decisions that are made along the order process. Information is the basis for these decisions. The ability of an employee to have access to current and accurate export compliance information is critical to the integrity of all export decisions. A Manual that contains the most current company policy and procedures and provides employees with the required information, tools, and resources to do their jobs is an integral component of a company's quality control assurance for consistent and accurate export transactions.

As you and your team draft the chapters of your EMCP Manual, remember to address the six essential questions regarding implementation: who, what, where, when, why, and how, because only by providing all the detailed step-by-step processes can the written Manual be effectively implemented and made operational. Think through and address the kinds of questions your staffs are likely to ask: How exactly should this task be done? What's next? What if this or that happens? Think through and address as many contingencies as possible in the Manual, so folks don't find themselves scrambling for instructions when there's little time to plan properly. Mitigation of administrative fines by BIS only occurs when the EMCP is well implemented.

Write the Manual so that someone unfamiliar with your company's EMCP processes would be able to understand what you do and how you do it, and even be able to pick up where you might leave off. It's easy to take processes for granted when you deal with them on a day-to-day basis, but if you painstakingly document your processes, you'll also be well prepared for an audit or assessment, whether by an inside or an outside entity.

Include guidance that is specific to specific tasks and specific business units, but also tie it all together, in order that your staffs understand the big picture, too, i.e., how they fit into the whole process, and how all depend on all. Remind your staffs that through export compliance, in addition to ensuring the sustainability and longevity of your company, you're also ensuring that our U.S.-origin dual-use goods and technologies are not used against us, and in so ensuring, all who deal with export transactions, public-sector and private-sector, have a national-security component to their jobs.

CREATE YOUR EMCP STRUCTURE

Certain elements have been developed to assist exporters with the establishment of an Export Management and Compliance Program. Without operational implementation and maintenance of these nine key elements identified in the Introduction of these Guidelines and included in the Manual content description, above, an EMCP cannot remain useful and reliable. Each of these elements is considered a vital link in the chain. One weak link can create a vulnerability that could negatively impact the entire system. These principles must be threaded together throughout the program. Each section and each check interconnects with the others

creating a system of double checks. None of the sections can be viewed as separate, stand-alone elements if the program is to be successfully implemented. Although other checks and safeguards may be added, the foundational principles of Export Management and Compliance Programs are the nine elements identified.

Many of these elements/principles may already exist within your company. Where possible, incorporate the export controls into your company's existing office procedures that company employees are already used to following. Be sure to include any branches or subsidiaries that you may have overseas.

Throughout each section of the Manual, stress the importance of documentation. The purpose of documentation is to provide a method of assurance that the system and procedures are being maintained according to established company policy and consistent with the EAR. If your company is moving toward a paperless environment, documentation may have evolved into electronic compliance checks or other paperless methods of assurance. In thinking about what those other methods might be, keep in mind Section 762.5 of the EAR, which describes acceptable records, and see Recordkeeping, Key Element 6, below.

Be sure to designate primary leads for the various tasks, assign back-ups, and include top management as designated personnel for certain key tasks. By so designating top management, you'll keep them involved, cover yourselves, and enhance that all-important corporate culture of compliance.

To further that corporate culture of compliance and encourage as much buy-in as possible from staff, write the chapters with a view toward empowering people as much as possible. Encourage input from all, make people feel both responsible and accountable for their part in the process through clarifying how all dealing with export transactions have the ability to "hold" a questionable transaction.

Allocate specific compliance tasks to specific responsible personnel, include contact information for personnel, disclose the information to customers and consignees, encourage your customers and consignees to contact you or other designated personnel with any questions or concerns they may have, and thereby further enhance your corporate culture of compliance.

Be sure to address any potential conflicts of interest. For example, there is a natural tension in corporations between sales and marketing on one side and export compliance on the other side. Committed management will break that tension, but will also look to the compliance officer for advice in that regard. Make sure that oversight and lines of authority are likewise clearly delineated for each of the processes in your Manual.

CREATE AN INTRODUCTION

Create an introduction that describes:

- The purpose of the EMCP;
- Why your company has decided to implement such a program;
- Key management officials who have oversight responsibilities of the EMCP;
- Who is to receive copies of the EMCP;
- Who is responsible for maintaining the program and responding to questions related to the EMCP;
- Where the EMCP will be maintained; and
- How often the program is to be updated.

TEMPLATE

This template language is an example of how a Manual Introduction might read.

EMCP introduction language might read as follows:

The objective of this Export Management and Compliance Program (EMCP) is to ensure that our company's exports, deemed exports, reexports, transfers, and activities are transacted consistent with the Export Administration Regulations (EAR). Various departments have a role in the management of our export transactions and compliance with U.S. export laws and regulations. It is this company's expectation that each employee understands the standards described and the importance of creating a synergistic system to manage the overall export responsibilities. A vital part of an EMCP is the establishment of mechanisms within the company's daily operational procedures that provide checks and safeguards at vulnerable points of the system. Such checks and safeguards help to

ensure that the right questions are being asked to preclude making shipments that are contrary to U.S. export controls, and therefore inconsistent with this company's best interests.

An EMCP soundly implemented, coupled with good judgment, can greatly reduce the risk of inadvertently exporting to a restricted end-user, or exporting for a prohibited end-use or activity.

To ensure the integrity of this system, individual feedback and suggestions for strengthening the procedures are encouraged. For questions and to send feedback and suggestions related to the EMCP procedures, please contact: **(Named Person, Title, E-Mail, Phone Number, (maybe address, too).**

The official, hard copy of this EMCP Manual will be maintained in the **(Named Department)** by **(Named Person)** and will be updated and distributed annually every **(September)**. Also, the EMCP may be found posted on our company intranet site at: **(named URL)**. Updates made prior to **(September)** will be distributed and posted as they become available.

IDENTIFYING PERSONNEL AND TASKS

Where possible, the organizational structure of the company has centralized the key export functions and coordinated export activities with other departments that may become involved in export-related issues (e.g., legal counsel, credit, shipping or contracts).

All efforts were made, where practicable, to assign export responsibility separately from the sales function to prevent a conflict of objectives.

Each export control task has a specific person assigned to perform the task and a specific person who is responsible for assuring that it is performed. Personnel assigned export control functions have been given authority commensurate with their responsibilities. Formal lines of communication between the key personnel and others with export-related functions have been established. Generally, typical responsibilities that our company wants to assign to compliance personnel include, but are not limited to, the following:

- Day-to-day management of the Export Management and Compliance Program;

- Assessing the risk associated with export transactions;

- Maintaining and distributing the EMCP Manual, including any compliance-personnel changes;

- Developing and implementing export-control and compliance training to ensure all employees are knowledgeable about export law and our company's compliance policies and procedures;

- The license process and procedures -- handling all export related transactions from before sale to after shipment, including jurisdiction and classification of all company products, screening parties and activities regarding transactions, and monitoring compliance of license conditions;

- All foreign national employees related to deemed export issues;

- Maintenance of all export records, including shipping documents, and correspondence related to exports.

- Internal and/or external audits/assessments of a company's export management and compliance program; and

- Handling, reporting, escalating, and taking corrective action regarding compliance problems and violations.

A compliance program is only as good as the personnel responsible for implementing that program. It is our Management policy to foster a culture where export compliance positions are valued, professional career positions in the company. Our Management provides incentives to hire, train, and motivate quality export compliance personnel and structures pay scales, evaluations, and promotions accordingly. Our Management emphasizes the importance of compliance positions within the organization in order to increase the desirability of such positions to attract highly qualified personnel. Hiring standards are high and pre-employment screening stringent.

Compliance personnel must have a working knowledge of export control laws and regulations and be able to competently ensure a company's compliance through the effective management of its export management and compliance program. Export compliance positions should have sufficient authority and discretion vested in them to garner the necessary respect to ensure compliance. Personnel given export control functions should have authority commensurate with their responsibilities, including the authority to stop export transactions when export control questions arise. Compliance personnel must be able to see beyond the immediate

economic bottom line, to the long-range legal implications that a company risks by not instituting an effective export management and compliance program. Compliance personnel must not only posses the ability to discern the right thing to do but, most importantly, have the internal fortitude to do the right thing, on a daily basis.

While the actual number of designated export-specific personnel will vary based upon available resources and expertise, our company must establish a system of checks and balances. This is particularly important within separate company divisions to ensure that all divisions work together to examine the sale or use of products, services, or technology. No commodity should be allowed to leave the company or the country for export unless all internal compliance procedures have been met, the proper signatures have been obtained, and the transaction is officially approved in accordance with the company's Export Management and Compliance Program requirements.

- Appendix **X** is a list of the responsible personnel, identified by name and title. In order to ensure ongoing compliance in cases of absence, alternate (backup) personnel are formally assigned for all key export control related functions. Telephone numbers, e-mail addresses and mailing addresses are provided for these individuals. General export control responsibilities are summarized in the Appendix and explained in more detail within the appropriate procedures.

- Appendix **Y** is a list our company's key overseas contacts described in the same manner.

KEY ELEMENT 4:
Compliance Training

Training is one of the critical elements of a company's export management and compliance program. Because export control regulations change and products and their end-uses are continually evolving, it is essential for companies to include a training component in their Export Management and Compliance Programs. Informed employees minimize the likelihood that inadvertent violations of export laws and regulations will occur. Ambiguities can lead to confusion which could contribute to an inadvertent export violation. A company, therefore, should be dedicated to updating their export control and compliance knowledge-base on a regular basis through training.

As important as it is to have export compliance policy and procedures, it is equally important that they be communicated effectively to all employees. All employees who are involved in export-related functions, including top management, contractors, consultants, and even interns, should fully understand export compliance responsibilities. Companies should provide these employees with sufficient training in order to ensure they possess a working knowledge of current export control regulations as well as the specific requirements of the company's Export Management and Compliance Program. By tailoring training to be job-specific, while also providing the big picture regarding the whole process, including some proliferation awareness, your staffs will more clearly understand the importance of their export-compliance roles to the company and the nation.

Including training in performance plans and performance appraisals would institutionalize the training program. Training should cover processes, responsibilities, obligations, and consequences (positive and negative). Companies should consider emphasizing training on high-risk areas of noncompliance. Employees should be required to complete training to learn not only about specific export regulations, but also about the particular products the company exports, ways in which such products can be misused, how to identify illegalities, how to detect suspicious and inconsistent behavior, and what to do in those circumstances. Providing exercises, problems to solve, and "What if…?" scenarios to work through in training might help in this regard.

Through an effective, compulsory, periodic training program for all associated with export transactions an *esprit de corps* can be built to ensure that your staffs become your compliance partners as you make it easy for them to help you. As you invest in your greatest asset, your people, you go a long way in creating the corporate-culture of compliance, so essential in an EMCP. Provide trainees with awards, prizes, and other recognition during and after training. You may even create some healthy competition by announcing, perhaps in your monthly Compliance Newsletter, which business units scored highest on quizzes given at the end of, or during the course of, annual training programs.

When developing a training program to support an export compliance program, a company should consider the following:

- Who will be responsible for overseeing export compliance training?
- Who will be responsible for conducting the export compliance training?
- Who should be trained and what types of training will be provided?
- How often will training be provided and/or required?
- How will training be documented and training records maintained?
- Are the concerns of all stakeholding units being addressed in the training program?
- How will training materials be kept relevant and up to date?

(1) Export Compliance Oversight

Depending on the size of a company and available resources, a company may want to consider designating a senior export compliance official, an export compliance working group, or an export compliance council to oversee export compliance training. This person (or persons) would be ideally situated to analyze, on a continuing basis, the training needs of the company, to determine the appropriate venue through which that training should be acquired, and to ensure that the necessary training is accomplished. If training is conducted by qualified internal compliance personnel, they would oversee the development of training materials in a collaborative effort between functional export compliance personnel, export licensing personnel, technical personnel, and export counsel. If external training services are procured, company personnel would provide oversight on the contract to ensure that the services provided met the requirements of the contract. They would also be able to ensure that the most efficient use is made of cross-functional training areas such as ethics, security, audits, and operations.

(2) Export Compliance Trainers

The size of a company, the extent of export operations, and the amount of available resources will determine whether a company decides to conduct training using internal compliance personnel to teach employees, whether the company will reach for a trainer from outside of the company to conduct internal training, and/or whether the company will send their employees to outside training seminars. Regardless of the venue, the trainer(s) must be qualified – they must possess an expert knowledge of the current Export Administration Regulations, be well educated in export management and compliance functions and processes, and be able to convey the specific requirements of a company's export management and compliance program.

For internal training, to decrease the training burden on senior export compliance personnel, some companies have successfully implemented a "train the trainer" system. Export counsel or senior export compliance personnel train employees who have export-specific jobs. Those employees, in turn, train other employees who are less involved in export issues. This type of internal training can be formal in a classroom type setting or informal through on-the-job training. In addition, export compliance information can continuously be conveyed through staff meetings, all hands meetings, employee Intranet training modules, written memoranda, newsletters, CDs, videos, and e-mails.

Companies have a wide range of vendors to select from when considering external compliance training. When selecting a training vendor, a company should confirm the bona fides of the trainer to ensure they possess an expert knowledge of the current Export Administration Regulations, are well educated in export management and compliance functions and processes, and will be able to incorporate the specific requirements of a company's export management system into the training.

In addition, the Bureau of Industry and Security conducts export seminars throughout the United States and also, on occasion, conducts seminars overseas. A list of scheduled seminars can be accessed at the following website address: *http://www.bis.doc.gov/seminarsandtraining/index.htm*. The BIS website also offers a plethora of materials that companies may download to include in their training programs, or direct their staffs to access and view, including BIS webinars, modules, and numerous guidelines, instructions, and informational pamphlets, that are kept up to date.

(3)   Training to be Provided

The person(s) delegated responsibility for oversight of the company's overall export compliance training program should develop a schedule for training all employees of the company with direct or adjunct export-related functions. The frequency of the training will depend on a number of variables, including the size of the company, the complexity of the company's export operations, the amount of personnel turnover, and the frequency of changes in a company's products, and the regulations and policies that control them.

It is recommended that a timetable be developed for training new employees and also for providing continuing education training for existing employees to reinforce export compliance knowledge, communicate changes in the export control regulations, company policies and procedures, and to educate on the application of the regulations to new product lines for export. Formal export control and compliance training should generally be conducted on an annual basis. The frequency and format of refresher training, however, will vary depending on employee's responsibilities and the nature of the export issues involved. Memoranda, newsletters, or e-mail can be effective on-going venues for reminding employees of the company's export compliance commitment and advising employees of changes to export regulations or the company's policies and procedures.

Once the overall schedule for training has been determined, the person (or persons) responsible for oversight of the company's overall export compliance training program should decide on the target groups of employees to receive training and then customize the content of the training for each group. Group training may include the following broad categories, with, perhaps, sub-groups that you determine for more specialized training.

- Senior Management Training
- Introductory Training for New Employees
- Intermediate Training for Employees with Export-related Jobs and Functions
- Advanced Training for Export Compliance Personnel

Training to be Provided – Senior Management Training

Training should be provided to senior management to ensure they are aware and invested in their role and responsibilities for the company's export compliance. Training should include company-specific export issues, provide an overview of the company's export management and compliance program, and explain potential liabilities for noncompliance. Costs and benefits should be discussed, as well as strategies for communicating management commitment, allocating the appropriate resources, and enhancing and nurturing a corporate culture of compliance throughout the organization. Companies with a Board of Directors or a Board of Trustees should conduct the same basic type of top-level briefing for them, too.

Training to be Provided – Introductory Training for All New Employees

For all new employees, companies should consider providing introductory export management and compliance training. As part of this on-board awareness training process for new employees, companies may want to include a security briefing that covers company-specific threat-diversion awareness and defensive security measures.

Introductory training can be accomplished in a variety of ways. New employees can attend an internal company export workshop or an external export seminar. They can also watch a company video on export management and compliance, read the company's Export Management and Compliance Program Manual, and do a shadow assignment with an experienced export management and compliance employee.

Introductory awareness training should generally explain:

- What an export is;
- How exports are approved;
- When exports are denied;
- License conditions;
- License exception parameters;
- How a violation occurs (including potential releases of technology);
- The company-specific "red flags" for potential export violations;
- The national security concerns underlying export compliance;

- The company-specific concerns underlying export compliance;
- How the company's products relate to those underlying concerns;
- Identification of high-risk areas;
- Awareness for technical exchanges through telephone, facsimile, e-mail or in person;
- The employee's specific duties and the importance of each employee in the overall compliance program;
- The consequences for both the company and the individual employee if an export violation occurs;
- The organizational structure of the company's export-related departments and functions;
- The identities and contact information of responsible export officials who should be contacted if export issues arise;
- Recordkeeping procedures;
- Employee's reporting obligations and requirements; and
- Expectations regarding audits/assessments.

Training to be Provided: Intermediate Training for Employees with Export-Related Jobs and Functions

Intermediate training for those employees with export-related jobs or those who regularly deal with export issues should be tailored to the specific job functions of the employees but should also include, at a minimum, the following:

- Overview of the purpose and scope of export controls and general prohibitions;
- Applicable export control regulations including a break-down, in layman's terms, of the connection between the regulations, the license, and the company's compliance efforts;
- Company-specific written operational procedures for export management and compliance;
- The company's licenses including license conditions and license exceptions;
- Company-specific product diversion risks;
- The company-specific "red flags" for potential export violations;
- Screening procedures;

- The roles and responsibilities of all company export personnel;
- Employees reporting obligations and requirements;
- Expectations regarding audits/assessments;
- The implications of export violations -- administrative, civil, and criminal penalties, personal liability, firing, etc.
- Compliance checks and safeguards to be conducted prior to entering into contractual relationships;
- Security awareness for marketing abroad;
- Requirements for international travel with products or technical data;
- Deemed export and technology transfer issues, if applicable;
- Export document preparation;
- Recordkeeping requirements; and
- Antiboycott requirements, if applicable.

