

# ENFORCEMENT OF EXPORT COMPLIANCE

Export Compliance is not the responsibility of the government. Export Compliance is the lawful responsibility of everyone who exports goods from the United States. In part, Compliance is an on-going effort to prevent the proliferation of Weapons of Mass destruction, facilitation of terrorism and denying terrorist the means resources to continue their murderous ways. No responsible citizen or company can merely look to make profits today at the cost of our national security.

Compliance is the first line of defense in protecting our national security. Here are the nine principles we apply in deciding whether a compliance program is effective and entitled to great weight mitigation.

## **1. Whether the company has performed a meaningful risk analysis.**

You conduct risk analyses in other aspects of your business, and you must do so in fashioning an effective compliance program as well. A meaningful risk analysis is the baseline from which an effective compliance program is designed. Among other things, you must consider the types of goods you are exporting, and the destinations they are bound for, as well as the likelihood of diversion. It is critical that you periodically revisit your risk analysis as your business model changes over time and becomes different or more complex, so that you modify your compliance plan to take those new circumstances into account.

## **2. The existence of a formal written compliance program.**

Without a written compliance program, there is no baseline from which to measure its effectiveness. There are no common goals set or communicated to others for the program.

## **3. Whether appropriate senior organizational officials are responsible for overseeing the export compliance program.**

Put people at a high level of responsibility into oversight positions for this and all other export-related matters. Please, do not leave these important issues to some isolated, lower-level person in the company. That is not the way companies deal with important issues.

## **4. Whether adequate training is provided to employees.**

You will have to train your employees so that they know what is required of them for your company to be in compliance. For them to stay abreast of developments, the training will have to be ongoing. In order to hold them accountable, you will have to maintain records showing that you provided appropriate training.

## **5. Whether the company adequately screens its customers and transactions.**

Your program has to have put the proper controls in place, including the various export screening mechanisms. On BIS's website, you will find "Know Your Customer" guidance, and the various lists against which you should screen export transactions.

## **6. Whether the company meets recordkeeping requirements.**

The EAR has recordkeeping requirements, and your company should make sure that it meets them. You should also maintain the kinds of records commonly expected in your line of business, all of which properly document the transactions in which you have engaged.

### **7. The existence and operation of an internal system for reporting export violations.**

Your compliance program should have an internal system through which employees can report suspected export violations. Such reporting systems provide you with the ability to look into such matters further and take appropriate action, including making Voluntary Self-Disclosures, for which administrative penalties are mitigated by 50 percent.

### **8. The existence and result of internal/external reviews or audits.**

You will have to test your program by running periodic audits of some kind, which will show you how well it is working. You will have to modify your company's procedures in light of what those audits show. Moreover, you will need to review, revise and update your compliance programs. If you have not taken a look at your program recently, it is probably time to do so. And it is probably time to revise it, in light of recent developments that have occurred in the law, in business and elsewhere.

### **9. Whether remedial activity has been taken in response to export violations.**

Under your compliance plan, it is important that you take appropriate disciplinary actions against employees who put your company and our nation at risk – not merely sweep those problems under the rug. If either the federal prosecutors get to those problems and employees first, it will be worse for everyone involved, including your company.

From Enforcement Keynote Address;  
Assistant Secretary Darryl W. Jackson,  
BIS Export Control Forum,  
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SEE ALSO: [www.bis.doc.gov](http://www.bis.doc.gov)

**FOR ASSISTANCE, M.E.Dey & Co., Inc offers compliance consulting at 800-635-5537**