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together

**ESTABLISHING AN
EXPORT COMPLIANCE PROGRAM**

Export Compliance Workshop

November 16, 2011

Export Compliance

Export Compliance Policy Statement

Export Compliance Policy Statement

Requires each and every employee to comply with the export laws and regulations of the United States to the full extent that such laws and regulations apply to Company's products.

Export Compliance Policy Statement

Employees who fail to comply with such export laws and regulations shall be subject to disciplinary action, including termination of employment.

Export Compliance Policy Statement

Further, any employee who does not comply with the export laws and regulations of the United States may additionally incur **individual liability** for civil and criminal sanctions as permitted by law.

Export Compliance Policy Statement

Company will assist its employees in determining the nature and extent of the export laws and regulations that apply to Company's products.

Export Compliance Program

Outline

- ✓ Export Behavior
- ✓ Export Definition & Deemed Exports
- ✓ Export Controls
- ✓ Export Procedures
- ✓ Export Record Management

Step 1: Export Behavior

- 1. Foreign Corrupt Practices Act**
- 2. Anti-Boycott Act**
- 3. False Statements Act**

Export Behavior

Foreign Corrupt Practices Act

(FCPA)

FCPA compliance

Company Policy mandates full compliance with FCPA by all operations and by all employees.

Each officer, general manager and division controller is responsible for ensuring that this policy is **known to the employees they supervise **and** for **promptly reporting** to the Law Department any events or activities suggesting that a violation has or might occur.**

Foreign Corrupt Practices Act

Compliance Measures

- ✓ **Maintain books, records and accounts that explain nature of and reason for payments made to foreign persons.**
- ✓ **Educate / train US operations and foreign subsidiaries regarding FCPA**

Foreign Corrupt Practices Act

Compliance Measures (cont'd)

- ✓ Investigate third party reps & JV partners
 - *Ties to foreign government*
 - *Reputation in general*
- ✓ Develop and Use Due Diligence Review Questionnaire

Foreign Corrupt Practices Act

Compliance Measures (cont'd)

- ✓ **Insert FCPA Compliance Language Developed in Third Party Rep Agreements.**
- ✓ **Obtain Annual FCPA Compliance Certifications from Third Party Reps.**

Foreign Corrupt Practices Act

Compliance Measures (cont'd)

- ✓ **Screen Purchase Orders / Requests for Proposals (RFP's) Issued by Foreign Governments for Payment Requests Associated with Contract Award.**

Foreign Corrupt Practices Act

Compliance Measures (cont'd)

- ✓ Develop Hotline for Reporting FCPA Problems / Issues
- ✓ Check out “**red flags**”
- ✓ **Don't Self-Blind!**

Export Behavior: FCPA

FCPA Guidance

**Visit Justice Department
Website at**

<http://www.usdoj.gov/criminal/fraud/fcpa/opinion/>

Export Behavior

Anti-Boycott Act

Export Behavior

Anti-Boycott Compliance

- ✓ **Check transaction for boycott requests**
- ✓ **Boycott Language Examples on BIS website**

Export Behavior

False Statements Act

Export Behavior

False Statement Act Compliance

Insure Accuracy of:

- ✓ **Export License Applications**
- ✓ **Commercial Invoices**
- ✓ **Exit Documents (SED's / AES's)**
- ✓ **Origin Certificates**

US Export Laws & Regulations

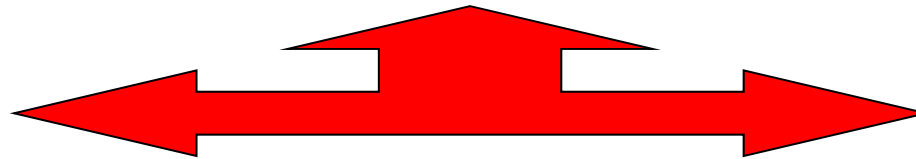
Outline

- ✓ Export Behavior
- ✓ Export Definition & Deemed Exports
- ✓ Export Controls
- ✓ Export Procedures
- ✓ Export Record Management

Export?