Training to be Provided: Advanced Training for Export Compliance Personnel

For those employees who are directly responsible for ensuring the company's export compliance, it is recommended that they be required to attend advanced formal training on at least a yearly basis. This training may be in the form of on-line classes, in-house seminars, or external seminars. By participating in formal compliance training, these employees can remain current on regulatory requirements, industry practices, and compliance issues.

(4) Training Documentation and Records Retention

Maintaining records of training helps a company to track and verify which employees have received training. Training records are the hard-copy proof of assurance that the company's expectations have been conveyed and that employees have been advised of their role in supporting the company's compliance efforts. It is recommended that a training record for each training event be maintained and that record include the date and place of training, the instructor(s) name, the subjects covered, and the identification of the employees who attended the training. Each employee's personnel file should include a record of all export training received. It is recommended that training records be maintained along with other export controls documents for a period of 5 years.

EXPORT-COMPLIANCE AWARENESS

The company's commitment to compliance may additionally be enhanced through less formal means such as through, perhaps, a monthly company Export Compliance Newsletter, a "Brown-Bag" lunch series, and a Compliance Awareness Day/Week.

The Newsletter may discuss new products, new regulations, new international threats, new compliance ideas, and significant contributions and suggestions from staff. Use of export-compliance posters throughout the organization and occasional distribution of export-compliance DVDs, perhaps highlighting cases in the news of good/bad practices, or a brief training segment, might also be good ideas to keep staff aware and enhance your corporate culture of compliance.

COMMUNITY OF PRACTICE

Lastly, bearing in mind that export compliance is a collaborative, not a competitive, endeavor, reach out to your compliance peers in other companies, even across industry lines, and, of course, also reach out to your partners in the public sector. Discussing and learning best practices, effective approaches, noteworthy experiences, what works and what doesn't, is invaluable in building a strong EMCP to safeguard your company.

KEY ELEMENT 5:
Cradle to Grave Export Compliance Security and Screening

Regarding license management and compliance safeguards through your entire export process, the company EMCP Administrator may be responsible for the design and use of a system of Decision Tables that captures item jurisdiction and classification decisions, determines whether a license is required, determines whether license exceptions are applicable, and provides for the screening of parties and uses of items. This chapter of the EMCP should detail compliance procedures from the sales pitch all the way through to post-shipment activities.

Compliance concerns exist regarding marketing, trade shows, and sales pitches, due to the types of items for sale and the parties being dealt with. Likewise, to the extent you are able, monitor post-shipment activities, including license-condition compliance, re-exports, in-country transfers, and temporary exports. Have compliance processes in place, and part of your EMCP, to cover all these contingencies. Central to this chapter of your EMCP, are your business processes specifying who does what and how, regarding product jurisdiction, classification, and license determination. While all parties to a transaction subject to the EAR must comply with the EAR, the greatest burden regarding these issues for non-routed transactions rests with the U.S. Principal Party in Interest.

For some interlinked templates of tasks and associated personnel for product classification and license determination, see below, and begin with the chart entitled Element Summary of Responsible Personnel and Tasks. Notice that, for example, the task in the second box from the bottom on the first page, will likely involve your engineers/technical experts in the design and use of that system of tools that captures item classification and licensing decisions. Those engineers/technical experts may use Appendixes C and D, below, as worksheets to do so. Additionally, Appendix E, below, may be used to prepare Appendixes C and D.

Jurisdiction and Whether Items are Subject to the EAR

The principal U.S. government entities with jurisdiction over items for export are the U.S. Department of Commerce (DOC) for dual-use items,

the U.S. Department of State (DOS) for military items, and the U.S. Department of the Treasury for economic and trade sanctions. There are, however, other government agencies with export-control responsibilities, as specified in Part 730, Supplement No. 3. As noted in Section 734.6, there are also rare occasions when an item may be subject to both DOS's International Traffic in Arms Regulations (ITAR) and DOC's Export Administration Regulations (EAR). Part 732, Supplement No. 2 provides a good decision tree to determine applicability of the EAR.

When preparing your submission for commodity jurisdiction, provide specific technical information, as well as information regarding product use, bearing in mind that your submission will be reviewed by both government engineers and policy analysts. It may additionally be helpful if you can describe how your item compares to similar foreign items.

How to Classify an Item

Every item controlled by DOC has an Export Control Classification Number (ECCN) or is designated EAR99. Determine the appropriate Commodity Classifications for your items based on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the EAR. Even EAR99 items, however, can be controlled by General Prohibitions 4-10, and a license may therefore be required. Also see the EAR's export control decision tree, Part 732, Supplement No. 1.

Determine whether your company policy will be to first rely upon your specific product engineers to classify items. Often, these are the individuals most qualified within a company who have technical backgrounds and are familiar with each item's parameters. If you choose this approach, it is recommended that you identify the product divisions and the engineers who are responsible for item classifications and include a list as an Appendix to this section **(see template Appendix B)**. To ensure that consistent procedures are practiced, it is recommended that you develop a standard report format for the product engineers to use to track and record their decisions, such as an **Item Classification Sheet (see template Appendix C)**. As they compare the item specifications against the CCL, it is important to document why the items fall in a particular category. It is critical to the export authorization decision that the product engineers note the specific parameters and subparagraphs of the ECCNs. If this decision is not accurate, every decision that follows could be wrong. Also, document the names of DOC personnel who have provided assistance in making the decision.

In cases where the items are not your company-manufactured items, the product engineers may request classification information from the original manufacturer.

In cases where the product engineers are uncertain of a classification, implement an escalation step, such as the engineer is to notify the EMCP Administrator, who is responsible for submitting a classification request using Form BIS-748P or its electronic equivalent (See Section 748.3 of the EAR) to BIS.

Each of these three methods of obtaining a classification (self-classification, manufacturer-classification, and request to BIS) involve different procedures, all of which should be detailed step-by-step in this chapter of your EMCP, including the circumstances when one or another approach may be used.

License Determination

Determine whether a license is required based on the ECCN on the CCL, the Country Chart provided in Supplement No. 1 to Part 738 of the EAR, and the General Orders and General Prohibitions in Part 736. Review the end-use of the item, the end-user, and the destination against the EAR requirements and determine the appropriate export authorization. (Evaluate whether any red flags arose related to whether the end-use described makes sense compared to the product.) It is recommended that the decision be recorded formally on a standard report, such as the **Export Authorization Decision Record (see template Appendix D)**. Capture the logic of the decision because this record serves as the basis of one of the critical factors on an Item and Country Decision Table (see below). Note relevant criteria such as country or end-use/user restrictions, and item parameters and limitations. As part of the licensing process, bear in mind that even if your item is EAR99, a license may still be required if General Prohibitions 4 - 10 apply.

Because items and the EAR change over time, somebody, most often the EMCP Administrator, is responsible for reviewing Federal Register Notices of changes to Part 774, the CCL. When the changes include your items listed on the Item and Country Decision Table (see below), the EMCP Administrator could submit a request to the appropriate product division for a re-evaluation of the classification of the item against the CCL as they were modified in the EAR change. The decision should be noted on the

original Item Classification Sheet. The EMCP Administrator and product engineer should determine whether a change is needed to the Export Authorization Decision Record and Item and Country Decision Table.

Item and Country Decision Table

The decisions made on the Item Classification Sheets and Export Authorization Decision Records are then transferred to the Item and Country Decision Table. Ensure that the Table is used at the vulnerable steps on your internal process flow chart (see below). Further, it is the tool used by all personnel delegated with this responsibility, as described in your Manual, to ensure that they consistently and accurately use the appropriate export authorization. Additionally, this Table serves as a tool to ensure your company remains in compliance with all applicable item and country-related restrictions, conditions, and specific parameters that may be described in License Exceptions.

The EMCP Administrator, along with relevant product engineers, is most often responsible for ensuring that the Table remains current and accurate. The format is structured so that personnel may easily understand and use the Table properly. Accordingly, the Table is transmitted to responsible employees with instructions indicating when, where, and how to perform the item and country check against the Table. Although the Table format may change over time and decisions are added, the Table should communicate the following information:

The item to be exported to (this country) may be exported by our company using (what authorization)? Are there specific restrictions related to the item, country, and end-use that must be complied with? **See template Appendix E**.

Several factors can influence the format of the Item and Country Decision Table. These factors include: the size of a firm, variety and types of items, countries/destinations, international marketing areas, end-users, end-uses, number of customers, etc. A small company with only a few employees exporting to three western European customers would probably use a fairly simple Table. However, a multinational corporation with several item lines, some requiring a license, and some eligible for license exceptions, with customers located worldwide, would most likely require a more elaborate and complex Table.

Completion of this screen constitutes only a preliminary license determination because it does not take into account the activities of the end-user, which may require a license (See Part 744 of the EAR).

Placement on the Internal Process Flow Chart

In your company transaction flow, the first place this Item and Country Decision Table might be used is by your sales representatives in the field. They could use the Table to determine immediately whether a license will be needed or if the item the customer is requesting may normally be exported under a License Exception. Knowing that obtaining licenses takes longer gives them an idea of what the delivery time might be. They can see on the Table that if they receive order requests from some countries (Country Group E, Supplement No. 1 to Part 740) they should not accept the request. This could save your company time by not allowing additional resources to be directed toward processing a request that is against your company policy.

A second evaluation which might be done is when the Sales Representative submits the order request to the EMCP Administrator to evaluate the transaction against the Export Administration Regulations requirements and the Table for the appropriate export authorization. The results of this Check should be recorded formally, on a Transaction Check List or some other standard format and filed with the transaction file. The record should include the authorization decision, the date the check was performed, and the signature/initials of the individual who performed it. The documented check should be in sufficient detail to allow auditors to review the records and verify that the check was completed accurately and consistently in compliance with our EMCP procedures.

A third evaluation which might be performed is in your Logistics Division prior to shipping the item, to confirm that the shipment is in compliance with our company procedures. The results of this Check are to be recorded on the Transaction Check List (or other standard format) and filed with the transaction file. The record is to include the authorization decision, the date the check was performed, and the signature/initials of the individual who performed it. The documented check should be in sufficient detail to allow auditors to review the records and verify that the check was completed accurately and consistently in compliance with our EMCP procedures.

If at any time the transaction is not consistent with your established written procedures, you should implement an escalation step where the transaction is escalated to the EMCP Administrator (or another designee) for resolution.

If you are converting to an electronic format, for a short period, both the manual and the electronic checks could be performed. The IT Manager might be responsible for maintaining the accuracy of the automated Table within the electronic program, as informed by the EMCP Administrator. The logic flow of the computer program should be included in the EMCP Manual to clearly identify where internal controls are performed within the system. Note on the flow chart that specific Checks must be completed prior to the order being released to the next processing step in the transaction flow. Records of these checks, along with electronic signatures, may be reproduced at each point if necessary. These electronic checks are the same ones required manually; however, this allows performance of this check quicker and with less possibility of error.

When submitting a license application in SNAP-R, proofread it first, as it is time-consuming for BIS to effect corrections to what exporters submit. Also, avoid using only P.O. Boxes and acronyms in the names and addresses of parties to transactions, as these may delay processing of applications.

TEMPLATE FOR KEY ELEMENT 5:
Item and Country Compliance

Objective: To create checks within the program to classify items by Export Control Classification Number (ECCN), to determine what export authorization may potentially be used for the intended destination, and to create a tool to communicate these decisions.

This section of our EMCP includes procedures to:

- Determine appropriate Commodity Classifications of your items as ECCNs on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the EAR and retain a copy of the logic and decision;
- Determine whether a license is required based on the ECCN on the CCL and the Country Chart provided in Supplement No. 1 to Part 738 of the EAR;
- Determine whether a License Exception may be available, subject to end-use and end-user restrictions;
- Provide instructions for the development and use of an Item and Country Decision Table; and
- Distribute the Item and Country Decision Table to all designated responsible personnel.

Procedures:

[Name, Title], the EMCP Administrator, is responsible for the design and use of a system of tools that capture item classification decisions, determine whether a license is required, determine whether license exceptions are available and for the capture of those decisions in a decision table format for consistent application. The decision table will be used to communicate to and be used by all of the applicable, designated responsible employees at critical vulnerable points in the process flow **[as indicated on the internal process flow charts and as described further in this procedure). The distribution list of responsible employees who are to receive and use the item and country decision table are listed on Appendix A, Product and Country Decision Table Distribution.]**

[Name, Title], the EMCP Administrator **and the EMCP Unit** make the decisions that all export-related personnel are expected to follow. There is less chance of making the wrong licensing decisions and less time is spent making the decisions if such a tool is communicated and used.

How to Classify an Item

- Items controlled by the Department of Commerce (DOC) either have an Export Classification Control Number (ECCN) or are designated as EAR99. Our company policy is to first rely upon our specific product engineers to make our classification of items decisions. These are the individuals most qualified within our company who have technical backgrounds and are familiar with each item's parameters. **The attached table, Appendix B, identifies the product divisions and the engineers who are responsible for item classifications**. The product engineers will track and record their decisions using the **Item Classification Sheet, Appendix C** as they compare the item specifications against the Commerce Control List. It is important to document why the items fall within a particular category. It is critical to the Export Authorization Decision step that the product engineers note the specific parameters and subparagraphs of the ECCNs. If this decision is not accurate, every decision that follows could be wrong. Also, document the names of DOC personnel who have provided assistance in making the decision.

- In cases where the items are not our company-manufactured items, the product engineers may request classification information from the original manufacturer.

- In cases where the product engineers are uncertain of a classification, the engineer will notify the EMCP Administrator, who is responsible for submitting a classification request using Form BIS-748P or its electronic equivalent (See Section 748.3 of the EAR) to the Department of Commerce, Bureau of Industry and Security.

The EMCP Administrator, with the product engineer, will review the End-Use of the item, the End-User, and the destination against the EAR requirements and will determine the appropriate export authorization. This decision is to be recorded on the **Export Authorization Decision Record, Appendix D**. It is important to capture the logic and decision notes for future reference and verification of the process. This record serves as the basis of one of the critical factors on a Decision Table. On the Export

Authorization Decision Record, note relevant criteria such as country or end-use/user restrictions, and item parameters and limitations.

Because both items and the EAR change over time, the EMCP Administrator and the EMCP Unit are responsible for reviewing Federal Register Notices of changes to Part 774, the Commodity Control List. When the changes include our items listed on the attached Decision Table, the EMCP Administrator will submit a request to the appropriate product division for a re-evaluation of the classification of the item against the CCL as they were modified in the EAR change. The decision will be noted on the original Item Classification Sheet. The EMCP Administrator and product engineer will determine whether a change is needed to the Export Authorization Decision Record and Decision Table.

Item and Country Decision Table

The decisions made on the Item Classification Sheets and Export Authorization Decision Records are then transferred by the EMCP Administrator to the **Item and Country Decision Table, Appendix E**. The purpose of this Table is to ensure that the Table is used at the high-risk steps of our internal process flow *[as indicated by the Item and Country Check Box on the flow chart.]* Further, it is the tool used by all personnel delegated with this responsibility, **[as listed in Appendix A]** to ensure that they consistently and accurately use the appropriate export authorization. Those same designated responsible personnel are listed on Appendix A to ensure that they receive the tools and information needed to effectively perform their responsibilities. Additionally, this Table serves as a tool to ensure our company remains in compliance with all applicable item and country-related restrictions, conditions, and specific parameters that may be described in License Exceptions.

The EMCP Administrator, along with relevant product engineers, is responsible for ensuring that the Table remains current and accurate. The format is structured so that personnel may easily understand and use the Table properly. Accordingly, the Table is transmitted to responsible employees (See Appendix A) with instructions indicating when, where, and how they are to perform the Item and Country Check against the Table. The Table format may change over time and decisions may be added as products and export destinations are added. **[Our Item and Country Decision Table is described in Appendix E.]**

Completion of this screen constitutes only a preliminary license determination because it does not take into account the activities of the end-user, which may require a license (See Part 744 of the EAR). **[See pages XX of this Manual for End-User Checks.]**

Placement on the Internal Process Flow Chart

We must evaluate all decision points in our various transaction flows where item and country data are used and determine whether there is a risk of making a wrong decision that can lead to a violation of the EAR or of our company policy.

In our company transaction flow, **[the first place this Table is used is by our sales representatives in the field.]** They are to use the Table to determine immediately whether a license will be needed or if the item the customer is requesting may normally be exported under a License Exception. Knowing that obtaining licenses takes longer gives them an idea of what the delivery time might be. Please note that it is our company policy not to export to some countries. You can see on the Table that you should not receive order requests from some countries. (Country Group E, Supplement No. 1 to Part 740). This saves our company time by not allowing additional resources to be directed toward processing a request that is against our company policy. The results of this Check are recorded on the Transaction Check List (see Appendix in this manual) and filed with the transaction file. The record is to include the authorization decision, the date the check was performed, and the signature/initials of the individual who performed it. The documented check should be in sufficient detail to allow auditors to review the records and verify that the check was completed accurately and consistently in compliance with our EMCP procedures.

