

*The International  
Trade Compliance  
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Experts for  
129 years!*

## Customer/End-User Screening - A critical step in export compliance

What process do you use and when do you use it to screen prospective and on-going foreign customers/consignees against the various denial lists? Do you know what the denial lists are? Perhaps you export goods that you view as not at all sensitive in respect of concerns of the U.S. Government over issues such as nuclear or chemical/biological proliferation, terrorism, or missile technology.

Let's place all goods, technologies and software exported from the U.S. into a context. What does the U.S. Government actually control at export? The answer is everything. There is only one exception - technology or technical data that is in the public domain that is freely available at no or nominal cost. In other words, the government does not control information that can be acquired in a public library; that which is available on the Internet; the sales, marketing and technical literature that your company freely distributes to anyone who asks for it.

Everything else is controlled at export by one or more agencies of the U.S. Government. The key is that a control over exports from the U.S. is all a matter of degree. It's how much control over what item to what destination to which end-user for what end-use. That combination could yield a result permitting the export under provisions of No License Required (NLR) or, at the other extreme, the issuance of a very specific license by a government agency for a specific quantity, company, country only after review and approval by one or more other agencies. It may be that as a condition of the U.S. export license, your foreign customer is prohibited from moving (reexporting) the goods out of its country without U.S. Government permission.

The three agencies most frequently encountered in the export control arena are the Bureau of Industry & Security (BIS) within the Department of Commerce, Directorate of Defense Trade Controls (DDTC) within the State Department, and the Office of Foreign Assets Controls (OFAC) within the Treasury Department. Respectively, they control dual-use goods, defense articles, and financial transactions. Though several other agencies, such as DEA and the Nuclear Regulatory Commission, have limited categories of goods and technology under their jurisdictions, these three account for the vast majority of all commodities, technologies and software at export.

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## *Customer/End-User Screening - A critical step in export compliance continued. . .*

So, you have properly classified your commodity, technology or software for export purposes and have determined that it may be exported under BIS regulations as NLR (no license required), or under DDTC regulations as an exemption, or there was no specific country destination sanction imposed by OFAC. If you think, at this point, you are good to go you will be making the same mistake that too many other exporters make and have suffered the penalties for.

Have you screened your consignee/end-user against the various denial lists published by these government agencies? It doesn't matter if your export is NLR or under a DDTC exemption. If the consignee/end-user is on one of the lists, the export may not be conducted without a license issued by the agency on whose list the name was found. Such licenses are not always granted.

### **Denied Persons List**

A list of individuals and entities that have been denied export privileges from the U.S. or the privilege of receiving U.S. exports. Any dealings with a party on this list that would violate the terms of its denial order is prohibited.

### **Unverified List**

A list of parties where BIS has been unable to verify the end use in prior transactions. The presence of a party on this list in a transaction is a "red flag" that should be resolved before proceeding with the transaction.

### **Entity List**

A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations. The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the Export Administration Regulations.

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### **Specially Designated Nationals List**

A list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC). OFAC's regulations may prohibit a transaction if a party on this list is involved. In addition, the Export Administration Regulations require a BIS license for exports or reexports to any party in any entry on this list that contains any of the suffixes "SDGT", "SDT", "FTO" or "IRAQ2".

### **Debarred List**

A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.

### **Nonproliferation 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).

### **General Order 3 to Part 736** (page 9)

This general order imposes a license requirement for exports and reexports of all items subject to the EAR where the transaction involves a party named in the order. This order also prohibits the use of License Exceptions to export or reexport to these parties. These parties are currently located in: Dubai, United Arab Emirates; Germany; Syria; Lebanon; Malaysia; Iran; and Hong Kong.