

Export Compliance

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Exporting is more than making a sale and arranging a shipment to a foreign customer. Even if the sale is through another U.S. company, your company assumes liability for the final destination of your products. You and/or your company could ultimately be held responsible if products end up in an embargoed country or in the possession of a person or entity that is on one of the denied parties lists – even if it is unbeknownst to you. Violators of the Export Administration Regulations (EAR) could be subject to both administrative and criminal penalties.

Because the U.S. government wants to ensure export compliance, on October 1, 2000, it changed the Foreign Trade Statistics Regulations to define the party who is ultimately responsible for the export. Prior to the change, it was simply defined as the exporter. The new regulation defines it as the United States Principle Party of Interest (USPPI). The U.S. Census Bureau's interpretation of who is the USPPI can be found on page 7 of the AES Compliance Best Practice Manual. In essence, it is the business that gains the most from the transaction, monetary or otherwise. In a simple transaction in which a U.S. manufacturer sells directly to a foreign customer, the U.S. manufacturer is the USPPI. However, your sale could be to another U.S. Seller (wholesaler/distributor), which has included its own profit margin in the selling price to the foreign entity. If its profit margin (or other benefit) is greater than yours, it would become the USPPI.

There are several lists to check before an order should be accepted. Note that many of these lists include U.S. individuals or entities that have been denied export privileges. The Bureau of Industry and Security (BIS) maintains three lists: Denied Persons, Unverified and an Entity list. These are individuals or entities that have been denied export privileges or for which a license for export is required under the EAR. BIS is concerned with issues of exporting goods that could pose a danger to U.S. interests if diverted or misused. The U.S. Department of State has authority over defense articles; therefore it services and administers the Nonproliferation Sanctions as well as the Debarred List. These are foreign individuals, private entities and governments that engage in proliferation or are barred from participating in the export of defense articles and services. The U.S. Department of Treasury's Office of Foreign Asset Control (OFAC) administers and enforces the Specially Designated Nationals list as well as economic and trade sanctions based on U.S. foreign policy. There is a link to most of these lists on the BIS website

and they are also included at the end of this article. Before the shipment leaves the U.S., the USPPI must file a Shipper's Export Declaration (SED) through the U.S. Census Bureau's Automated Export System. If the USPPI delegates an authorized agent such as a freight forwarder to file the SED, it must give a properly executed power of attorney to the agent. The agent must also be physically located in the United States.

Even if you are not the USPPI, you can be held legally liable if your goods wind up in an embargoed country or in the hands of an individual or entity from which the U.S. government has banned from conducting business with a U.S. company. Whether you are just getting started in exporting or are doing research about a particular transaction with regard to the EAR, I recommend that you visit the Bureau of Industry and Security's website, which has a number of resources for exporters. The Export Control Basics link gives general information that defines what is an export and if an export license is needed for your product (note that a license may or may not be required depending upon the country or entity you to which you are shipping). With regard to compliance I recommend reading the Compliance/Enforcement section. The BIS warns that it is our duty to check out the details of a sale and specifically states that a company or its employees and sales force are not to self-blind. Under Know Your Customer Guidance, there is a link entitled Don't Let this Happen to You. These are examples of hefty fines, prison or probation, and revocation of export privileges that have been the consequence for exporters that shipped EAR controlled substances without licenses, or have undervalued the shipment, or have shipped to an entity to which they should not have been doing business.

This article is not meant to sway you from finding new markets for your products, but rather is to inform you there are regulations that must be followed, whether or not you are the USPPI. By simply setting up export compliance procedures for your company, you will avoid costly fines and penalties for actions that you would otherwise unknowingly violate.

Recommended websites with links:

The following website links provide further information on the subject of "Export Compliance". Feel free to make use of them.

U.S. Department of Commerce, Bureau of Industry and Security:

<http://www.bis.doc.gov/>

- Export Control Basics
- Lists To Check

U.S. Department of Treasury, Office of Foreign Assets Control:

<http://www.treas.gov/offices/enforcement/ofac/>.

- Sanction Programs: Country and List Based
- OFAC News and Guidance
- Frequently Asked Questions

U.S. Department of State:

<http://www.state.gov/>

- About State – International Security and Nonproliferation – Nonproliferation Sanctions
- Business – Defense Trade Controls – Country Policies and Embargoes
- Business – Compliance – Compliance Program Guidelines

U.S. Census Bureau – Automated Export System:

<http://www.census.gov/foreign-trade/aes/>

- Getting Started on AES – Overview
- Getting Started on AES – AES Best Practices
- Document Library – Newsletters – Newsletter Archives – January 2003 (defines USPPPI)