[A second evaluation is done when the Sales Representative submits the order request to the EMCP Administrator to evaluate the transaction against the Export Administration Regulations requirements and the Table for the appropriate export authorization.] The results of this Check are recorded on the Transaction Check List (see Appendix in this manual) and filed with the transaction file. The record is to include the authorization decision, the date the check was performed, and the signature/initials of the individual who performed it. The documented check should be in sufficient detail to allow auditors to review the records and verify that the check was completed accurately and consistently in compliance with our EMCP procedures.

[A third evaluation is done by our Logistics Division prior to shipping the item, to confirm that the shipment is in compliance with our company procedures.] The results of this Check are to be recorded on the Transaction Check List (see Appendix in this manual) and filed with the transaction file. The record is to include the authorization decision, the date the check was performed, and the signature/initials of the individual who performed it. The documented check should be in sufficient detail to allow auditors to review the records and verify that the check was completed accurately and consistently in compliance with our EMCP procedures.

If at any time the transaction is not consistent with our established written procedures, the transaction is to be escalated to the EMCP Administrator for resolution.

As we are converting to an electronic format, for a short period, both the manual and the electronic checks will be performed. The **IT Manager, [Name]**, is responsible for maintaining the accuracy of the automated Table within the electronic program, as informed by the EMCP Administrator. The logic flow of the computer program is included in the EMCP Manual and indicates where compliance checks are performed within the system. Note on the flow chart that specific Checks must be completed prior to the order being released to the next processing step in the transaction flow. Records of these checks, along with electronic signatures, may be reproduced at each point if necessary. These electronic checks are the same ones we have required manually; however, this allows us to perform this check quicker and with less possibility of error.

ELEMENT SUMMARY OF RESPONSIBLE PERSONNEL AND TASKS:

Name, Title	EMCP Task
[Name, Title], the EMCP Administrator Backup: Employee 1, EMCP Unit	Responsible for the design and use of a system of tools that capture item classification decisions, determine whether a license is required, determine whether license exceptions are available and for the capture of those decisions in a decision table format for consistent application.
	With the product engineer, will review the End-Use of the item, the End-User, and the destination against the EAR requirements and will determine the appropriate export authorization. This decision is to be recorded on the Export Authorization Decision Record, Appendix D.
	Responsible for reviewing Federal Register Notices of changes to Part 774, the Commodity Control List. Initiates requests to the appropriate product division for a re-evaluation of the classification of the item against the CCL as they were modified in the EAR change. The decision will be noted on the original Item Classification Sheet. The EMCP Administrator and product engineer will determine whether a change is needed to the Export Authorization Decision Record and Decision Table.
	Responsible for ensuring that the Table remains current and accurate.
	Resolution of escalated exceptions to processing.

Name, Title	EMCP Task
EMCP Unit: [Name, Title of Employee 1] [Name, Title of Employee 2] [Name, Title of Employee 3] [Name, Title of Employee 4]	Under the authority of the EMCP Administrator, are responsible for the design and use of a system of tools that captures item classification decisions, determine whether a license is required, determine whether license exceptions are available and for the capture of those decisions in a decision table format for consistent application.
Persons who use the Decision Table, Appendix A:	The decision table will be used to communicate to and be used by all of the applicable, designated responsible employees at critical vulnerable points in the process flow.
Sales Representatives in the Field	They are to use the Table to determine immediately whether a license will be needed or if the item the customer is requesting may normally be exported under a License Exception.
EMCP Unit	Evaluate transactions against the Export Administration Regulations requirements and the Table for the appropriate export authorization.
Logistics Division	Prior to shipping the item, to confirm that the shipment is in compliance with our company procedures.
Product Divisions and Engineers See Appendix B.	Classify products by DOC ECCNs.
	The product engineers will track and record their decisions using the Item Classification Sheet, Appendix C.

Name, Title	EMCP Task
	The EMCP Administrator and product engineer will determine whether a change is needed to the Export Authorization Decision Record and Decision Table, when there are changes to the EAR. Responsible for ensuring that the Table remains current and accurate.
IT Manager	Responsible for maintaining the accuracy of the automated Table within the electronic program, as informed by the EMCP Administrator.

APPENDIX A
Item and Country Decision Table
Distribution List

Date:

DISTRIBUTE TO:

    Sales Representative 1, Germany

    Sales Representative 2, Hong Kong

    Sales Representative 3, Singapore

    Sales Representative 4, United Kingdom

    EMCP Unit Employee 1

    EMCP Unit Employee 2

    EMCP Unit Employee 3

    EMCP Unit Employee 4

    Logistics Division Employee 1

    Logistics Division Employee 2

FROM: EMCP Administrator

Subject: Item and Country Decision Table Revisions

Attached is the revised Table, which reflects changes published in the Federal Register (provide specific citation) on_____ . Specifically, please note that items previously classified under ECCN XXXXX are now classified under_____ and require an immediate records change.

Please acknowledge receipt of this communication via email within five working days.

APPENDIX B
Product Divisions and Engineers Who Classify Our Products

PRODUCT DIVISIONS	NAMES OF ENGINEERS ADDRESSES AND TELEPHONE NUMBERS

APPENDIX C
Item Classification Sheet

Item Description	
Technical Specifications	
Agency Jurisdiction	
ECCN Classification Decision	
Contacts Made to Determine Item Classification	
Name/Title of Technical Decision Maker (Engineer)/Date	
Name/Title of Approving Manager/ Date	
End-Use of the Item (Civilian or Military?)	
Request for Evaluation Due to EAR Change Made	
Evaluation Decision **Date** **Name/Title of Product Engineer**	

APPENDIX D
Export Authorization Decision Record

Item Description	
Technical Specifications	**See Attached Specifications**
Agency Jurisdiction	
ECCN Classification Decision	
Country of Destination & Intermediate Countries	**(Country Groups:)**
End-Use of the Item (Civilian or Military?) **Prohibited End-Use?**	**Detailed End-Use?**
End-User & Intermediate Parties License Requirements:	
Appropriate Export Authorization: **No License Required?** **License Required?** **License Exceptions Available to this Country with These Restrictions (Specific Parameters set Forth in Part 740)? (Part 754 for Short Supply)?** **General Prohibitions Considered (with EAR References):**	
Export Authorization Decision Made by	
Date:	
Request for Re-evaluation Due to EAR Change Made	**What date effective?**
Re-evaluation Decision **Date** **Name/Title of Product Engineer**	**What was the decision?** **Change Needed?**
Date	

APPENDIX E
Item and Country Decision Table

[The item I want to export to (this country) may be exported by our company using (what authorization)? Are there specific restrictions related to the item, country, and end-use that I must comply with?]

ECCN (774, Supp. 1) Our product model #	When exported to Country 1	When exported to Country 2
3A001.c.1 Signal Processing Devices: Model #000000	LVS (Section 740.3): $1500*	Requires a license
4A003 computers Model FPD1830	NLR {Provided no General Prohibition 4-10 issues}	License Exception APP

* NOTE: N/A for MT or NP (The restriction in the CCL states that you cannot use License Exception Limited Value Shipment (LVS) for items that are MT or NP controlled.)

NOTE: It is the policy of our company to cancel orders destined to Country Group E, Part 740, Supplement No. 1.

Procedures for Implementing Checks and Screenings and Addressing Vulnerabilities

The EMCP Administrator describes who is responsible for each stage of the flow and identifies at what points an export violation could potentially happen. Then, the EMCP Administrator integrates various checks into the process at those points of vulnerability. Screening of all parties to a transaction should be based on the government lists of entities (see "Lists to Check" in the left margin of the BIS website *http://www.bis.doc.gov*), potential uses of exported products, red flags associated with transactions, antiboycott compliance, the General Prohibitions and General Orders, and any foreign lists that may be applicable to your transactions.

The EMCP Administrator determines the frequency of export checks. For example, a Sanctioned Persons and Entities Check conducted by sales personnel at the initial stages of a transaction could minimize the time and expense a company might incur to win business that it cannot fulfill. A Sanctioned Persons and Entities Check at the end of the process, immediately prior to shipping, can identify any last-minute *Federal Register* Notices of changes that could be relevant to the transaction.

Whether Checks are manually or electronically performed, or both, it is important to clearly define the preventative controls to minimize vulnerabilities prior to order entry, in-process controls that will place a "hold" on a transaction necessitating a secondary review, and after-process controls that would alert you to system failures.

- An example of a preventative control would be requiring the sales personnel to perform a check of customers against the BIS website's Denied Persons List. If there were a match of a customer name, such a procedure could prevent the request from being entered into an order processing system.

- An example of an in-process control is when the logic of an automated system is established to read items requested and country of destination and then apply the appropriate licensing authorization decision. Entries against the logic would create a "hold" on a transaction necessitating further review.

- An example of an after-process control is when an export checklist is automatically generated at the end of the process (could be manually attached to the order) that is used as one last review before shipment to confirm export transaction requirements were fulfilled and accurate.

The order processing system, whether it is manual or automated, has "hold" functions that ensure adherence to sign-off procedures and prevent the preparation of commercial invoices and shipping documents prior to review and sign-off. In cases where transactions are placed "on hold," those special transactions receive supervisory sign-off to release them. **[The criteria for release are .....]** At each vulnerable point, implement different supervisory levels of signature to strengthen the system (in both the manual and electronic processes).

As part of company policy and procedure, Checks should be performed at all vulnerable stages on all parties involved in transactions. For example, ensure that items exported under in-transit shipments, shipments to bonded warehouses, and free trade zones are disposed of as authorized, thereby reducing the possibility of diversion. The party with control over the items should be assigned responsibility for monitoring the items. For instance, control over items that are in-transit remains the responsibility of the firm, until the title is transferred to the customer.

However, control over shipments to bonded warehouses or free trade zones may not rest with the exporter. The question of control, therefore, depends on the point at which title passes from the firm to the ultimate customer. The export clearance and retention of records requirements for these types of shipments are no different from any ordinary export transaction.

Cross Reference to the Auditing Plan Section of the EMCP: Each individual with responsibility for performing a control check(s) should be held accountable. The methods of verifying the performance of the checks implemented are described within the written procedure for each Check, whether by requiring documentation of the completion of the checks for reviewing purposes or some other means used to ensure compliance.

Cross Reference to the Recordkeeping Plan Section of the EMCP: To ensure compliance with the recordkeeping requirements, the flow chart and narrative description should also include the EMCP requirements for the processing and maintenance of the shipping documents (especially if they are kept in different locations).

Screening against Parties and Activities

To help companies assess proposed customers and transactions against restrictions, prohibitions and red flag indicators as order requests are received, processed, approved and completed, this Section focuses on compliance with Part 744 end-use, end-user and activity restrictions and Part 764 prohibitions on persons and entities. The objective is to create and implement systematic, streamlined internal controls that will ensure evaluation and compliance with each of the restrictions and to create double checks within that system.

Systematic check procedures ensure that if a check or screen is missed by one delegated person, team or unit, it will be detected by another. It is important to create tools that can be effectively used by employees within the performance of their standard operating procedures and who typically may not have (or need) exposure to the EAR. These tools can be instrumental in fulfilling their respective role of evaluating customers and/or transactions while ensuring successful compliance with the EAR. The information in this Section includes: Sanctioned Persons and Entities, Diversion Risk Red Flags, End-Use Checks, and other Checks. These Checks, or portions of the Checks, can be delegated to various responsible persons throughout the program for use in evaluating both transactions and customers.

- The **Sanctioned Persons and Entities Check** is list-oriented (names and addresses) in nature and includes evaluation of the following:
  - Denied Persons List
  - Entity List
  - Specially Designated Nationals List
  - Department of State – Debarments & Sanctioned Persons

- The **Diversion Risk Check** is red-flag oriented in nature and ensures that the transaction does not involve abnormal circumstances that indicate that the export may be destined for an inappropriate end use, end user, or destination.
  - Red Flag Indicators [Part 732.6 of the EAR]
  - Unverified List

- The **End-Use Checks** (EUCs) are activity-oriented in nature and include:
  - Restricted Nuclear Activities
  - Restricted Rocket Systems and Unmanned Air Vehicles Activities
  - Restricted Chemical and Biological Weapons Activities
  - Other reasons for EUCs include concerns involving: national security, regional stability, anti-terrorism, Fire-arms Convention, crime control, and United Nations sanctions.

- Other:
  - **Antiboycott Compliance:** Antiboycott laws were adopted to encourage, and in specified cases, require U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction.
  - **General Prohibitions and General Orders:** EAR Part 736.

Developing Screening Procedures

- Determine **who** will be held accountable for maintaining the procedures and updating the information in the written EMCP as changes in the *Federal Register* are published related to the relevant sections of the EAR.

- Determine **specifically who** should perform these checks based upon what their current role is and based upon whether vulnerabilities could be eliminated through evaluation of this information at each person's role and step in the customer and transaction evaluation process. Your written procedures should also clearly define which management position has oversight for ensuring the performance of the checks, and who is responsible for verifying the completion of the documentation.

- Determine **when** the checks will be performed within your entire system flow chart to eliminate the risk points of vulnerability. Carry this information over to other sections of your EMCP. Create double checks throughout the system. Consider whether there are areas of particular risk to your company that management should emphasize from the corporate perspective. How will management be informed of effectiveness or ineffectiveness of internal controls implemented? How will management actively participate in various due diligence strategies?

- Determine **how** you will ensure all designated responsible employees will consistently comply with the EAR restrictions. Create step-by-step procedures for each process.

- Determine **what** will be used (as a tool) to ensure consistent completion of checks during the approval process of customers and transactions. Various formats are provided as examples. You should build in different decision paths specific to your company's management procedures. As designated personnel complete the checklist, your instructions should direct them to the EMCP Administrator to determine the next course of action. For accountability and review purposes, the check should include the name or initials of the person performing the screen, the date, and the date of the information used.

  Your written procedures should include verification that checklists and other screening tools are completed when they are supposed to be performed and retained for the specified period of time. In addition, your procedures should describe how often these checks will be verified and by whom. Develop procedures for when screening fails to reveal what it should; think through as many contingencies as possible ahead of time, and incorporate procedures for them in your EMCP.

- Create a compliance audit tool for each element to verify that employees designated as accountable for the completion of screen checks actually performed the checks according to established procedures and that records are maintained according to written procedures. Carry this information over to the Recordkeeping section.

- Designate the person responsible for training on screenings. Consider including in your training agenda, proliferation awareness for all employees. Sales representatives, traffic departments and personnel involved with credit checks, order receipts, requests for quotes, invoicing and servicing of products should be fully trained to recognize a questionable transaction and/or a transaction to a "potential" restricted activity or person.

- Your License Determination Decision tool should communicate the treatment of any proliferation controlled items that you plan to export/reexport. The End-Use Compliance Checks address end-use concerns, not the Commerce Control List-driven concerns.

- Your written procedures should include instructions regarding the treatment of questionable transactions or activities that arise as red

flags (End-Use Screens). You should describe the specific internal escalation procedures employees are to follow.

- Identify a method for capturing daily issues involving questionable transactions and customers and escalating them for resolution and for communicating feed back to all employees and to management. Determine how the issues and methods of resolution might be used to strengthen the overall system, i.e., the development of company-specific "red flags" that arise in the daily course of business. How can "red flags" be incorporated into compliance procedures to raise company awareness of vulnerabilities?

- Determine where the completed Checks will be filed and who will be designated as the recordkeeper. Checklists may be included as part of the individual transaction order files or part of a company's customer profile. Carry this information over to Recordkeeping and Auditing.

Consider the Unique Nature of the Check

Although all of the steps above apply to the development of detailed procedures for each Element, the differing natures and the methods of application may be unique in each Element. For example, the Sanctioned Persons and Entities Check consists of a comparison of names and addresses of sanctioned names to your customer names. How to apply this list-matching Check will be different from how to have various persons be aware of the "red flags" that may arise.

SCREENING APPLICATIONS TO CONSIDER

There are two basic techniques for screening export transactions (for goods and technology):

The customer-based method

This method is most often used when companies transact business with an established, stable customer base. To use a customer-based method, a company maintains an up-to-date "clean" database of all pre-approved customers – customers that have been checked against all the various control lists. If an export transaction involves a party that is not in the company database, the order may not be accepted until the new customer is screened. This method is advantageous for those companies receiving orders from a fairly stable customer base.

The decisions displayed in the check may be completed as part of a new customer approval procedure. If the decisions are made as part of the customer approval process, the screen check should be maintained in the customer profile. A well-documented customer file includes each customer's nature of business, history, usual order activity, and orders. If this information changes, then new screening should be documented. These customer profiles make up an approved customer list, with each customer designated by a unique code or number. Prior to the placement of an order, the sales representative or perhaps an engineer would verify that the request is in conformance with the customer profile. Orders could then be placed using the approved customer code or number, meaning that the order requested is consistent with the approved customer profile information. To ensure the success of this method, procedures should be implemented to fully screen all new customers; re-screen with any changes to the established customer information; and rescreened annually as part of customer base maintenance. New information on a customer may come from many sources, including government, industry, the media or from the actual customer. A customer may change activities, indicate a new end-use or end-user, request a change in an existing order or furnish replies to the company's inquiries. Training of the sales representatives/ engineers that are closest to the customers in maintenance of the customer profiles and diversion risk red flags would also be essential to the successful implementation of this method. Also note that the various governmental lists undergo revision periodically.

The customer and end-user must be screened against the various control lists. Companies receiving export orders from a wide variety of new customers, thereby making the maintenance of a "clean" up-to-date database difficult, may find the transaction-based method most efficient.