- Goods
- Services
- Technology / Technical Data

To



**US Person in
Foreign
Country**

**Foreign Person
in Foreign
Country**

**Foreign
Person in
United States**

Procedures for International Travel With Lap Top Computers

Prior to Departure, determine if any Data on your Lap Top is either **prohibited** or **otherwise requires a license** for export to the travel destination.

✓ **If Data is prohibited from export to travel destination, purge data from lap top before travel.**

✓ **If Data is licensable:**

Check availability of License exemption? Or

Obtain License approval? Or

Purge Data from Lap Top.

Procedures for E-Mailing Technical Data

Prior to sending E-Mail to a foreign country or to a foreign recipient – either in the US or outside the US -- determine if the E-Mail contains any Data that is either **prohibited** or **otherwise requires a license** for export to the destination foreign country or the foreign person recipient.

- ✓ If Data is prohibited from export to the destination country or to the foreign person recipient, remove Data from E-Mail before release.
- ✓ If Data is licensable:

Check availability of License exemption? Or

Obtain License approval? Or

Purge Data from E-Mail.

Place note in file regarding resolution

Procedures For Foreign National Employees

- ☑ **Determine need to disclose technical data / technology**
- ☑ **If necessary:**
 - ☑ **Assess export control jurisdiction**
 - ☑ **Conduct prohibited country screenings**
 - ☑ **Conduct prohibited & restricted party screenings**
 - ☑ **Apply for export license, if required**
 - ☑ **Assign escort until license received**
 - ☑ **Restrict computer access**
 - ☑ **Obtain signed Technical Data Access Agreement**

Procedures For Foreign National Visitors

- ✓ **Determine need to disclose technical data / technology**
- ✓ **If necessary:**
 - ✓ **Assess export control jurisdiction**
 - ✓ **Conduct prohibited country screenings**
 - ✓ **Conduct prohibited & restricted party screenings**
 - ✓ **Apply for export license, if required**
 - ✓ **Develop visit plan consistent with licensing requirements**
 - ✓ **Obtain signed Technical Data Access Agreement**

Procedures for Handling Technical Data / Technology

- ✓ **Implement Technology Control Plan**
- ✓ **Request Signed Certifications when disclosing / transferring Technical Data**
 - Both Foreign and US customers
 - See certification in Manual
- ✓ **Mark Technical Data as**
 - “Controlled” or “Non-Controlled”*
 - See Manual for Technical Data Legend*

DDTC, BIS & OFAC

Jurisdiction?

DDTC



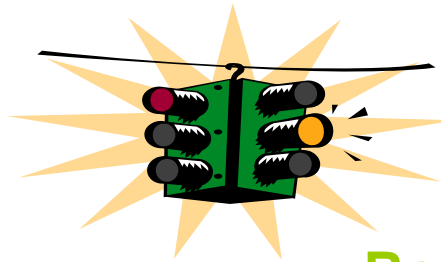
OFAC



BIS

Prohibitions

**Country?
End User?**



Prohibitions

**Country?
End User?**

Restrictions

License Required



Restrictions

**Product?
End User?
End Use?
Red Flag?**

**License Required?
No License Required?**

Export Control Jurisdiction

Which
US Laws & US Regulations
Apply to the Proposed Export?

Step 2

Step 2: Obtain End Use, End User, Ultimate Destination Statement

When: Before you make a quote or any export

Format:

Buyer's letterhead

Buyer's signature

Export Procedures

Step 2 cont'd:

Analyze End Use Information to Determine Export Jurisdiction

Product ordered by buyer

Special design?

Special modification?

COTS item?

Export Procedures

Step 2 cont'd:

Analyze End Use Statement to

Military or Space

- ✓ Defense Article
- ✓ AECA / ITAR
- ✓ DOS / DDTC
- ✓ CJR?

