

My goods are EAR99. Why do I have to screen?

One afternoon I get a phone call from a frantic export client who is desperate to meet with me. He's just been informed by the Bureau of Industry and Security (BIS) that he's being penalized \$250,000 for failing to do proper export screening. He tells me that the Bureau has made a huge mistake. His goods are harmless commodities with no specific ECCN, so they are classified as EAR99. Since his goods don't need a license, he was under the impression that he didn't have to do any screening. Not exactly, I tell him.

Additional Screening

It is in an exporter's best interest to document the process for each of the following screens as well as keep the records for each completed screen for five years.

Denied Party Screening. This screen involves checking a number of lists to ensure that an export or reexport is not being shipped to a prohibited end-user. Exporters can invest in software to perform this screen or use the Lists of Parties of Concern on the Bureau of Industry and Security's website.

The first part of the screen involves checking the Denied Persons List and Debarred List. It is illegal for an exporter to conduct a sale with any individual or entity on these two lists, regardless of whether the end-user is located in the U.S. or overseas.

Next, exporters should check all parties against the Unverified List, Entity List, Specially Designated Nationals List, and Nonproliferation Sanctions List. Export transactions involving certain parties on these lists may be completely prohibited or only allowed with a license.

Red Flags Check. This is a check for any abnormal circumstances in an export transaction that cause a reasonable suspicion of a potential violation of the Export Administration Regulations (EAR). The Bureau of Industry and Security refers to such circumstances as "red flags." Examples of red flags include the customer insisting on paying with cash for an expensive item when normally the terms of sale would call for financing OR the products don't fit the buyer's line of business (e.g. an order of sophisticated computers for a small bakery).

Sanctioned/Embargoed Countries Check. Exporters must verify that the destination is not a sanctioned country. The U.S. restricts shipping to Sudan, Syria, Cuba, North Korea, and Iran. Exporters should carefully review embargo provisions for license requirements.

End-Use Check. For goods subject to 15 CFR 744, exporters must check for prohibited end-uses, such as chemical, biological, and nuclear applications; as well as those used to transport them (e.g. a vessel, aircraft, or rocket system).

If any of the above screens results in a prohibition, the exporter must request a license from the Bureau of Industry and Security or ensure the export is eligible for a license exception.

The Real Cost of Noncompliance

It's important that U.S. exporters understand and comply with all screening requirements to avoid losing export privileges and hundreds of thousands of dollars in penalties [2]. In 2010, the Bureau of Industry and Security completed 708 end-use

checks, resulting in over \$12.2 million in criminal fines and \$25.4 million in civil penalties [3].

Footnotes

[1] See 15 CFR 736.2.

[2] See 15 CFR 766.

[3] Amounts for fines taken from page 9 of the Bureau of Industry and Security's "Annual Report to Congress for Fiscal Year 2010."

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