For accountability and review purposes, checks should include the name or initials of the person performing the screen, as well as the date of the screening, and the date of the list or material used for the screening. Using the "yes/no" format is easily implemented within electronic processing systems. In an electronic format, the completion of the checklist can be mandatory prior to moving to the next order-fulfillment stage.

Include your company's specific instructions on the check and in your EMCP written procedures for how to handle matches of names with names on the "Sanctioned Persons and Entity Lists." Clearly state what action your company employees are to take and who they should call with questions.

Determine where the completed check will be filed. Completed checks may be included as part of the individual transaction order file, on the company's customer file, or for contracted parties, in their contract files.

As you develop your check, include decision paths specific to your company management procedures that instruct employees to the EMCP Administrator (or another designated person) to determine the next course of action.

The transaction-based method

To use the transaction-based method, a company must screen each order as received. This method is often used when transactions are with customers who are one-time customers or where a customer relationship has not yet been developed and consistent customer base may find this screening method the most efficient.

The check could be applied as part of each transaction as an order request is considered and at various stages in the order approval process. If the decisions are made as part of the transaction process, the screen check should be maintained along with the transaction documents. Vulnerable stages where the check might be applied include:

- upon receipt of an order request (by sales representative/engineer);
- during the process, as part of the order approval (by EMCP Administrator); and
- prior to shipment (by shipping manager).

Regardless of the screening method used, all companies need to develop and document screening procedures, especially procedures for stopping an order if a customer is found to be on one of the export control denied persons lists. All export personnel should be trained on these procedures, especially those specifically assigned responsibility for performing the screening activities throughout the order process. Screening should not only occur at the beginning of the process when the order is received but also at the end of the process prior to shipping the product in the event there has been a change to the control lists during the processing time frame. In addition, all screening should be documented. Documentation should consist of the name of the individual that performed the check, the date the check is performed, the date of the list used to perform the check, and the result of the check.

For the transaction-based method, the check could be applied as part of each transaction as an order request is considered and at various stages in the order approval process. If the decisions are made as part of the transaction process, the screen check should be maintained along with the transaction documents.

- For each order received, check the names of the ordering party's firm and principals as well as the name of the end user (and any other parties to the transaction), if available, against the latest DPL, and other lists.

- Screen backlog orders, orders in process, and orders ready to ship when a new list or update is published.

- Export transactions should be screened before accepting an order and again immediately prior to shipping, particularly when turnaround time on an order is more than one week.

Vulnerable stages where the check might be applied include:

- Upon receipt of an order request (by sales representative/engineer);

- During the process, as part of the order approval (by EMCP Administrator); and

- Prior to shipment (by shipping manager).

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 BIS 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. This might occur during the credit check stage of the order process.

SANCTIONED PERSONS AND ENTITIES CHECK

OBJECTIVE: To implement internal controls that will detect sanctioned persons and entities prior to engaging in exports, reexports, selected transfers, or certain activities that are prohibited or restricted with license requirements, unless authorized by the USG.

Determine which method, customer or transaction based, will be used to perform the check:

- Identify the person(s) responsible for performing the check;
- Obtain/Access the latest export control lists and information;
- Conduct the Checks;
- Document the Checks;
- Establish a procedure for holding, canceling and releasing orders when there are matches of customer names with the named Sanctioned Persons and Entities.

BACKGROUND:

This screen is designed based upon end-user (persons and entities) restrictions described in Part 744 and persons prohibitions described in Part 764 of the EAR. Restrictions and prohibitions considered in this Guide include:

- Section 744.10 prohibits exports and reexports of any items subject to the EAR to Russian entities, included in Supplement 4 of Part 744, the Entity List (and see Section 744.1(c));
- Section 744.11 provides license requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.
- Sections 744.12, 744.13, 744.14 prohibit exports and reexports of any items subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively.
- Section 764.3(a) Sanctions, Denial of export privileges describes how an order may be issued that restricts the ability of the named persons to engage in export and reexport transactions involving items subject to the EAR, or that restricts access by named persons to items subject to the EAR. An order denying export privileges may be imposed either as a sanction for a violation specified in this part or as a protective administrative measure. An order denying export privileges may suspend or revoke any or all outstanding licenses issued under the EAR to a person named in the denial order or in which such person has an interest, may deny or restrict exports and reexports by or to such person of any item subject to the EAR, and may restrict dealings in which that person may benefit from

any export or reexport of such items. The terms of a denial order describe the scope of the sanctions. Additionally, any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity for any license application or other matter before BIS may be excluded by order from any or all such activities before BIS.

■ Section 744.18, Restrictions on exports, reexports and transfers to persons designated in or pursuant to Executive Order 13315 (Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions. (OFAC includes these on the SDN list by the bracketed initials (IRAQ2);

■ Section 744.20, State Department Sanctioned Entities, requires a license, to the extent specified in Supplement 4 to Part 744, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in Supplement 4 to Part 744 and is an unacceptable risk of use in or diversion to such activities; (See Supplement No. 4 to Part 744.)

Developing Your Procedure:

The purpose of this check is to systematically consider the persons and entities restrictions and prohibitions of Part 744 and Part 764 to prevent violations of these regulations.

In developing your EMCP manual procedures for each of these checks, the first seven points below are the same for each different principle. However, the eighth step addresses the unique operating procedure you must develop that will address the unique nature of each check and possibly the unique application of the check within your system.

Unique Persons and Entities Check Procedures

The unique screening focus for the Sanctioned Persons and Entities Check is on performing comparisons of names and addresses for orders, support persons (freight forwarders, vendors), etc., against lists of restricted and prohibited persons and entities. The nature of the information, names and addresses, is conducive to compliance review in a checklist format. (See the Template, Sanctioned Persons and Entities Check at the end of this Section.) Note that transliterations of some names using non-Latin alphabets can vary in spelling; the U.S. Treasury's SDNL provides various transliterations.

The publication of revisions to the "lists" varies according to when sanctions are issued by different U.S. government agencies. Therefore, rather than using hard copy "lists" as a source for performing a compliance check, compilations of restricted persons and entities are maintained on the responsible U.S. government agency websites. Note that each section on the template includes the relevant web addresses.

Determine who should perform these checks. These decisions should be made as you think through how transactions move through the order processing flow or as part of the process to establish approved customer profiles. Decide who are the designated responsible employees who are involved in receiving requests for orders, export, reexport or in-country transfer transactions. It could be the EMCP Administrator, sales representatives, traffic departments and personnel involved with credit checks, order receipts, requests for quotes, invoicing and servicing of products.

When developing screening procedures, consider persons and entities beyond just those involved in order transactions. Identify who is responsible for contracting vendors, freight forwarders and other parties involved in services and transactions. Develop a procedure to describe the steps this responsible person is to take for screening service providers and parties to the transaction prior to contracting them. Describe in the procedure the steps that will be taken to ensure ongoing checks of these persons when new names and entities are published in the *Federal Register*.

Denied Persons

You may not take any action that is prohibited by a denial order issued under Part 766 of the EAR. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country, either in the U.S. or abroad, by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. Orders denying export privileges are published in the *Federal Register* when they are issued and are the legally controlling documents in accordance with their terms.

Denial orders are designed to cut off the access of denied parties to U.S.-origin items not only by denying such parties the right to export, but also by

prohibiting third parties from dealing with a denied party in a transaction involving U.S. items. General Prohibition Four, found in Part 736 of the EAR, prohibits engaging in actions prohibited by a denial order. Denial orders generally apply to all items subject to the EAR, "No License Required" or License Exception eligible items as well as to items that require a license.

Note that it is necessary to screen not only against exporting or reexporting to a denied party, but also against (1) in-country transfers abroad of U.S.-origin items to a denied party, and, (2) the servicing of a denied party's U.S.-origin items. All such dealings are prohibited unless the facts are made known to and written permission is received from the Office of Exporter Services to engage in a particular transaction.

In developing your Check, you must state your company decision path, whether it is to escalate matches of customers with the Denied Persons for higher level review to determine whether to proceed or whether the course of action is to terminate the orders.

If you suspect that questionable, unauthorized, or illegal activities may have taken place, or that someone is asking you to participate in such activities, you should contact BIS's local Export Enforcement field offices, call its headquarters in Washington, DC at (202) 482-1208, call its 24 hour Hot Line (800) 424-2980. Your procedures should clarify who is responsible for taking this action and when they are to take it.

Entity List

The EAR provides that BIS 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, or where the U.S. Government has determined that there is reasonable cause to believe that the entity has been involved, is involved, or poses a significant risk of involvement in activities contrary to the national security or foreign policy of the United States.

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 (§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, BIS 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). In addition, BIS has expanded the Entity List to include those entities where the U.S. Government has determined that there is reasonable cause to believe that the entity has been involved, is involved, or poses a significant risk of involvement in activities contrary to the national security or foreign policy of the United States.

Section 744.1 of the EAR 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 item 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.

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 EMCP Administrator may wish to establish a procedure for monitoring daily *Federal Register* Notices, or the BIS website.

If matches occur between your customers and the Entity List, you will want to ensure that the orders to those customers are thrown off-line from the normal order flow and given closer 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 EMCP Administrator. The EMCP Administrator can then verify that the customer is actually on the Entity List 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.

Decision path options for the Entity List matches might include:

- Has my end-user been identified as presenting an unacceptable risk of use in or diversion to restricted activities by being named on the Entity List or have I been individually informed by BIS?

- Is the prohibition for all items or is the prohibition narrowed to specific items? Your company may choose to have a match of a customer with an Entity named escalated to make this determination of whether the transaction should be processed by submitting a license application or whether the order should be cancelled.

- Even if the Entity List prohibition does not capture your specific items that you want to export, do you know that the items will be used in the design, development, production or use of rocket systems or unmanned air vehicles for the delivery of chemical, biological, or nuclear weapons?

Specially Designated Nationals

The Department of the Treasury, Office of Foreign Assets Control (OFAC), maintains each of the following on a list of Specially Designated Nationals. Each type of designation is identified on the list by bracketed initials as follows:

- Specially Designated Global Terrorist (SDGT)
- Specially Designated Terrorists (SDT)
- Foreign Terrorist Organizations (FTOs)
- Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members (IRAQ2)

The list may be viewed at: *http://www.treas.gov/offices/enforcement/ofac/sdn*

OFAC Compliance offers advice on what to do when you have matches at: *http://www.treas.gov/offices/enforcement/ofac/faq#sdn*

List of Parties Debarred for Arms Export Control Act Convictions

The Department of State, Directorate of Defense Trade Controls (DDTC) publishes parties (including entities and individuals) who have been convicted of violating or conspiracy to violate the Arms Export Control Act (AECA). As a consequence, they are subject to "statutory debarment" pursuant to section 38(g) (4) of the AECA and section 127.7 of the International Traffic in Arms Regulations (ITAR). Thus, these persons are prohibited from participating directly or indirectly in the export of defense articles (including technical data) and defense services. The names of these parties and their ineligibility for defense trade have been previously published by DDTC in the Federal Register. Statutory debarment remains in

effect unless the debarred person's application for reinstatement of export privileges is granted by DDTC; Notice of reinstatement will be published in the Federal Register and the person's name will be removed from the list. This list may be viewed at *http://pmdtc.org/debar059*.

The Statutory Debarment List is a small subset of persons who may be "debarred" or ineligible to participate in the export of defense articles and defense services. In other words, the list does not include persons that may be ineligible under other AECA and ITAR prohibitions or restrictions (e.g., for violations of, or indictments under, other statutes specified in the AECA; ineligibility to receive export or import licenses from other U.S. Government Agencies; ineligibility for U.S. Government contracts).

In addition, persons may be "administratively debarred" on a case-by-case basis resulting from the resolution of individual enforcement proceedings for violations of the AECA and ITAR. This list may be viewed at *http://pmdtc.org/debar_admin.htm*.

Proliferation Sanctions

Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS's license application denial policy described in §744.19 of the EAR (15 CFR §744.19).

As mentioned above, exporters may receive free automatic e-mail notifications from BIS when changes are made in the lists and regulations when they sign-up for this service at the following BIS Web site address: *http://www.bis.doc.gov/Forms/EmailNotification.htm*

In addition, there are various commercial vendors who, for a fee, provide automated tools for export control screening.

DOCUMENTATION OF SCREEN

To ensure a method of verification of performance of the Sanctioned Persons and Entities Check consistent with the written EMCP procedures, the screen should be documented. Documentation could consist of noting the name or initials of the individual performing the check, the date the check is performed, and the date of the most current denied persons

information used to perform the check. The documentation may be made on the individual order (e.g., in the case of screening on a transaction base) or on the customer list (e.g., in the case of screening on a customer base).

KNOW YOUR CUSTOMER AND RED-FLAG INDICATORS (Part 732, Supplement 3 of the EAR)

OBJECTIVE: To establish procedures to assess proposed transactions against diversion risk red flag indicators and to instruct personnel on what actions to take to resolve red flags.

- Communicate the red flag indicators and Know Your Customer Guidance to personnel.
- Maintain customer profiles to establish the norm in order to be alert to the atypical.
- Provide instructions on what actions personnel must take on red flags that come across their desk in the normal course of the day.
- Include an auditable tool or procedure that ensures all responsible personnel are considering red flags and are documenting resolution of red flags.

BACKGROUND:

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. This check is designed to help exporters avoid a violation of this and other sections of the EAR.

- 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).
- 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.

When any of the following factors have been identified and follow-up inquiries have not satisfactorily resolved doubts, the company may not proceed with the export in question before contacting BIS. 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.

PROCEDURE

Red Flag Indicators

BIS has developed a set of indicators, or "red flags," that can indicate that the customer is attempting to engage in illegal or potentially illegal transactions. These indicators are designed to alert company officials to the need for increased suspicions and scrutiny. Assess which employees have the specific type of information come across their desk in the normal course of business that might raise red flags. See template for diversion risk and red-flag check, below.

Screening the End-Use or End-User

Companies should develop and routinely apply a specific set of questions to carefully screen the end-use or end-user such as, but not limited to, the following:

- Is the buyer evasive and unclear about whether the product is intended for domestic use, for export, or for reexport when questioned?
- Are orders for items inconsistent with the needs of the purchaser?
- Is equipment requested of a configuration incompatible with stated destination (e.g., 120 volts in a country with 220 volts)?
- Have the nonproliferation credentials of the recipient country been thoroughly screened?
- Has particular attention been paid to whether or not the product or service is intended for military use or subject to licensing?

Screening the Final Destination

Companies should screen the final destination:

- Is the requested order suitable to improve existing equipment or plants for military use?

- Are there excessive safety or security measures in light of the nature of the equipment?
- Is equipment to be installed in an area under strict security control or adjacent to military-related facilities?

Screening the Shipping Procedures

Careful screening should be conducted on the shipping procedures:

- Are delivery dates vague or are deliveries planned for out of the way destinations or is a freight-forwarding firm listed as the product's final destination?
- Is the shipping route abnormal for the product and destination?
- Is the packaging inconsistent with the shipping mode or destination?
- Are there unusual requests concerning labeling or shipment of goods?

Screening the Terms of Sale

Screening should be performed on the terms of sale:

- Are there any requests for normally unnecessary devices or no request for usually necessary devices and lack of a convincing explanation for the request or non-request?
- Was there no request for performance guarantee, warranty or normal service?
- Are routine installation, training, or maintenance services declined by the customer?
- Does the customer request completion of a partly finished product?
- The company should also evaluate whether the recipient country is a member of an international nonproliferation agreement or regime. In addition, it should determine the degree to which the importing government cooperates with nonproliferation policies, and whether or not the buyer or end-user has been previously denied by another supplier for an item they are requesting.

It could be the EMCP Administrator or a sales representative, field engineer or all of them who complete this check. The responsibility should be delegated out to all who might have this information come across their desks in the normal course of their day. 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 red flags that might signal diversions to these restricted end-uses. Sales representatives, traffic departments and personnel involved with credit checks, order receipts, requests for quotes, invoicing and servicing of products should be fully trained to recognize a potential transaction or activity of concern. (Identify specifically who they are and list them in Responsible Personnel for accountability and training purposes.) Training of the sales representatives/engineers that are closest to the customers in maintenance of the customer profiles and diversion risk red flags would also be essential to the successful implementation of this method.

Ideally, this check 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. **Written procedures should make it clear specifically who is responsible for performing this screen and when.**

It is recommended that this check be performed on a transaction basis since a portion of the check relates to the appropriateness of the items being requested as well as the customer's shipping instructions. The check 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 check 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.

"Check" 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, the date the check is performed, and the date of the data used for the screening. (See the Template checklist at the end of this Section.)

The "red flags" noted in this screen can be helpful in highlighting potential diversions to entities of proliferation concern.

The duty to check out "red flags" is not confined to the use of License Exceptions affected by the "know" or "reason to know" language in the EAR. Applicants for licenses are required by part 748 of the EAR to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless red flags oblige you to take verification steps.

Do not self-blind. Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user, and ultimate country of destination for the item your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

Employees need to know how to handle "red flags". Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

Reevaluate all the information after the inquiry. The purpose of this inquiry and reevaluation is to determine whether the "red flags" can be explained or justified. If they can, you may proceed with the transaction. If the "red flags" cannot be explained or justified and you proceed, you run the risk of having had "knowledge" that would make your action a violation of the EAR.

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 EMCP 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.

Unverified List

Although the requirement is not described in Part 744 or 764, you should include a list check against the "Unverified List" as you are checking names and addresses.