Not Military or Space

- ✓ Dual Use Article
- ✓ EAA / EAR
- ✓ DOC / BIS

Step 3

Screen for Prohibitions

Export Procedures

Step 3: Based on Export Jurisdiction, Analyze Export for Prohibited Countries

- ✓ Export shipment destination
- ✓ Ultimate destination country
- ✓ Intermediate destinations
- ✓ Transshipment countries
- ✓ Countries between export shipment and ultimate destination

Step 3

Prohibited Buyers / End Users

AECA / ITAR

- ✓ Debarred Parties
- ✓ Denied Parties
- ✓ SDN's
- ✓ Proliferators

EAA / EAR

- ✓ Denied Parties
- ✓ SDN's
- ✓ Proliferators

Government sponsored screening service – “Marketplace” Internet search

Step 4 & Step 5

Screen for Restrictions

Export Procedures

**Based on Export Jurisdiction, Analyze Export for
Restrictions / License Requirements**

✓ **Step 4:**

Product-Specific License Requirements

✓ **Step 5:**

End User License Requirements

End Use License Requirements

Red Flags

Export Procedures

**Based on Export Jurisdiction, Analyze Export for
Restrictions / License Requirements**

AECA / ITAR

**Product Licenses Always
Required unless
ITAR License Exemption
Available.**

EAA / EAR

- ✓ **Some Product Specific
Licenses Required**
- ✓ **Some End User Licenses**
- ✓ **Some End Use Licenses**
- ✓ **Red Flags**

ITAR's Restrictions

**ITAR Requires Export Licenses
For All Exports of Defense Articles,
Defense Services, and / or
Technical Data
to "Foreign Persons" wherever located
Very few exemptions (NLR)**

Types of Licenses: Permanent Exports

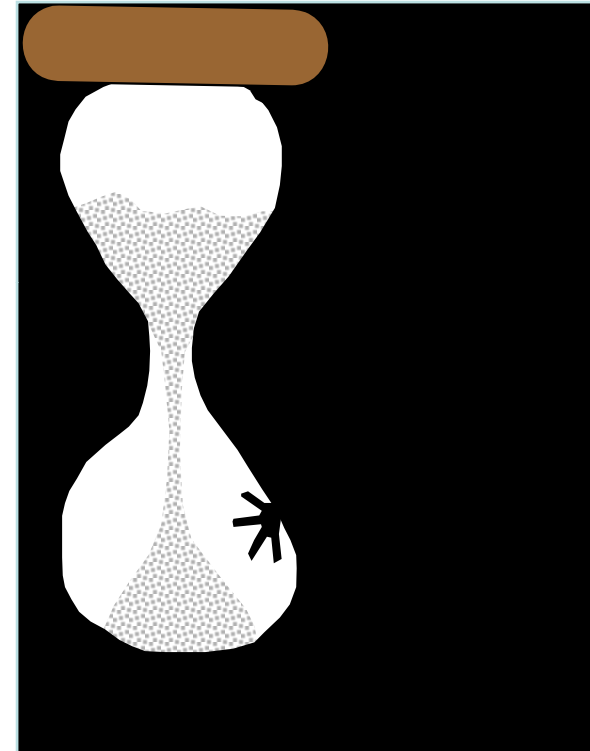
DSP-5 - for Unclassified

- **Export of Technical Data**
- **Export of Hardware**
- **Foreign National Employees & Visitors**
- **Not for defense service exports (TAA)**



License Approval Time

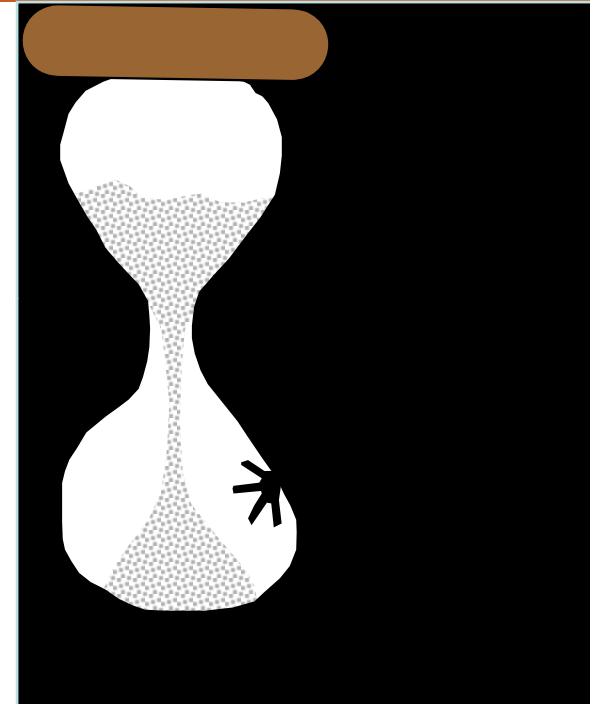
- **DSP-5 License :**
Average 17.5 days
- **MLA or TAA:**
Average 40- 45 days



