Export Controls: Assessing your Compliance Program and Responding to Non-Compliance Findings

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Checklist of Good Practices
### 7 Elements of a Good Compliance Program

<table>
<thead>
<tr>
<th>Element</th>
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<tbody>
<tr>
<td>Establish Policies, Procedures and Controls</td>
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<td>Exercise Effective Compliance and Ethics Oversight</td>
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<td>Exercise Due Diligence to Avoid Delegation of Authority to Unethical Individuals</td>
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<td>Communicate and Educate Employees on Compliance and Ethics Programs</td>
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<td>Monitor and Audit Compliance and Ethics Programs for Effectiveness</td>
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<td>Ensure Consistent Enforcement and Discipline of Violations</td>
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<td>Respond Appropriately to Incidents and Take Steps to Prevent Future Incidents</td>
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Sponsored Projects
Technology Transfer

- Material Transfers
- Non-Disclosure Agreements
- Invention Disclosures
- Licensing Technology
Raise Awareness

- Notices for foreign travelers
- Simple Information Form

Exceptions

- TMP
- BAG

Exports

- Licenses
- Clean Computer Program
Digital Data Concerns

- Cloud Computing
- Portable Storage
- Destruction
- Email
Assessing the Efficacy of Your Program
Effective Compliance

- Top Level Commitment
- Ongoing Awareness & Education/Training
- Pre- and Post Compliance Monitoring
- Continuous Assessment of Risk
- Internal Controls Written Policies And Procedures
- Controlled Work in Segregated Facilities
- Recordkeeping in Accordance with Regulations
- Monitoring & Audits
- Self-disclosure & Corrective Actions
<table>
<thead>
<tr>
<th>Nunn-Wolfowitz Task Force Report</th>
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<tbody>
<tr>
<td>Summaries of applicable export laws and regulations</td>
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<tr>
<td>Charts or diagrams showing the organizational compliance structure</td>
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<tr>
<td>Policies and procedures regarding export compliance</td>
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<tr>
<td>Technology classification and license matrices</td>
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<tr>
<td>Operations and licensing process flow charts</td>
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<tr>
<td>Sample forms, instructions and agreements</td>
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<tr>
<td>Contact list of important export compliance employees</td>
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<tr>
<td>Lists of other export compliance resources</td>
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BIS Elements of Good Compliance

- Management Commitment
- Continuous Risk Assessment of the Export Program
- Formal Written Export Management and Compliance Program
- Ongoing Compliance Training and Awareness
- Pre/Post Export Compliance Security and Screening
- Adherence to Recordkeeping Regulatory Requirements
- Internal and External Compliance Monitoring and Periodic Audits
- Maintaining a Program for Handling Compliance Problems, including Reporting Export Violations
- Completing Appropriate Corrective Actions in Response to Export Violations
Effective manuals and programs include:

• Organizational structure
• Corporate commitment policy
• Identification, Receipt and Tracking of ITAR Controlled Items/Technical Data
• Re-Exports/Retransfers
• Restricted/Prohibited Exports and Transfers
• Recordkeeping
• Internal Monitoring
• Training
• Violations and Penalties
Internal Controls

Reasonable Assurance

Effectiveness

Compliance

Efficiency

Reliability
Assessing Effectiveness

- Internal Audit
- Responsible Office
- Information Security
Audit Sample

- Audit High Risk
- Sample Moderate Risk
- Validate Process
- Annual Updates
Periodic Updates of Policies and Procedures

- Revised/New Regs
- Forms/Templates
- Violations Non-Compliance
Dealing with Issues of Non-compliance
Dealing with Potential Violations

**Discovery**
- Audits
- Provide a safe environment for reporting
- Have written procedures for handling potential violations

**Investigate**
- Provide a timely response
- Ensure compliance is restored
- Inform those on the escalation tree
- Self-report within required timeframe

**Corrective Action**
- Determine the cause and accountability
- Revise internal controls, if needed
- Take disciplinary action, if warranted

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Legal Support

Export Controls Office

University Counsel

External Counsel
Ancillary Issues
DD Form 2345 Militarily Critical Technical Data Agreement

Under the Canada/US Joint Program

- A certification is required by U.S. or Canadian contractors for access to unclassified technical data disclosing militarily critical technology with military or space application that is under the control of, or in the possession of the U.S. Department of Defense (DoD) or the Canadian Department of National Defence (DND).
- Issued by Defense Logistics Information Services (DLIS)
- Valid for five (5) years
- Must be signed by an authorized official
NARA Proposed Rule on Controlled Unclassified Information (CUI) - RIN 3095-AB80

- Confidential Unclassified Information was originally defined by Executive Order 13556 published in 75 FR 68675 on November 4, 2010 with implementation by agencies
- National Archives and Records Administration (NARA) proposed rule published May 8, 2015
- Requires reporting of non-compliance
- CUI Registry

Planned single FAR clause to flow down requirements to federal contractors
• Prescriptive requirements
• References security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations
• Cyber incident reporting requirement requires “rapid reporting” within 72 hours of discovery of any cyber incident.
• National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations
  – Deadline for Compliance: December 31, 2017
Contact Information

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