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check (PLC) or a post-shipment verification (PSV) for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 C.F.R. Part 732. The "red flag" applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

END-USE CHECKS

OBJECTIVE: To create a system that will identify and stop export, reexport, and selected in-country transfer transactions that involve certain end-uses and activities to determine what appropriate authorization is to be used.

- Ensure compliance with Part 744 Proliferation End-Use Restrictions.
- Create Checks to ensure that appropriate personnel are consistently and continuously considering whether YOUR items may be headed for prohibited activities.

BACKGROUND:

This screen is designed based upon the end-use and activity restrictions described in Part 744 of the EAR. This guide includes consideration of the following end-use restrictions:

- Section 744.2, restrictions on certain nuclear end-uses;
- Section 744.3, restrictions on certain rocket systems and unmanned air vehicles end-uses;
- Section 744.4, restrictions on certain chemical and biological weapons end-uses;
- Section 744.5, restrictions on certain maritime nuclear propulsion end-uses.

PROCEDURE:

The purpose of implementing internal controls within your EMCP for the sections noted above is to prevent U.S. items or persons from contributing to proliferation of weapons of mass destruction or to other weapons activities.

The unique screening focus is whether you know that your items might be destined for the restricted activities described in the EAR sections above. Creating and implementing Checks that will effectively detect prohibited activities becomes more complex than the matching of information described in the Template, Sanctioned Persons and Entities Check, found at the end of this Section.

Step 1:

Determine the Countries of Concern or Countries Excluded from the prohibition;

Step 2:

Evaluate Potential Risk Activities and Organizations

The value of this section is that it sensitizes employees to processes and activities that may seem legitimate on the surface, but where red flags may arise related to patterns of orders by customers. Consider certain key words and activities that are typically associated with the design,

development, production or use of the restricted activities as part of your customer or transaction approval process. On the attached Checklist, the key words and phrases are taken from Part 742. There may be other key words that are of specific risk to your particular product line or activities that you should add in this section. The idea is to flag potential risks and then decide whether "hits" should be directed to your EMCP Administrator or another designee, and should place the orders on hold until the potential risk is closely reviewed and cleared for further processing.

Step 3:

Determine whether you know if items are destined for restricted activities, as described in Part 744; and

Step 4:

Determine what action is needed based upon the Checklist responses.

- The **Nuclear End-Use Check** is a check list designed to determine whether you know or are informed that an item subject to the EAR is destined to a restricted nuclear end-use (744.2); and a nuclear-related question was added to this Check to determine whether you know the item is for use in connection with a foreign maritime nuclear propulsion project to a nuclear maritime end-use (744.5);

- The **Rocket Systems and Unmanned Air Vehicles End-Use Check** is a check list designed to determine whether you know or are informed that an item subject to the EAR is destined to a restricted end-use involving certain rocket systems (including ballistic missile systems and space launch vehicles and sounding rockets) and unmanned air vehicles (including cruise missile systems, target drones and reconnaissance drones) (744.3);

- The **Chemical and Biological Weapons End-Use Check** is a check list designed to determine whether you know or are informed that an item subject to the EAR is destined to a restricted chemical and biological weapons end-use (744.4);

- The **Military End-Uses and to Military End-Users Check** is a check list **drafted** to comply with 744.17, Restrictions on certain exports and reexports of general purpose microprocessors for military end-uses and to military end-users.

- Other reasons for control by BIS include concerns involving: national security, regional stability, anti-terrorism, Fire-arms Convention, crime control, and United Nations sanctions (738.2).

TEMPLATE
Sanctioned Persons and Entities Check

The purpose of this screen is to systematically consider the persons and entities restrictions and prohibitions of Part 744 and Part 764 of the Export Administration Regulations to detect such persons and entities and to determine the appropriate course of action.

Step 1: Denied Persons Check

Denial Orders	
Is a Denied Person involved in my transaction? Export Privileges are denied by written order of the Department of Commerce. Each order affecting export privileges is published in the Federal Register. These orders are the official source of information about denied persons and are controlling if there is an inconsistency with anything on the web site list. *http://www.bis.doc.gov/dpl/thedeniallist.asp*	Yes_____ No_____
If the answer is "YES," hold the transaction and escalate it to the EMCP Administrator to determine whether the party is denied export/reexport/in-country transfer privileges by the terms of a Denial Order (OR cancel the transaction?) Export Administration Regulation violation charging letters, settlement agreements and orders are available online at: *http://efoia.bis.doc.gov/ExportControlViolations/ TOCExportViolations.htm* If the answer is "NO," then proceed to the next question	

Step 2: The Entity List Check (Supplement No. 4 to Part 744)

Have you been individually informed by the Bureau of Industry and Security (BIS) as described in Sections 744.2(b), 744.3(b), 744.4(b), 744.10, and 744.20 that a license is required or is a license required by the terms of the Entity List for the items destined to the Entity? *http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf*	Yes_____ No_____
If the answer is "YES," a license is required. If the answer is "NO," then proceed to the next question	

Step 3: Specially Designated Nationals List Check

Is a person listed on the Treasury Department's Office of Foreign Assets Control Listing of **Specially Designated Nationals and Blocked Persons** a party to my transaction? (Supplement No. 3 to Part 764) ***http://www.treas.gov*** **Specially Designated Global Terrorists** (744.12) **Specially Designated Terrorists** (Section 744.13) **Designated Foreign Terrorist Organizations** (Section 744.14) **Former Iraqi Regime, Its Senior Officials and Their Family Members** (Section 744.18) *http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf*	Yes_____ No_____
If the answer is "YES," a license is required. If you have checked a name manually or by using software and find a match, you should do a little more research. Is it an exact name match, or very close? Is your customer located in the same general area as the SDN? If not, it may be a "false hit." If there are many similarities, contact OFAC's "hotline" at 1-800-540-6322 for verification. If your "hit" concerns an in-process wire transfer, you may prefer to email your question to OFAC. Unless a transaction involves an exact match, it is recommended that you contact OFAC Compliance before actually blocking assets. *http://www.treas.gov/offices/enforcement/ofac/faq/#sdn* If the answer is "NO," then proceed to the next question	

Although the next Check is not based upon Part 744 or Part 764, as the objective statement of this Check describes, the nature of the information is list-oriented and can most efficiently be performed as part of this Check. As another option, because the Unverified List of persons are considered as red flags, this Check could be moved to the Diversion Risk Red Flag Check (or included on both as a double Check in the system).

Unverified List Check	
The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check ("PLC") or a post-shipment verification ("PSV") for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 C.F.R. Part 732. The "red flag" applies to the person on the Unverified List regardless of where the person is located in the country included on the list. Is my customer on the Unverified List? ***http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html***	Yes_____ No_____

NOTE: You could "fast lane" this check by narrowing the action down to the countries where Unverified companies are located: If your item is destined to Hong Kong, Malaysia, Singapore, or the United Arab Emirates, is the company on the Unverified List? Caution would be needed to ensure someone is held accountable for changing these countries if new country locations are added.

Step 4: Nonproliferation Sanctions List

The United States imposes sanctions under various legal authorities against foreign individuals, private entities, and governments that engage in proliferation activities. Announcements of such sanctions determinations are printed in the Federal Register and can be accessed through the **Government Printing Office** web page. Is it known or are there indications that the customer is a party sanctioned by the Department of State? *http://www.state.gov/t/isn/c15231.htm*	Yes_____ No_____
If the answer is "YES," contact the EMCP Administrator. If the answer is "NO," then proceed to the next question.	

TEMPLATE
Diversion Risk & Red-Flag Check

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. See BIS's "Know Your Customer" Guidance at:

http://www.bis.doc.gov/complianceandenforcement/RedFlagIndicators.htm

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.

KNOW YOUR CUSTOMER	
The customer or purchasing agent is reluctant to offer information about the end use (or end-user) of a product.	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_____
The customer declines routine installation, training, or maintenance services.	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 is known to have, or is suspected of having, unauthorized dealings with embargoed countries.	Yes_____ No_____

KNOW YOUR 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.	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_____
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_____
DELIVERY	
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_____
Add company-specific indicators here.	
Add the new red flag indicators that are pending.	

NUCLEAR END-USE CHECK

The Export Administration Regulations (EAR) requires a license when one would not otherwise be necessary when the exporter knows the items will be used in certain restricted end-uses. The purpose of this screen is to provide a step-by-step process to determine whether a license is required based on the nuclear end-use prohibitions of Sections 744.2 and 744.5 of the EAR.

Step 1: Focus on Countries

Is the end-user/customer located in Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Turkey, or the United Kingdom? (See Supplement No. 3 to Part 744.)	Yes_____ No_____
If "YES," the nuclear end-use restrictions do not apply and you may end this check here. A license is not required based on Section 744.2.	

If "NO," for ALL other countries, proceed to Step 2.

Step 2: Related Industries/Activities Applicability Check

The purpose of this step is to offer key words and phrases that help you detect whether you are entering into activities where processes may be of greater risk.

Power plants	Yes_____ No_____
Energy plants	Yes_____ No_____
Nuclear facilities	Yes_____ No_____
Nuclear explosives or weapons activities	Yes_____ No_____
Manufacturing of parts used in atomic facilities	Yes_____ No_____
Nuclear or atomic reprocessing plants	Yes_____ No_____
Nuclear or atomic waste activities	Yes_____ No_____
Nuclear or atomic "source" material	Yes_____ No_____

Separation of isotopes of any source or special nuclear material	Yes_____ No_____
Production of heavy water	Yes_____ No_____
Nuclear fuel fabrication	Yes_____ No_____
Plants of any kind supported by fast breeder reactor	Yes_____ No_____
Institute of science and technology	Yes_____ No_____
Radiological facilities	Yes_____ No_____
Conventional weapons and armaments research and development establishments	Yes_____ No_____
Military entities	Yes_____ No_____

Whether you answered "YES" or "NO," proceed to Step 3 to determine whether a license is required based upon the specific end-uses described below.

Step 3: Restricted End-Uses

Do you know that your items will be used directly or indirectly in any of the following activities:

Nuclear explosive activities

Research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device or components or subsystems of such a device? (744.2(a)(1))	Yes_____ No_____

Unsafeguarded* nuclear activities

Research on, or development, design, manufacture, construction, operation, or maintenance of:	
A nuclear reactor	Yes_____ No_____
A critical facility	Yes_____ No_____
A facility for the fabrication of nuclear fuel	Yes_____ No_____

A facility for the conversion of nuclear material from one chemical form to another	Yes_____ No_____
A separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) Safeguards at the relevant facility	Yes_____ No_____
A separate storage installation when it contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export)	Yes_____ No_____
A facility where IAEA Safeguards are not met	Yes_____ No_____

*Unsafeguarded means that there is no obligation on the part of the country, to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation.

Safeguarded and unsafeguarded nuclear activities

Nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation or maintenance of any of the following facilities or components for such facilities:	
Facilities for the chemical processing of irradiated special nuclear or source material	Yes_____ No_____
Facilities for the production of heavy water	Yes_____ No_____
Facilities for the separation of isotopes of source and special nuclear material	Yes_____ No_____
Facilities for the fabrication of nuclear reactor fuel containing plutonium	Yes_____ No_____

If you answered "YES" to any of the questions in Step 3, contact your EMCP Administrator; a license is required and a License Exception may not be used.

If you answered "NO" to all of the questions in Step 3, a license is not required under Section 744.2.

Proceed to the final question.

Step 4: Restrictions on Certain Maritime Nuclear Propulsion End-Uses (744.5)

Do I know that the items are for use in connection with a foreign maritime nuclear propulsion project? This prohibition applies to any technology relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery devices, components, or equipment specifically developed or designed for use in such plants or facilities	Yes_____ No_____

If you answered "YES" to Step 4, contact your EMCP Administrator; a license is required based upon Section 744.5.

If you answered "NO" to Step 4, a license is not required under Section 744.5.

CERTAIN ROCKET SYSTEMS AND UNMANNED AIR VEHICLES END-USE CHECK

(Including cruise missile systems, target drones and reconnaissance drones)

The Export Administration Regulations (EAR) requires a license when one would not otherwise be necessary when the exporter knows the items will be used in certain restricted end-uses. The purpose of this screen is to determine whether a license is required based on end-use prohibitions of Section 744.3 of the EAR.

STEP 1: Focus on Countries

Does the transaction involve a **governmental program** for nuclear weapons delivery of **NPT Nuclear Weapons State** that is also a **member of NATO** (United States, United Kingdom, and France)?	Yes_____ No_____

If "YES," you do not need to proceed with this End-Use Check.
If "NO," proceed to Step 2.

STEP 2: Restricted End-Uses

Whether the transaction involves an export, reexport or transfer (in country), do I know the items will be used in the design, development, production or use of rocket systems or unmanned air vehicles capable of a range of at least 300 kilometers in or by a country listed: Bahrain, China (PRC), Egypt, India, Iran, Iraq, Israel, Jordan, North Korea, Kuwait, Lebanon, Libya, Macau, Oman, Pakistan, Qatar, Saudi Arabia, Syria, United Arab Emirates, or Yemen? (See Country Group D:4 of Supplement No.1 to Part 740 of the EAR.)	Yes_____ No_____
Whether the transaction involves an export, reexport or transfer (in country), do I know the items will be used, anywhere in the world, except by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also **members of NATO** (the United States, the United Kingdom and France), in the design, development, production or use of rocket systems or unmanned air vehicles; or	Yes_____ No_____

(continued)

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CERTAIN ROCKET SYSTEMS AND UNMANNED AIR VEHICLES END-USE CHECK

(Including cruise missile systems, target drones and reconnaissance drones)

Whether the transaction involves an export, reexport or transfer (in country), do I know the items will be used in the design, development, production or use of any rocket systems or unmanned air vehicles in or by a country listed in number (1) above, and I am unable to determine:	
■ The characteristics (i.e., range capabilities) of the rocket systems or unmanned air vehicles, or	Yes_____ No_____
■ Whether the rocket systems or unmanned air vehicles, regardless of range capabilities, will be used in a manner prohibited under paragraph (a)(2) of this section.	Yes_____ No_____

NOTE: "Rocket Systems" include, but are not limited to, ballistic missile systems, space launch vehicles, and sounding rockets. "Unmanned air vehicles" include, but are not limited to, cruise missile systems, target drones and reconnaissance drones.

If you answered "YES" to any question above, contact your EMCP Administrator, a license is required and a License Exception may not be used.

If you answered "NO" to all questions above, you have completed the Check. A license is not required under Section 744.3.

CHEMICAL AND BIOLOGICAL WEAPONS END-USE CHECK

The Export Administration Regulations (EAR) require a license when one would not otherwise be necessary when the exporter knows the items will be used in certain restricted end-uses. The purpose of this screen is to provide a step-by-step process to determine whether a license is required based on the end-use prohibitions of Section 744.4 of the EAR.

STEP 1: Related Industries/Activities Applicability Check

The purpose of this check is to detect whether you are entering into activities where processes may be of greater risk and to decide whether there are "Red Flags" that prompt you to proceed cautiously and inquire further.

Do you know that the end-user is involved in any of the following chemical or biological activities or industries:

Chemical plants	Yes_____	No_____
Petrochemical plant	Yes_____	No_____
Petroleum	Yes_____	No_____
Cosmetics production	Yes_____	No_____
Food processing	Yes_____	No_____
Glass, ceramic or porcelain production	Yes_____	No_____
Mining operations	Yes_____	No_____
Metal manufacturing	Yes_____	No_____
Organic synthesis	Yes_____	No_____
Paper manufacturing	Yes_____	No_____
Plastic or rubber manufacturing	Yes_____	No_____
Pharmaceuticals	Yes_____	No_____
Insecticides or pesticides	Yes_____	No_____
Semiconductor manufacturing	Yes_____	No_____
Paint production	Yes_____	No_____
Institutes of science and technology	Yes_____	No_____
Conventional weapons and armaments research & development establishments	Yes_____	No_____
Military entities	Yes_____	No_____
Biological/Chemical Research	Yes_____	No_____

Continue with the Red Flags part of this step.

STEP 2: Red Flags Specific to CBW Controls

Has the customer/end-user:	
Provided evasive responses or is reluctant to provide an adequate explanation concerning:	
■ The chemicals or biological agents to be produced with the equipment?	Yes_____ No_____
■ End-use of the chemicals or biological agents produced with the equipment?	Yes_____ No_____
Been reluctant to explain sufficiently the chemical raw materials or biological agents to be used with the equipment being purchased?	Yes_____ No_____
Ordered quantities excessive for the production capability of the end user?	Yes_____ No_____
Made requests for excessive safety/security devices/measures in light of the stated end-use, or the customer's lack of familiarity with appropriate safety/security measures?	Yes_____ No_____
Made requests to complete a partly finished project and/or will not provide license authorizations obtained for the part of the project already completed?	Yes_____ No_____
Requested modification of a plant or equipment in an existing or planned facility that changes production capability significantly and could make the facility more suitable for the manufacture of chemical weapons, chemical weapon precursors or biological agents and weapons?	Yes_____ No_____
Requested models of equipment or containers made or lined with nickel, hastelloy, monel and other high nickel content or which are airtight beyond the normal requirements for the stated end-use, especially when less expensive models are appropriate for the end use?	Yes_____ No_____
Requested excessive confidentiality concerning final destination or details on equipment, materials or technical data to be delivered?	Yes_____ No_____

(continued)

STEP 2: Red Flags Specific to CBW Controls

Requested that the items be installed in:	
■ An area with unusually strict security control (such areas may include but are not limited to an area close to a military-related facility, to which access is severely restricted; science and technology parks, or the facility is isolated from major population centers)?	Yes_____ No_____
■ An atypical location in light of the character of the equipment (e.g. milk pasteurization equipment that is not being installed near a dairy or baby food distribution/ packaging center)?	Yes_____ No_____
Refused personnel contractor or subcontractor access to parts of the plant other than those involved in the contract?	Yes_____ No_____
Divided the contract for the construction or renovation of a plant without furnishing adequate information about the complete scope of the project, the final destination or proposed use of the plant?	Yes_____ No_____

STEP 3: Restricted End-Uses

Do you know that your item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons? (744.4(a))	Yes_____ No_____

If you answered "YES" to the questions in Step 2 and were unable to resolve the red flags, or answered "YES" to Step 3, a license is required and a License Exception may not be used.