License Approval Time

Expedited Programs

- **OEF & OND**
- **DCI (Eurofighter, etc)**
- **UK & Australia (126.15)**
- **Customer Letters**
- **NO Politicians!!!**



Licenses Not “Sure Thing”

- **Countries Embargoed under ITAR (126.1)**
- **Prohibited Buyers / End Users**
- **Policy Reasons or National Security**
- **Just Plain “No”**

Licenses Issued with Provisos

A limiting condition placed on an export license or other approval (such as a MLA or TAA), which qualifies the approval granted by the DDTC.

no detailed design data
no source code

U.S. Export Controls Jurisdiction of DDTTC

When DDTTC License Required:

✓ **Put Export on hold!**

No Escapes!

✓ **Apply for License**

Wait Patiently!

Significance of BIS Control

**Compared to ITAR, EAR has Fewer
Product Restrictions**

(5% versus 100%)

But EAR has other types of restrictions

EAR Restrictions

Product-Specific

End Users

End Uses

Red Flags

EAR

Product- Specific Restrictions

U.S. Export Controls Jurisdiction of BIS

Restrictions Based on Product:

CCL: ECCN Other than EAR99?

Reasons for Control?

EAR Country Chart?

BIS License?

2B350 Chemical manufacturing facilities an equipment, except valves controlled by 2A22 or 2A292, as follows (see List of Item Controlled).

License Requirements

Reason for Control: CB, AT

<i>Control(s)</i>	<i>Country Chart</i>
CB applies to entire entry	CB Column 2
AT applies to entire entry	AT Column 1

License Requirement Note: This ECCN does not control equipment that is both: (1) specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification) and (2) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of the chemical weapons precursors controlled by 1C350.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number

Related Controls: N/A

Related Definitions: For purposes of this entry the term "chemical warfare agents" are those agents subject to the export licensing authority of the U.S. Department of State,

Directorate of Defense Trade Controls. (See 22 CFR part 121)

Items:

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m³ (100 liters) and less than 20 m³ (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

a.1. Alloys with more than 25% nickel and 20% chromium by weight;
a.2. Nickel or alloys with more than 40% nickel by weight;

a.3. Fluoropolymers;

a.4. Glass (including vitrified or enameled coating or glass lining);

a.5. Tantalum or tantalum alloys;

a.6. Titanium or titanium alloys;

a.7. Zirconium or zirconium alloys; *or*

a.8. Niobium (columbium) or niobium alloys.

b. Agitators for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

b.1. Alloys with more than 25% nickel and 20% chromium by weight;

b.2. Nickel or alloys with more than 40% nickel by weight;

b.3. Fluoropolymers;

b.4. Glass (including vitrified or enameled coatings or glass lining);

b.5. Tantalum or tantalum alloys;

b.6. Titanium or titanium alloys;

b.7. Zirconium or zirconium alloys; *or*

b.8. Niobium (columbium) or niobium alloys.

c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m³ (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

c.1. Alloys with more than 25% nickel and 20% chromium by weight;

c.2. Nickel or alloys with more than 40% nickel by weight;

c.3. Fluoropolymers;

c.4. Glass (including vitrified or enameled coatings or glass lining);

c.5. Tantalum or tantalum alloys;

c.6. Titanium or titanium alloys;

c.7. Zirconium or zirconium alloys; *or*

c.8. Niobium (columbium) or niobium alloys.

d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m², but greater than 0.15 m², and tubes, plates, coils or

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
	Sudan	X	X		X		X	X	X	X	X		X		X	X
Suriname	X	X		X		X	X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X		X		X		
Sweden ^{3,4}	X					X		X	X			X		X		
Switzerland ^{3,4}	X					X		X	X			X		X		
Syria	X	X	X	X		X	X	X	X	X		X		X	X	
Taiwan	X	X	X	X		X	X	X	X	X		X		X		
Tajikistan	X	X	X	X		X	X	X	X	X		X	X			
Tanzania	X	X		X		X	X	X	X	X		X		X		
Thailand	X	X		X		X	X	X	X	X		X		X		
Togo	X	X		X		X	X	X	X	X		X		X		
Tonga	X	X		X		X	X	X	X	X		X		X		
Trinidad & Tobago	X	X		X		X	X	X	X	X	X	X		X		
Tunisia	X	X		X		X	X	X	X	X		X		X		

EAR

**Restrictions
Based on
End Users**

U.S. Export Controls Jurisdiction of BIS

Restrictions on End Users

Unverified End User

Entity List

Proliferator List

BIS License?

EAR

Restrictions Based on End Uses

U.S. Export Controls Jurisdiction of BIS

Restrictions on End Uses

CBW

MT

NP

China Rule: 32 ECCN's

BIS License?

EAR

**Restrictions
Based on
Red Flags**

Export Procedures

EAA / EAR Red Flags

- ✓ **Consistency of End Use with Buyer's Business?**
- ✓ **Consistency of Deal with Standard Practices?**
- ✓ **Reasonability Check**

Step 5

EAA / EAR

Restrictions Based on Red Flags:

Likely Diversion

Fails “Smell Test”

Duty to Inquire

BIS License?

U.S. Export Controls Jurisdiction of BIS

Summary of Restrictions – LR?

ECCN Other than EAR99?

Commodity Control List & reasons for control

Country Chart

EAR99 or NLR on ECCN other than EAR99

Restricted End User or

Restricted End Use

Red Flag

U.S. Export Controls Jurisdiction of BIS

Restrictions on Dual Use Items

When BIS License Required:

- ❖ **Put Export on hold!**
- ❖ **Investigate Exceptions**
- ❖ **Apply for License: SNAP-R**

Step 5

If Export License Required, Apply to DDTC or BIS, as Relevant

- 1. Put Export “On-Hold” until License Received**
- 2. Review License Upon Receipt**
- 3. Lodge License with CBP, if Required**
- 4. Observe Terms / Provisos of License**
- 5. License Applicants Are Responsible for Compliance with License Terms / Provisos**

Step 6

Process Export

Step 6

Apply Appropriate Destination Control Statement to Invoice and Transportation Document

AECA / ITAR

See ITAR 123.9(b)

“These commodities are authorized by the USG for export only to ...”.

EAA / EAR

See EAR 758.6

“These commodities ... were exported from the U.S. in accordance with the EAR. Diversion contrary to U.S. law is prohibited.”

Export Procedures

Step 6: Complete Origin Certificate if Seeking duty-free status under a FTA in importing country.

FTAs Between US and Other Countries

- ✓ NAFTA
- ✓ Australia FTA
- ✓ Bahrain FTA
- ✓ Chile FTA
- ✓ Israel FTA
- ✓ Jordan FTA

Export Procedures

Step 6: Complete Origin Certificate if Seeking duty-free status under a FTA in importing country.

FTAs Between US and Other Countries

- ✓ **Morocco FTC**
- ✓ **Oman FTA**
- ✓ **Peru FTA**
- ✓ **Singapore FTA**

Step 6

Complete AES Submission

- ✓ **When Required**
- ✓ **Exemptions**
- ✓ **Routed Transactions**

Step 6

AES Submission **Routed Transactions**

- ✓ **Foreign Buyer = Exporter**
- ✓ **Export Clearance**
- ✓ **Transportation**
- ✓ **Written Undertaking**
- ✓ **incoterms**

Not Recommended for Licensed Exports!