If you answered "NO" to all of the questions, you have completed the Check. A license is not required under Section 744.4.

ANTIBOYCOTT QUESTIONS

Antiboycott laws require U.S. persons to refuse to participate in foreign boycotts that the U.S. does not sanction (Part 760 of the EAR).

Some indicators of antiboycott concern can also be viewed as "Red Flags":

- Agreements to refuse, or actual refusals, to do business with Israel or with entities blacklisted by boycotting countries.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality.
- Furnishing information about business relationships with Israel or with entities blacklisted by boycotting countries.
- Furnishing information about the race, religion, sex, or national origin of another person.
- Paying, or otherwise implementing letters of credit that include requirements to take boycott related actions prohibited by the antiboycott regulations.

Create a HOLD function until resolved.

You are required to report each boycott-related request you receive to the Office of Antiboycott Compliance at (202) 482-2381.

EXAMPLES
ANTIBOYCOTT LANGUAGE

- You might come across these "Red Flags" in written documents such as questionnaires, letters of credit, customer correspondence, and contract provisions, purchase orders or it could come up in conversations with potential customers.
- A fax reads: "Good day. Thanks for your fax regarding … , but unfortunately this company is blacklisted in … . However, you may supply the same from another company and brand name."
- A copy of a legal offer includes this language: "Please confirm that … is the manufacturer, and that the material is of [country] origin, and ensure that [company] is not listed in the Israeli Boycott List."
- A tender for supplies includes this language: "Please ensure that [name of your company] and [manufacturer of your supplies] are not listed in the Israel Boycott List."

■ A certification reports: "We hereby certify that the product/goods shipped are not of Israeli origin, that they do not contain any Israeli material, and that they are not being exported from Israel."

ANTIBOYCOTT COMPLIANCE CHECK

The antiboycott laws were adopted to encourage, and in specified cases, require U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction. They have the effect of preventing U.S. firms from being used to implement foreign policies of other nations which run counter to U.S. policy.

The Arab League boycott of Israel is the principal foreign economic boycott that U.S. companies must be concerned with today. The antiboycott laws, however, apply to all boycotts imposed by foreign countries that are unsanctioned by the United States.

Who Is Covered by the Laws?

The antiboycott provisions of the Export Administration Regulations (EAR) apply to all "U.S. persons," defined to include individuals (U.S. taxpayers) and their related companies located in the United States and their foreign affiliates. These persons are subject to the law when their activities relate to the sale, purchase, or transfer of goods or services (including information) within the United States or between the U.S. and a foreign country. This covers U.S. exports and imports, financing, forwarding and shipping, and certain other transactions that may take place wholly offshore related to boycotting countries or their nationals.

The following are illustrative examples of how you might create a check in your system using questions at key steps in your process. Companies should call the advice line (202) 482-2381 with questions concerning these or any request to comply with restrictive trade practices or boycotts.

Do I know of agreements to refuse or actual refusals to do business with Israel or with blacklisted companies?	Yes_____ No_____
Do I know of agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality?	Yes_____ No_____

(continued)

Am I aware of requests for furnishing information about business relationships with Israel or with blacklisted companies?	Yes_____ No_____
Am I aware of requests for furnishing information about the race, religion, sex, or national origin of another person?	Yes_____ No_____
Do I know of requests for paying, or otherwise implementing letters of credit that include requirements to take boycott related actions prohibited by the antiboycott regulations?	Yes_____ No_____
Other recent examples of boycott requests that have been reported to the Office of Antiboycott Compliance can be reviewed at: *http://www.bis.doc.gov/AntiboycottCompliance/ oacantiboycottrequestexamples.html*	

If you answered "YES" to any of the questions above, the EAR requires reports of receipts of boycott requests to be filed quarterly on form BIS 621-P for single transactions or BIS 6051P for multiple transactions received in the same calendar quarter. The forms are available on-line in a fillable pdf format at:

http://www.bis.doc.gov/antiboycottcompliance/ BoycottRequestReportingForm.html

To obtain paper copies by U.S. mail, call the Office of Antiboycott Compliance in Washington, DC at (202) 482-2448.

TRA reports are filed with tax returns on IRS form 5713. This form is available from local IRS offices.

DRAFT LANGUAGE

GENERAL PURPOSE MICROPROCESSORS FOR MILITARY END-USES AND TO MILITARY END-USERS CHECK

The purpose of this Check is to determine whether a license is required based upon certain restrictions described in Part 744.17. This license requirement does not apply to exports or reexports of items for the official use by personnel and agencies of the USG or agencies of a cooperating government.

Is the commodity you may export or reexport described in ECCN 3A991.a.1 on the CCL (microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a "composite theoretical performance" ("APP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more)?	Yes_____ No_____
If yes, continue. If no, this Check does not apply to you.	
Do you know that the items will be used in Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, China (PRC), Estonia, Georgia, Iraq, Kazakhstan, North Korea, Kyrgyzstan, Laos, Latvia, Lithuania, Macau, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam? (Country Group D:1, Part 740)	Yes_____ No_____
If yes, continue. If no, this Check does not apply to you.	
Do you know that the item of export or reexport, or have reason to know, or are informed by BIS that the item will be or is intended to be used for a "military end-use"? For these purposes, the phrase 'military end-use' means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the International Munitions List (IML) (as set out on the Wassenaar Arrangement website at http:\\www.wassenaar.org); commodities listed under ECCN's ending in "A018" on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR; or any item that is designed for the "use", "development", "production", or deployment of military items described on the USML, the IML, or commodities listed under ECCN's ending in "A018" on the CCL.	Yes_____ No_____
If yes, continue. If no, this Check does not apply to you.	

DRAFT LANGUAGE

GENERAL PURPOSE MICROPROCESSORS FOR MILITARY END-USES AND TO MILITARY END-USERS CHECK

Supplement No. 1 of Part 744 lists examples of 'military end-use". Is the general-purpose microprocessor to be employed in the "use," "development," or deployment of:	
Cruise missiles?	Yes_____ No_____
Electronic suites of military aircraft and helicopters?	Yes_____ No_____
Radar for searching, targeting, or tracking systems?	Yes_____ No_____
Command/control/communications or navigation systems?	Yes_____ No_____
Unmanned aerial vehicles capable of performing military reconnaissance, surveillance, or combat support?	Yes_____ No_____
Rocket or missile systems?	Yes_____ No_____
Electronic or information warfare systems; or	Yes_____ No_____
Intelligence, reconnaissance, or surveillance systems suitable for supporting military operations?	Yes_____ No_____
If yes to any of the above applications, continue. If no, this Check does not apply to you.	
Do you know that the items will be used by a "military end-user"? For these purposes, "military end-user" means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end-uses' as defined above.	Yes_____ No_____

If yes, a license is required based upon certain restrictions described in Part 744.17.

CUSTOMER PROFILE

Customer Number _____ Order No. _____
Customer Company Name: _____
Company Principal(s) _____
Company Representative Name: _____
Address: _____

New Customer: YES ____ NO ____
Has the customer received an on-site visit? YES ____ NO ____
Established Customer: YES ____ NO ____ How many years? _____

Customer's Business is: _____ privately owned; _____ a public utility;
_____ a government entity; _____ a military entity.

The customer has been in business ___ less than a year; ___ 1 to 5 years; ___ over 5 years.

Products Ordered: _____

Nature of Business: _____

End-Use is ___ Civilian Use ___ Military Use
Specific End-Use is: _____

Profile check performed by: Printed Name: _____
Initial: _____ Date: _____
Annual profile check: Printed Name: _____
Initial: _____ Date: _____

SANCTIONED PERSONS AND ENTITIES CHECK Are sanctioned persons or entities parties to the transaction or other activities as described in Denial Orders, The Entity List, Specially Designated Nationals List, or on the Unverified List?	Yes_____ No_____
DIVERSION RISK RED FLAG CHECK Is it known or are there indications that the customer is at risk for diversion?	Yes_____ No_____
NUCLEAR END-USE CHECK Is it known or are there indications that the customer is involved directly or indirectly in any nuclear activities?	Yes_____ No_____
ROCKET SYSTEMS AND UNMANNED AIR VEHICLES END-USE CHECK Is it known or are there indications that the customer is involved directly or indirectly in the design, development, production or use of missiles?	Yes_____ No_____

(continued)

CHEMICAL & BIOLOGICAL WEAPONS END-USE CHECK 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?	Yes_____ No_____
NONPROLIFERATION SANCTIONS Is it known or are there indications that the customer is a party sanctioned by the Department of State?	Yes_____ No_____
ANTIBOYCOTT COMPLIANCE CHECK Are there indications that the customer is involved in boycott activities in conflict with U.S. law and regulations?	Yes_____ No_____
MILITARY END-USES AND TO MILITARY END-USERS CHECK Complete this Check only if you exporting a general purpose microprocessor, described in 3A991.a.1.	Yes_____ No_____

IMPORTANT: If the answer to any of the above questions is "yes," contact your EMCP Administrator. Attached are the Checks.

Freight Forwarder Guidance

FREIGHT FORWARDER GUIDANCE

Members of the international forwarding community play a key role in ensuring the security of the global supply chain, stemming the flow of illegal exports, and helping to prevent Weapons of Mass Destruction (WMD) and other sensitive goods and technologies from falling into the hands of proliferators and terrorists.

Responsibilities of the Forwarding Community

Forwarding agents have compliance responsibilities under the Export Administration Regulations (EAR) even when their actions are dependent upon information or instructions given by those who use their services. However, hiring an agent, whether a freight forwarder or some other agent, to perform various tasks, does not relieve a party of its compliance responsibilities.

Agents are responsible for the representations they make in filing export data. Moreover, no person, including an agent, may proceed with any transaction knowing that a violation of the EAR has, is about to, or is intended to occur. It is the agent's responsibility to understand its obligations.

Agents, especially those acting as the "exporter" in routed export transactions (see below), should understand the "Know Your Customer" guidance and "Red Flags" found in supplement no. 1 to part 732 of the EAR. Agents and exporters should determine if Red Flags are present, exercise due diligence in inquiring about them, and ensure that suspicious circumstances are not ignored. Failure to do so could constitute a violation of the EAR.

Agents should be thoroughly familiar with the ten General Prohibitions set forth in part 736 of the EAR, and with the violations outlined in part 764 of the EAR. Engaging in prohibited conduct or committing the violations set out in the EAR may subject violators to significant penalties -- up to 20 years imprisonment and fines of up to $1,000,000 upon criminal conviction, and penalties of up to $250,000 per violation and/or a denial of export privileges for administrative offenses.

Routed and Non-Routed Export Transactions

Primary responsibility for compliance with the EAR falls on the **"principal parties in interest" (PPI)** in a transaction. Generally, the PPIs in an export transaction are the U.S. seller and foreign buyer. See the following parts and sections of the EAR for additional information: section 748.5, regarding parties to a transaction; part 758 on export clearance; and relevant definitions in part 772.

In a **"routed export transaction,"** in which the foreign PPI authorizes a U.S. agent to facilitate the export of items from the United States, the U.S. PPI obtains from the foreign PPI a writing in which the foreign PPI expressly assumes responsibility for determining licensing requirements and obtaining authorization for the export. In this case, the U.S. agent acting for the foreign PPI is the "exporter" under the EAR, and is responsible for determining licensing authority and obtaining the appropriate license or other authorization for the export.

An agent representing the foreign PPI in this type of routed export transaction must obtain a power of attorney or other written authorization in order to act on behalf of the foreign PPI.

In this type of routed export transaction, if the U.S. PPI does not obtain from the foreign PPI the writing described above, then the U.S. PPI is the "exporter" and must determine licensing authority and obtain the appropriate license or other authorization. This is true even if the transaction is considered a routed export transaction for purposes of filing electronic export information pursuant to the Foreign Trade Regulations (15 C.F.R. part 30).

In a routed export transaction in which the foreign PPI assumes responsibility for determining the appropriate authorization for the export, the U.S. PPI obtains from the foreign PPI a writing wherein the foreign PPI expressly assumes responsibility for determining licensing requirements and obtaining licensing authority. The EAR requires the U.S. PPI to furnish the foreign PPI and its agent, upon request, with the correct Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN. In addition, the U.S. PPI must provide the foreign PPI and its agent with any information that it knows will affect the determination of license authority. The U.S. PPI also has responsibility under the Foreign Trade Regulations (15 C.F.R. part 30) to provide certain data to the agent for the purposes of filing electronic export information.

In a transaction that is not a routed export transaction, if the U.S. PPI authorizes an agent to prepare and file the export declaration on its behalf, the U.S. PPI is the "exporter" under the EAR and is required to:

- *Provide the agent with the information necessary to complete the AES submission;*
- *Authorize the agent to complete the AES submission by power of attorney or other written authorization; and*
- *Maintain documentation to support the information provided to the agent for completing the AES submission.*

If authorized by either the U.S. or foreign PPI, the agent is responsible for:

- *Preparing the AES submission based on information received from the U.S. PPI;*
- *Maintaining documentation to support the information reported on the AES submission; and*
- *Upon request, providing the U.S. PPI with a copy of the AES filed by the agent.*

Both the agent and the PPI who has authorized the agent are responsible for the correctness of each entry made on an AES submission. Good faith reliance on information obtained from the PPI can help protect an agent, but the careless use of "No License Required," or unsupported entries, can get an agent into trouble. Agents without the appropriate technical expertise should avoid making commodity classifications and should obtain support documentation for ECCNs.

Additionally, upon written request, Census will provide companies with twelve months of AES data free of charge every 365 days. The Census Bureau's Foreign Trade Division currently provides U.S. PPIs, and other filers requesting their AES data, with all ten data elements required in routed export transactions.

Mitigating the Risk and Building a Private-Sector/Public-Sector Partnership

As noted above, forwarders may be subject to criminal prosecution and/or administrative penalties for violations of the EAR. BIS has not hesitated to hold forwarders liable for participating in illegal transactions. Bad publicity alone can cost companies incalculable sums, in terms of future

business, not to mention costs associated with lengthy and costly litigation, or administrative or criminal penalties. For example, in August 2009, after a government investigation lasting for more than five years, DHL reached a $9,444,744 Settlement Agreement with BIS and Treasury's OFAC in a case involving hundreds of shipments to Iran, Sudan, and Syria, and a failure to adhere to government recordkeeping requirements.

This case, and many others involving forwarders, demonstrate the need for forwarders to know their customers and be aware of suspicious circumstances and Red Flags that may be present in an export transaction. When presented with Red Flags, forwarders have an obligation to inquire about the facts of the transaction, evaluate all of the information after inquiry and refrain from engaging in the transaction if the Red Flags cannot be resolved. These steps help protect not only the forwarder but also the forwarder's client, who may be unknowingly engaging in a prohibited transaction.

Forwarders can take steps to mitigate their own and their clients' risks of liability by establishing a compliance program that scrutinizes export transactions and checks the parties to transactions against BIS's and other U.S. Government agencies' various Lists to Check (see *http://www. bis.doc.gov/complianceandenforcement/liststocheck.htm*). Forwarders should also familiarize themselves with the types of activities to avoid in suspicious transactions as described in the BIS publication, ***Don't Let This Happen to You***, also on the BIS website. See *http://www.bis.doc.gov/ complianceandenforcement/dontletthishappentoyou-2008.pdf*

Although in a non-routed transaction the primary burden of compliance rests with the U.S. PPI, section 758.3 of the EAR states that "[a]ll parties that participate in transactions subject to the EAR must comply with the EAR." Therefore, some compliance responsibility also rests with the freight forwarder. Parts 744, 760, 736, 732 supplement no. 3, and 764, among others, discuss how export transactions may not be conducted with certain parties, that dealing with certain parties may have additional licensing requirements, that dealing with certain parties should raise Red Flags for exporters, and that certain countries, activities, and items have certain restrictions under the EAR.

While the EAR allows flexibility in the manner in which U.S. companies meet these compliance requirements in a number of different methods, BIS strongly recommends that all parties dealing with export transactions maintain a vigorous and effective Export Management and Compliance Program (EMCP), incorporating the nine key elements (check the EMCP weblink at *http://www.bis.doc.gov/complianceandenforcement/emcp.htm*), and especially the screening of all parties to transactions, as part of their overall due diligence.

BIS, however, also recommends striking the right balance. Compliance activities would differ depending on the nature of the items being exported and the destinations to which they are exported, but err on the side of caution to ensure that our U.S.-origin dual-use goods and technologies are exported in compliance with the EAR.

Freight forwarders and exporters are symbiotically situated to work together to develop compliance procedures for their mutual benefit and sustainability. Building compliance partnerships and sharing compliance strategies with each other and other parties to transactions as part of Standard Operating Procedures will give all involved a competitive edge. Once the investment is undertaken and the procedures are in place and continually maintained, export transactions will proceed predictably, safely, and with consistent application of the appropriate research and analysis of parties and uses/applications. The more compliance processes are integrated into existing business processes, the more seamless your entire export process will be. As you share and learn compliance techniques with your business partners and build synergies while also building business relationships, you will ensure your mutual longevity and bottom lines.

Even if forms like the BIS-711, the Destination Control Statement, and the Letter of Acceptance of License Conditions are not required by the EAR from your overseas business partners, as part of your own compliance processes, you may wish to draft a document including language similar to these and require their use in certain situations to enhance compliance.

Concerning documentation requirements, refer to the EAR's part 762 (applicable to all transactions subject to the EAR) regarding records that have to be maintained, records that don't have to be maintained, requirements for producing records, retention period, etc. There are also recordkeeping requirements from, *inter alia*, Customs (19 CFR part 163), the

Department of State (ITAR and 22 CFR part 122.5), the Census Bureau (15 CFR 30.66(c)), and Treasury's OFAC (31 CFR part 501).

BIS's Export Management and Compliance Division (EMCD, at 202-482-0062 and through the BIS website) is available to assist with compliance questions; our Outreach and Educational Services Division (OESD, at 202-482-4811, 949-660-0144, and through the BIS website) is available to assist with general questions involving exporting, and, for licensing issues, it may be helpful to speak with one of BIS's expert Licensing Officers who deals with your particular line of products. Your local Export Enforcement Field Office would also be able to give you guidance; to find your local office call (202) 482-1208, or check the BIS Program Offices website at *http://www.bis.doc.gov/about/programoffices.htm#ee*, and for a regulatory perspective, you may also contact BIS's Regulatory Policy Division (RPD) at (202) 482-2440 and through the BIS website.

Notably for freight forwarders, in the EAR, see, inter alia, sections 758.1 through 758.6, 748.4, and 750.7(d). Section 758.3(b) notes the difference in definitions between Census and BIS for the term "exporter." Section 758.8 discusses the return or unloading by forwarders, or other entities, of shipments at the direction of U.S. government officials, and part 730, supplement no. 3, notes that export control responsibilities for Ocean Freight Forwarders are with the Federal Maritime Commission's Office of Freight Forwarders.

You may additionally set up information briefings, whereby you invite EMCD, Customs and Border Protection (CBP), BIS's Export Enforcement, and/or representatives from other government entities to make presentations to your company and your business partners, in order to support you in educating all regarding compliance. Make use of the BIS website and the other government websites, and send staff to BIS seminars and seminars offered by other government agencies.

Parties who believe they may have committed a violation of the EAR are encouraged to submit a Voluntary Self Disclosure (VSD) to BIS. VSDs are an important indicator of a party's desire to bring their export activities into compliance, and also may provide important information to BIS helping to identify foreign proliferation networks. Parties submitting VSDs may be eligible for significant reductions in administrative penalties, and those with well-implemented EMCPs may expect further significant reductions of

administrative penalties. Procedures for submitting VSDs may be found in section 764.5 of the EAR. The procedures detailed in section 764.5 do not apply to VSDs involving violations of the antiboycott provisions of the EAR. Procedures for submitting VSDs for boycott violations are found in section 764.8 of the EAR.

The Office of Export Enforcement (OEE) and the Office of Exporter Services (OExS, which includes EMCD, OESD, and RPD) welcome the opportunity to work with the international forwarding community to help ensure compliance with U.S. export requirements. While it is important to protect yourselves and your clients from engaging in transactions that might constitute violations, it is equally important that BIS be able to fulfill its mission of keeping the most sensitive goods out of the most dangerous hands. Development of effective, well-integrated and well-implemented EMCPs, prompt notification by forwarders to OEE of suspicious transactions, and assistance to OEE Special Agents in gathering the evidence necessary to disrupt illicit proliferation networks and bringing export violators to justice, are important steps in helping to achieve these private-sector and public-sector goals.

If you have reason to believe a violation is taking place or has occurred, you may report it to the Department of Commerce by calling its 24-hour hotline number: 1 (800) 424-2980. Or, if you prefer, use our web form (at *https:// www.bis.doc.gov/forms/eeleadsntips.html*) to submit a confidential tip.

Please note that use of the form will not generate any return e-mail to you, so that the information you submit will remain confidential.

KEY ELEMENT 6:
Recordkeeping

Objectives:

- Identify who will keep the records;
- Specifically list the records that are to be maintained and in what format;
- Detail the filing and retrieval systems and procedures;
- Clarify the records retention period; and
- Determine methods to verify compliance with the recordkeeping requirements.

Procedure:

Recordkeeping requirements outlined in Part 762 apply to all transactions subject to the Export Administration Regulations. Section 772.1 defines the term "export control document." As defined in Section 762.6 of the EAR, the U.S. Government requires that companies keep export records for five years from the date (the latest date) of export from the U.S.; the date of any known reexport, transshipment, or diversion of such export; the date of any termination of the transaction, whether formally in writing or by other means; or in the case of records pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person receives the boycott-related request or requirement. Certain USG agencies may inspect these records whenever they deem necessary and have the option to cite an exporter that fails to have or to produce requested records. If a company has a policy to retain records for longer than the government-required time for document retention, and the government requests those older records, the company may not destroy them. The collection of documents in an audit request can be daunting, particularly if a company does not have a systematic method of filing records or in cross-referencing its record system.

The effective management of records requires integrating records management into company business processes as a critical function supporting the company's mission. Companies need a coordinated strategy, implemented company-wide, that will promote the effective

management of company records to ensure that they can be located and are available for as long as required. Therefore, management should issue a policy that would not only define the responsibilities and standards for recordkeeping, but also emphasize that records should be treated as a company asset. Recordkeeping must be an integral part of the way the company does business rather than something extra at the end of a process. Companies must establish written procedures to identify the individuals who are responsible for the operation, use, and maintenance of the recordkeeping system. Procedures for the inspection and quality assurance of records should be documented. In addition, a record of where, when, by whom, and into what system, required records are maintained, should also be kept. Including record-retention requirements in contracts with freight forwarders, brokers, and distributors, could also be useful.

Export-related records can be kept in a variety of ways -- in manual filing systems, in electronic network or web-based systems, in stand-alone computers, or in any combination of the three. Regardless of the filing system used, a company must be able to retrieve required documents. When feasible, the exporter should maintain the original records in the form in which they were created or received. Reproductions of original records may be maintained (if the nine conditions in Section 762.5 are met), but the reproductions must be complete, accurate, and legible. Whether stored in a paper, microfilm, or through electronic digital storage techniques systems, the record must be capable of being produced on paper. The system used must record and reproduce all marks, information, and other characteristics of the original record and be both legible and readable.

With the rapid advances in information and communications technology, particularly in the area of electronic transactions and business processes, automated recordkeeping systems, the growth of e-mail traffic, and the implementation of electronic business practices, both new opportunities and challenges have been created for company recordkeeping and knowledge management. Companies are facing a changing business environment where the management of overwhelming volumes of information and records is critical and traditional hard-copy methods for managing records has become outmoded as computers have become the primary method for storing information. In a computer based environment it is important to note that every employee involved in the export business of the company becomes a records manager responsible for ensuring records can be located, easily shared, and are not at risk of being lost.

In order to develop and support a good recordkeeping system, a company should, at a minimum, consider the following actions:

- Companies should understand their current business environment and the barriers to managing company record assets. By first recognizing the barriers, companies can take the necessary first steps toward creating a strategy to ensure that the company is creating and maintaining record assets effectively. Companies may find:
  - Records are not managed as a company asset or seen as critical to supporting the mission of the company;
  - Marginal support of records management has led to a lack of training, tools, and guidance for employees;
  - A lack of processes supporting the retention of records;
  - Ineffective implementation of records management processes and procedures;
  - Records management is not incorporated into business processes or not incorporated early enough, particularly for automated processes;
  - An overwhelming volume of records;
  - Difficulty assuring authenticity, reliability, and integrity of records;
  - Technological obsolescence of the hardware and software used to store electronic records; or
  - Lack of physical safeguards to secure records from being lost, destroyed, or otherwise compromised.

- A company should conduct an analysis of its business activities to identify all transactions subject to export control law that must be captured in a recordkeeping system. Types of records to be maintained will depend on the nature of the company's activities and how items are controlled for export under the EAR. A list of all records to be maintained should be developed and distributed to all employees (see template, below).

- A company should develop and implement a company-wide recordkeeping policy to define responsibilities and apply standards that encompass all record formats including but not limited to hard copy and electronic media, records from websites, management information systems, e-mail correspondence, and documents in individual and shared workspaces.

- A company should develop the necessary procedures and controls to carry out the recordkeeping policy. Provide employees with written guidance on these recordkeeping procedures, including a description of the record maintenance procedures, records location, responsible personnel, and simple aids outlining approved practices for capturing essential export records.

- A company should clearly allocate responsibilities for recordkeeping among personnel in line-business units, records management, system administration, and elsewhere. Publicly identify those designated with recordkeeping responsibility, and ensure oversight and chain-of-command exist.

- A company should develop ongoing training and awareness programs to ensure and promote the effective capture, retrieval, and management of records.

- A company should ensure that all required records are captured and correctly filed to allow for efficient search and retrieval by conducting periodic audits of the recordkeeping system. Documents should be kept in easily retrievable form and location. The filing system, whether hard copy or electronic, should allow easy matching, for any particular transaction, of invoices, Shippers Export Declarations/AES records, delivery notes, air waybills, bills of lading, packing slips, and records such as technical data logs. Regular internal reviews of recordkeeping will ensure proper practices and procedures are followed.

- For companies with electronic records management systems, they should ensure that records management and information technology are integrated as the cornerstones of an integrated information management strategy. In today's business environment, information technology has moved beyond data management to document management and even data warehousing. In order to effectively capture records, companies must realize the convergence of responsibilities between records management and information technology, and that a multi-disciplinary approach to integrating these two areas and the users who create the records is essential.

- For electronic systems, implement information systems that have sufficient capacity to support effective records management. For electronic information systems, records management requirements often are not considered early enough in the design or capital planning stages of information technology development. More often, records management is considered after implementation and too

late to incorporate specific recordkeeping requirements into systems design. If records exist in electronic form, a company should take records management into consideration when building new or enhancing existing electronic information systems to ensure that all appropriate records are captured and changes in technology do not make records obsolete. Companies should take into consideration hardware and software dependency, indexing requirements for retrieval, migration of software formats, and requirements for refreshing storage media. Indexing and other expedient search techniques should be used for documents whether they are stored electronically or in paper form.

- Manage the risk of losing records by evaluating the physical storage site and control procedures for disposal of records. Involve information technology specialists -- they design the safeguards of a company's electronic records and systems and know how data is stored and purged. Maintain a back-up system for electronic storage and implement measures that will assist recovery of information and other electronic communications on the company's computer systems and electronic mail facilities, should there be a failure in the main system. Also, remember that disposal of hard-drives should be part of your compliance considerations; hard-drives should be sanitized first (see DOC/NIST "Guidelines for Media Sanitation") before being sold or disposed of.

Specifically, companies should include in their recordkeeping systems:

- General export-related records;
- Records of certain communications with foreign nationals; and
- Records of certain communications with the U.S. government.

General Export-Related Records

U.S. export laws specifically require exporters and those involved in exporting to maintain records of the following documents, as applicable:

- The export license including any and all documents submitted in accordance with the requirements of the EAR in support of, or in relation to, an export license application. This includes:
  - All support documentation for license applications;
  - Memoranda, notes, correspondence;

- Contracts;
- Invitations to bid;
- Proforma invoices;
- Books of account;
- Financial records;
- Restrictive trade practice or boycott documents and reports;
- Application for International Import Certificate;
- Import or end-user certificate;
- Statement by ultimate consignee and purchaser;
- Delivery verification certificate or similar evidence of delivery;
- Shipper's Export Declaration and/or Automated Export System documentation;
- Air waybill, bill of lading, dock receipt or a short form bill of lading issued by any carrier and any other export clearance documents;
- Customer's purchase order;
- Packing list;
- Commercial invoice (with the destination control statement);
- Credit letters;
- Certificates of origin;
- Written acceptance of conditions by end-user, if a license is required.
- Key management infrastructure (KMI) classification requests and reports.
- Encryption commodities and software (ENC) review and classification requests and reports;
- Wassenaar reports of certain commodities, software, and technology controlled under the Wassenaar Arrangement as outlined in Part 743 of the Export Administration Regulations;
- Deemed Export Technology Control Plans;
- Special Comprehensive License Internal Control Programs;
- Advance notifications and annual reports of all exports of Schedule 1 Chemicals;
- Records pertaining to transactions involving restrictive trade practices or boycotts described in Part 760 of the Export Administration Regulations.

- Power of attorney or other written authorization for an agent to perform certain specified acts on behalf of the exporter, principal party, or foreign principal party;

- Voluntary self-disclosure statements;

- Records of transactions involving exports under any of the License Exceptions outlined in Part 740 of the Export Administration Regulations;

- Additional records for any items exported or reexported pursuant to License Exception RPL (Section 740.10) to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. For such export or reexport, the following information must be maintained:

  - A description of the equipment replaced, repaired, or serviced;

  - The type of repair or service;

  - Certification of the destruction or return of equipment replaced;

  - Location of the equipment replaced, repaired, or serviced;

  - The name and address of who received the items for replacement, repair, or service;

  - Quantity of items shipped; and

  - Country of ultimate destination.

When exporting operation software or technology controlled under ECCNs 2D983 and 2E983 under license exception TSU (Section 740.13), additional records must be maintained including the following information:

- A description of the software or technology exported or reexported, including the ECCN, as identified on the Commerce Control List;

- A description of the equipment for which the software or technology is intended to be used, including the ECCN, as identified on the Commerce Control List;

- The intended end-use of the software or technology;

- The name and address of the end-user;

- The quantity of software shipped; and

- The location of the equipment for which the software or technology is intended to be used, including the country of destination.

For humanitarian donations exported by U.S. charitable organizations under license exception GFT (Section 740.12), the donors must keep additional records including:

- The donor organization's identity and past experience as an exporter of goods to meet basic human needs;
- Past and current countries to which the donor program has been and is being directed, with particular reference to donor programs in embargoed destinations;
- Types of projects and commodities involved in the donor program;
- Specific class(es) of beneficiaries of the donated goods; and
- Information concerning the source of funding for the donor programs and the projected annual value of exports of humanitarian donations.

For exports to Iraq (Section 746.3) subject to a license requirement under the Export Administration Regulations as of July 30, 2004, and for exports to Libya (Section 762.2) subject to a license requirement under the EAR as of April 29, 2004, records must be kept on:

- The date of export or reexport and related details (including means of transport);
- Description of items, including ECCN, and value of items;
- Description of proposed end-use and locations in Iraq and Libya where items are intended to be used;
- Parties other than specific licensee who may be given temporary access to the items; and
- Date of consumption or destruction, if the items are consumed or destroyed in the normal course of their use in Iraq and Libya, or the date of reexport to a third country not requiring further export authorization from the United States, or return to the U.S.

For exports of crude oil under license exception TAPS (Section 754.2) authorized under the TransAlaska Pipeline Authorization Act, the master of each vessel carrying TAPS oil must maintain records on:

- The vessel's name, port of registry, and official number or call sign;
- The name of the vessel's owner(s);
- Whether ballast water is being carried;

- The original location and salinity, if known, of ballast water taken on, before an exchange;

- The location, date, and time of any ballast water exchange; and

- The signature of the master attesting to the accuracy of the information provided and certifying compliance.

Exporters must file post-shipment reports and keep records in accordance with recordkeeping requirements in Part 762 of the EAR for high performance computer exports to destinations in Computer Tier 3, as well as exports of commodities used to enhance computers previously exported or reexported to Computer Tier 3 destinations, where the "Adjusted Peak Performance" ("APP") is greater than 0.75 Weighted TeraFLOPS (WT). See Section 743.2 of the EAR.

Exporters must also file post-shipment reports for certain exports of thermal imaging cameras controlled by ECCN 6A003.b.4.b to certain countries; see Section 743.3 for the specific requirements and the information to be included in those reports to BIS.

For exports of unprocessed western red cedar, the exporter must maintain a signed statement by the harvester or producer, and each subsequent party having held title to the cedar that the cedar in question was harvested under a contract to harvest unprocessed western red cedar from State or Federal lands, entered into before October 1, 1979. Also, see Section 754.4 of the EAR.

In addition, companies should consider maintaining:

- Export control checklist documentation, including screening records.

- Red flag checklist documentation, including screening records.

- A company-specific product classification list outlining all formal commodity classifications and advisory opinions.

- Training log documenting all formal employee export training.

- Audit reports of a company's EMCP including recommendations and follow-up actions.

- Log to track temporary imports, exports and reexports (TMP; Section 740.9) to ensure all destinations are authorized and all items are either returned within one year or transferred according to the provisions of the Export Administration Regulations.

- Log to track shipments of limited value (LVS; Section 740.3) to ensure shipments do not exceed more than 12 times for a particular commodity in a calendar year to the same ultimate or intermediate consignee.

- License exception Technology and Software Under Restriction (TSR; Section 740.6) written assurance.