INCOTERMS 2010

INCOTERM	Exporter Tasks	Costs included in Pricing
EXW	Export Packaging	\$
FAS \ FOB \ FCA	Export Packaging Pre-Carriage	\$\$
CFR \ CIF CPT \ CIP	Export Packaging Pre-Carriage Main Carriage (Insurance = I)	\$\$\$

INCOTERMS 2010

INCOTERM	Exporter Tasks	Costs in Pricing
DAT \ DAP	Export Packaging Pre-Carriage Main Carriage On Carriage	\$\$\$\$
DDP	Export Packaging Pre-Carriage Main Carriage On Carriage Foreign Import Duties (and VAT)	\$\$\$\$\$\$

INCOTERMS (cont'd)

INCOTERMS 2010

- ✓ Also deal with Risk of Loss
- ✓ Do not address title passage
- ✓ Can be used in U.S. domestic transactions
- ✓ Different than UCC Shipment & Delivery Terms

UCC 2.319-2.324

Deleted from UCC Model Code in 2006

Not yet enacted by many states

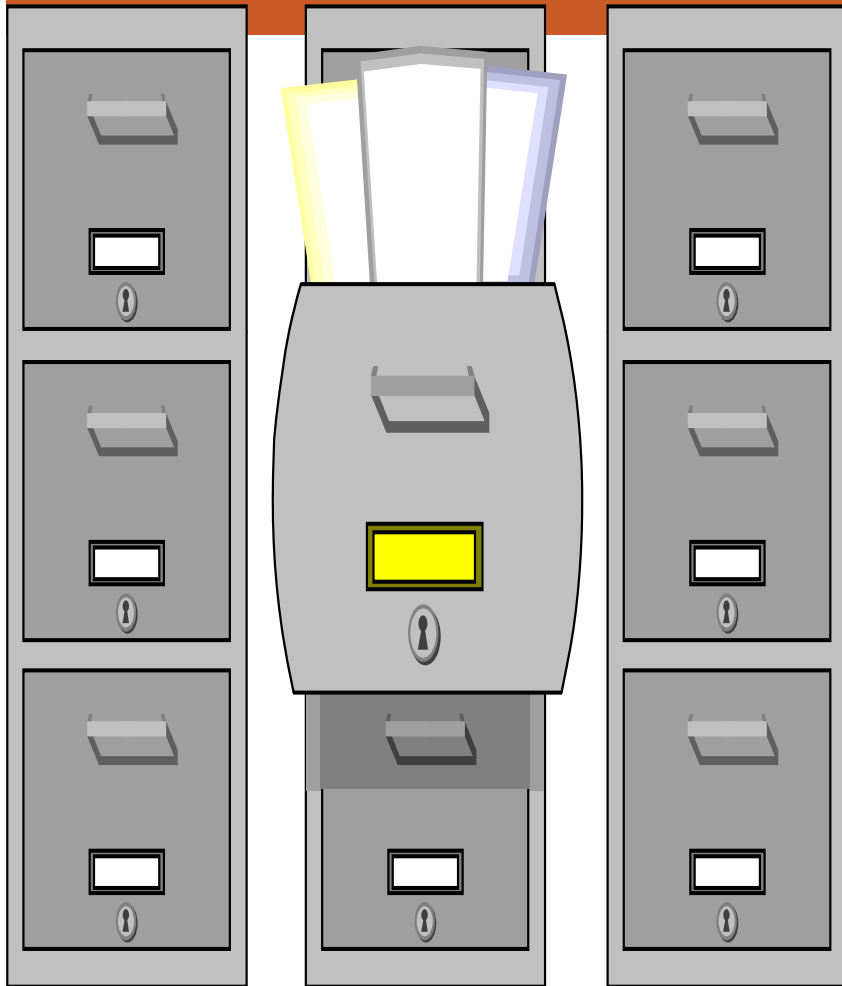
Step 7

Record Keeping

- ✓ **Five Years for Date of Export Available for Inspection**
- ✓ **Penalty for Non-Production**

Enforcement Tool!

Retain Records for 5 Years From Date of Export



- Export License Application**
- Export License**
- Commercial Invoice**
- Transportation Document**
- SED or AES Extract**
- Origin Certificates for FTA**
- Sales Contract**

Ignorance, No Excuse

**ITAR & EAR Apply a standard of
“Strict Liability” in assessing
Violations!**

There is No Margin For Error!

Negligent versus Criminal

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