Documenting Certain Communications with Foreign Nationals

One of the greatest risks of inadvertent violations of export laws and regulations occurs during informal technical exchanges with foreign national employees, subcontractors, visitors or customers through telephone, facsimile, electronic mail, or in person. Putting a system in place to prevent the release of controlled technology and software is a good business practice. A company that has controlled technology and software and either employs foreign nationals or has frequent meetings with foreign nationals should consider developing a Technology Control Plan (TCP). A TCP should be incorporated into a company's export management and compliance program and include the additional features of a physical security plan, an information security plan, and personnel-screening procedures.

A company that does not have controlled technology or software may want to consider implementing a policy requiring a brief memorandum be submitted to export-compliance personnel documenting all communications with foreign-national customers and visitors or a policy that the export compliance manager be notified prior to a meeting with a foreign national.

Recordkeeping of foreign-national visitors at a company's facility, for example, would document all foreign-national visits and any special conditions attached to the visits. The record would indicate:

- The visitor's name and nationality;
- The name and affiliation of the organization represented;
- The date of the visit;
- Persons visited;
- Purpose of the visit with specific emphasis on products or services discussed; and
- A summary of the visit, including any issues or circumstances of note.

Instituting this type of recordkeeping would serve to heighten employees' awareness that such communications are risk areas for potential export violations, thereby minimizing the risk of an inadvertent violation.

Documenting Certain Communications with the U.S. Government

Companies should also consider developing and implementing a system to document all conversations with government officials involving potentially relevant interpretations or other guidance on export control issues. These records can provide continuity in performing future export compliance functions, and may assist the company in defending its actions if necessary. Copies of all such records should be provided to and maintained by export-compliance personnel.

It is recommended that companies require employees to direct all questions on interpretation or other guidance to the company's export-compliance manager and that conversations on behalf of the company with the U.S. Government on these issues be conducted by the company's export-compliance manager.

Exporters should note that under Section 762.3 of the EAR, a list of records has been provided that are determined to be exempt from recordkeeping requirements. The list includes records such as:

Export information page	Commission payment back-up
Special export file list	Commissions payable control
Vessel log from freight forwarder	Check request forms
Inspection certificate	Accounts receivable correction form
Guarantee certificate	Check request register
Warranty certificate	Commission payment printout
Packing material certificate	Commissions payable worksheet
Goods quality certificate	Engineering fees invoice
Customer notification of advance meeting	Foreign tax receipt
Letter of indemnity	Individual customer credit status
Financial release form	Exp. customers code forms request
Financial hold form	Receipt of funds acknowledgment
Export parts shipping problem form	Escalation development form

Draft number log	Summary quote
Expense invoice mailing log	Purchase order review form
Financial status report	Proposal extensions
Bank release of guarantees	Financial proposal to customers
Cash sheet	Sales summaries

Remember that various governmental agencies have recordkeeping requirements that may apply to your transactions, including the DOC BIS requirements in the EAR, Part 762, the DOC Census requirements in 15 CFR 30.66(c), the Department of State requirements in the ITAR, 22 CFR Part 122.5, the U.S. Treasury requirements in 31 CFR Part 501, and the Customs requirements in 19 CFR Part 163. Also, bear in mind that a transaction may be subject to the recordkeeping requirements of more than one governmental agency.

EXAMPLE OF A RECORDKEEPING CHECK LIST

✓	Records List	EAR Reference
	Export Administration Regulations (EAR)	762, & as specified below
	Federal Register notices affecting EAR	
	Export Management System (EMCP) Manual & Operating Procedures **Item Classification Sheet Export Authorization Decision Record Consolidated Check List**	Item & Country Item & Country Compliance
	BIS 748P, Multipurpose Application	748, Suppl. 1
	BIS 748P-A, Item Appendix	748, Suppl. 1
	BIS 748P-B, End-User Appendix	748, Suppl. 1
	BIS issued license & accompanying attachments riders or conditions	
	Written acknowledgment of receipt of conditions	750.7(d)
	BIS-711, Statement by Ultimate Consignee and Purchaser	748, Suppl. 3 & 748.11
	International Import Certificates or End User Certificates	748.10
	People's Republic of China End-User Certificate	
	License Exception TSR Written Assurance	740.6
	License Exception LVS Logs	740.3
	License Exception TMP Logs	740.9
	Classifications & Advisory Opinions	748.3
	Electronic License Submissions Log of Electronic Submissions	748.7
	Delivery Verification Certificates	748.13
	Commercial Invoices with the destination control statement	758.6
	Automated Export System Records	758.1; 758.2
	Air Waybills and/or Bills of Lading	
	High Performance Computer Records & Reports Safeguard Plans & Logs	742, Suppl. 3
	Humanitarian Donations GFT records	740.12

(continued)

EXAMPLE OF A RECORDKEEPING CHECK LIST

✓	Records List	EAR Reference
	Key Management Infrastructure (KMI) Classification Requests & Reports	740.8
	Encryption Commodities & Software (ENC) Review & Classification Requests & Reports	740.17
	Copies of Wassenaar Reports	743.1
	Restrictive Trade Practices and Boycott Documents and Reports	760.6
	License Conditions Records Required Reports of Theft or Loss	750.7
	End-User Acceptance of Terms and Conditions	750.7(d)
	Distributor Agreements	
	Records of transactions	
	Need to Add "Tools/Checklists" as described in the EMCP	

KEY ELEMENT 7:
Export Compliance Monitoring and Auditing/Assessing

Objective:

To protect the integrity of your EMCP by verifying that operational compliance procedures within all of the company's export-related divisions and locations reflect the company's written compliance procedures, and that company procedures are consistent with government export regulations.

To identify and resolve inconsistencies between written and operational procedures, draft an audit/assessment module which answers:

- Who should conduct reviews?
- What procedures should reviews follow?
- What should be audited/assessed?
- How often will reviews take place?

Procedure:

The best way for a company to assess the effectiveness of its compliance efforts is to formally audit/assess all elements of its compliance program, including the audit process itself. An effective audit program evaluates whether what should happen, does, and that what should not happen, does not, on a daily basis. Audits determine if the right questions are being asked throughout the process to ensure exports are consistent with U.S. national security and foreign policy interests and, thus, consistent with the best interest of the company. A company's audit program may consist of the following:

- Use of experienced audit personnel;
- Verification of checks and safeguards employed by individual business units for each of the key elements of an EMCP;
- Internal corporate audits/assessments;
- Use of external auditors/assessors; and
- Reporting, corrective action, and follow-up procedures for audits.

Experienced Audit Personnel

The experience level of audit personnel and the structure of the audit team are often an indicator of the effectiveness of a company audit program. To mitigate any potential conflict of interest, auditor(s), or staff acting in an auditing capacity, should have a chain-of-command that would allow them the freedom and flexibility to identify compliance deficiencies and potential areas of risk, and then make recommendations to address them. Companies should consider pooling resources to create an auditing team consisting of auditors, legal counsel, and experienced export-compliance personnel. Using such a team approach ensures the leveraging of multifaceted expertise to critically evaluate processes in detail.

Annual training of audit personnel should be a priority in a company's EMCP. Training should be tailored to a company's business operations and export compliance issues and should include training on auditing principles, practices, and procedures; explanations of U.S. export laws and regulations; an overview of the entire license application process from customer inquiry to product delivery; policy and procedures for implementing license authorizations and conditions; and an overview of potential areas of risk.

Internal Checks and Safeguards

Each program office or business unit should have its own ongoing internal assessment system to ensure that the policies and procedures of the company's export management and compliance program are being followed. These internal checks should be tailored to the operations of the program or business unit. Companies may want to consider using a simple checklist format of compliance factors to conduct assessments. A sample comprehensive compliance checklist is provided in the Audit Module: Self-assesment Tool on the BIS compliance website.

Internal checks should generally involve a transaction-level and process-level review of compliance efforts with a special emphasis placed on areas of high risk. These assessments can be conducted on a more frequent basis than a corporate-level audit or audit conducted by an external company. Most importantly, internal assessments can successfully focus attention at the business unit level on risk areas at an early stage, affording the opportunity to correct deficiencies before they result in major problems.

Internal Corporate Audits

At the corporate-level, companies should schedule internal audits to be conducted at least on an annual basis on the overall export management and compliance program. These audits should focus on the company's overall export compliance process and the export transactions of specific business units. An export compliance audit should include, but is not limited to, the following:

- Interviews with export-related personnel and management;
- Analysis of export control checks especially screening practices and internal controls for compliance;
- Comparison of operational practices to written procedures;
- Review of management commitment;
- Review of current policies and procedures including all written guidelines;
- Review of training and education programs;
- Review of the order processing system;
- Analysis of the export authorization process;
- Analysis of the implementation of export licenses including adherence to and tracking of license conditions;
- Review of internal assessments;
- Review of notifications of noncompliance;
- Review of procedures for corrective action and follow-up;
- Review of procedures related to visits or employment of foreign nationals;
- Review of technology controls and technology transfers, including via e-mails;
- Review of procedural checklists for travel abroad, including for hand-carried items like laptop computers;
- Review of recordkeeping practices;
- Sample review of export-related documents; and
- Analysis of sample transactions.

See separate **Audit Module: Self-assessment Tool**, on the BIS compliance website for much more detail regarding audits/assessments for all nine key elements of an EMCP.

External Audits

It is a good business practice to periodically utilize an outside auditor. External audits can provide an unbiased, third-party evaluation, and validation, of a company's overall export management and compliance program and practices.

Reporting, Corrective Action, and Follow-Up Procedures for Audits

Companies should include in their export management and compliance programs the appropriate procedures and practices for audit reporting. Audit reports should be provided to the program office or business unit reviewed and to the appropriate management officials. If an audit's findings raise questions concerning export compliance risks, procedures should also be in place for these issues to be raised to management attention. Procedures should define the requirements for implementing audit recommendations, following-up on corrective actions taken, and reporting on audit recommendations.

SUMMARY

Pre-audit Checklist

- Identify business units and personnel to be audited.
- Send e-mail notification to affected parties.
- Develop a tracking log for document requests.
- Prepare audit templates such as interview questions, transactional review checklist, audit report format, etc.
- Each business unit should provide their written procedures related to export compliance before the audit.
- 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.

Post-audit Checklist

- 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, with time-frames, in audit report.
- Brief executive management on audit findings and recommendations.
- Track corrective actions. Within the year, audit corrective actions.

KEY ELEMENT 8 & 9:
Handling and Reporting Export Compliance Problems and Violations, & Taking Corrective Actions

Objective:

To provide clear guidance to company employees regarding notification, escalation, and corrective action for times when there are problems or suspected problems with export transactions.

Procedure:

An essential part of a company's export management and compliance program are procedures which provide clear guidance to all employees, including contract employees, concerning what actions to take in the event of suspected incidents of export-related noncompliance.

An effective notification program for reporting suspected incidents of export-related noncompliance includes:

- Management that is fully committed to conducting business in compliance with the letter and spirit of the law and committed to fostering a safe environment for employees who raise questions or concerns about compliance;
- Internal and external reporting procedures for suspected violations of noncompliance; and
- Corrective and disciplinary actions for noncompliance with company compliance policies and procedures and incidents contrary to U.S. export law.

Management Commitment

For any notification program to work, employees, including contract employees, must feel that management at all levels of the organization is truly committed to export compliance. This commitment must be effectively communicated, often and broadly. Employees should not only be encouraged to report suspected export violations but also know that management views reporting suspected violations as an integral part of the

company's compliance program and an important part of the responsibility and duty of each employee's job. Management must convey to employees that in addition to knowing the legal and ethical responsibilities that apply to their jobs, it is an employee's duty to speak up if they are unsure about the proper course of action or need advice, if they believe another employee is doing, or may be about to do, something that violates the company's compliance program, or if they believe that they have personally been involved in noncompliant activity. Management must instill within all employees the personal commitment to do the right thing.

The most important thing Management can do to foster a culture of compliance within their employees is to lead by example. Employees must have a high level of assurance that export compliance is management's overriding concern in all export decisions and will never be sacrificed for profit or personal gain. It is critical that employees know that they will be free from retribution or retaliation from other employees or management if in good faith they raise questions or concerns about compliance. In fact, employees who have both the conscience and confidence to step forward when actions are suspect are one of the best defenses a company has to ensure that it does not break any export compliance laws.   Management should also ensure that employees they supervise have adequate training, knowledge, and resources to comply with the company's compliance program.   They are responsible for monitoring compliance of the employees they supervise, enforcing compliance standards consistently, and reporting incidents of noncompliance to the proper management level.

It should be made part of performance plans, performance evaluations, and the promotion process, that employees voice concerns when they see a possible problem. Additionally, employees who speak up should be lauded, perhaps in a monthly company compliance newsletter, even if the problem reported resulted in no violation, but only in a change in procedures to expedite compliance and business.

Internal and External Reporting Procedures

As part of a company's export management and compliance program, all employees should be given clear instructions on where suspected incidents of export-related noncompliance should be reported. Suspected incidents can be reported in a variety of places in a company including an export compliance office, legal department, or ethics hotline. The office or individual(s) assigned the responsibility for taking reports should be

publicly identified. The name, room number, telephone number, and e-mail address of the notification office or person(s) should be made available to all employees, especially those involved in export-related activities. In addition, companies may consider providing a mechanism or venue through which employees can make reports anonymously and can be assured that those reports will be confidential and shared on a 'need-to-know' basis.

Written procedures should be developed explaining the internal procedures to be followed by the appropriate company personnel when a suspected incident of export related noncompliance has been reported. Think through as many contingencies as possible ahead of time, and delineate appropriate and detailed procedures. At a minimum, this should include:

- Criteria for when to conduct an investigation on a potential noncompliant activity;
- How to determine and revise the scope of the investigation;
- The investigation procedures (who, what, where, when, how);
- Investigative report documentation requirements, making it clear to employees that it is in their and the company's best interests to strictly adhere to documentation requirements;
- Management notification procedures if noncompliance is discovered;
- Documentation requirements of remedial action taken;
- Follow-up reporting procedures to management regarding corrective actions taken; and
- Notification procedures to the reporting employee regarding the outcome of the investigation.

Written procedures should also be developed establishing procedures for reporting violations to the U.S. government. The Commerce Department has a Voluntary Self-Disclosure program under which the disclosure will be considered as a mitigating factor in an export enforcement investigation. However, in order to be considered "voluntary," disclosures must be made prior to the time the U.S. Government obtains knowledge of either the same or substantially similar information from another source and initiates an investigation or inquiry. In addition, the voluntary disclosure must be made with the full knowledge and authorization of senior company management. To make a voluntary disclosure, contact the Director of BIS's Office of

Export Enforcement, as per Section 764.5(c)(7). To maximize mitigation, also disclose what corrective action is being taken and any other mitigating factors, including how you have implemented all nine key EMCP elements included herein.

Corrective and Disciplinary Actions

Every problem is also a learning opportunity to enhance your company's EMCP and its business and compliance processes; therefore, be sure to incorporate lessons learned into your training and awareness programs.

Since your EMCP should make it clear in every section that employees are both responsible and accountable, companies should also consider developing a graduated scale of disciplinary action for employees who do not comply with the company's export policies and procedures, and should also define disciplinary actions to be taken in the event of export violations or negligence. Disciplinary actions should be considered on a case-by-case basis depending upon the seriousness of the incident, and can range from oral/written reprimands to termination. When warranted, the use of administrative or financial penalties is probably one of the most effective tools a company has to warn other employees that noncompliance will not be tolerated.

Compliance Guidances Summary

Having an Export Management and Compliance Program will help prevent our U.S.-origin dual-use goods and technologies from being used against us, and in that regard, the jobs of all involved with exporting have a national security component to them.

A well-implemented EMCP that include all nine elements described here, will help companies to thrive and will serve as a mitigating factor in an enforcement proceeding.

Use the following checklist to evaluate your EMCP:

EMCP Self-evaluation Checklist

- Are management commitment and managerial involvement clearly apparent?
- Are sufficient resources, including qualified and dedicated employees, committed to support the compliance program?
- Are there established mechanisms through which employees feel safe and comfortable reporting concerns regarding noncompliance activity?
- Do you have established compliance policies, procedures, and standards of conduct for export operations and personnel?
- Is there a sufficient level of written operational guidance to ensure day-to-day compliance?
- Are there effective lines of communication throughout export operations?
- Has your organization built compliance partnerships and applied programs globally?
- Does your organization provide training to all employees on export-compliance policies and specialized training on policies and procedures for those directly involved in exports and the export-compliance program?
- Have you implemented checks and safeguards, including screening of parties and activities, throughout all export processes?

- Does your program ensure compliance and detect violations through continuous monitoring and audit systems, and does it also ensure appropriate recordkeeping?

- Does your EMCP ensure consistent and quick response to detected violations? Does it have an established procedure for escalating problems and taking corrective action when needed?

- Do you continuously evaluate and modify your program to enhance prevention and detection of noncompliance risks?

Investing in an EMCP that is well integrated into your current business processes can lend predictability, consistency, and security to your export transactions, as you ask the right questions and undertake the right analyses regarding parties to your transactions and uses of your items. A well-implemented EMCP, including detailed step-by-step procedures tailored to the specifics of your business, can also lend sustainability and longevity to your business, as well as the business partners you've included in the process, especially given the recent heightened penalties for export violations. Your partners at the Office of Exporter Services in BIS are waiting to assist you in developing your EMCP; contact us today at (202) 482-0062, or through our "Compliance Program Assistance" link on our BIS website (*www.bis.doc.gov*).

To have your draft EMCP reviewed by BIS, please send it (electronically and/or hard copy) to:

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