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### Build Your Export Management and Compliance Program

**M**any people will tell you that you should write an Export Management and Compliance Program (EMCP) because the U.S. Commerce Department's Bureau of Industry and Security (BIS) recently updated its guidelines. An even better reason to spend the time to ensure you have a current EMCP is to re-confirm that you have developed an operational program that consistently manages your company's export decisions and export transactions in compliance with the Export Administration Regulations (EAR). Additionally, developing written EMCP guidelines documents and ensures consistent instruction and operational application of your company's export policies, procedures, decisions, and transactions. The decision to write an EMCP is all about business strategy.

The EMCP should be designed to reflect the scope of your company's export/re-export activities and your specific business operations. Utilizing an off-the-shelf template would conflict with the intended purpose of creating an EMCP and the accompanying benefits. Spending the time to develop an EMCP that is tailored to your business operations will ensure you run an effective compliance program. Such factors as the countries in which you operate, where your suppliers are, your company size, the nature of your products, the end-users/end-use of your products, will all impact your EMCP.

Keep in mind when building your EMCP, you want it flexible enough so that as you grow and evolve, and regulatory changes occur, so does your EMCP. If you are a small firm, for example, you may choose to only focus on basic areas, while building a foundation for the future. Spending time to establish a solid compliance program, and incorporating best practices from the beginning, will ensure you have an EMCP program that evolves and grows along with you.

The following are the nine key elements identified by BIS for an effective compliance program for an exporter of U.S.-origin dual-use items:

- **Management commitment:** Senior management must establish written export compliance standards for the organization, commit sufficient resources for the export compliance program, and ensure appropriate senior organizational officials are designated with overall responsibility for the export compliance program, in order to ensure adherence to export control laws

and regulations, and develop and nurture a pervasive corporate culture of compliance.

- Continuous risk assessment of the export program.
- Formal written EMCP: A manual of policies and procedures with a sufficient level of operational detail to ensure effective implementation and day-to-day compliance.
- Ongoing compliance training and awareness.
- Cradle-to-grave export compliance security and screening: Screening of employees, contractors, customers, products, and transactions, and implementation of compliance safeguards throughout the export life-cycle, including for product development, jurisdiction, classification, sales, license decisions, supply-chain management, servicing channels, and post-shipment activity.
- Adherence to recordkeeping regulatory requirements.
- Compliance monitoring and periodic audits/assessments.
- Internal program for handling compliance problems, including reporting and escalating export violations.
- Completing appropriate corrective actions in response to export violations.

Keep in mind your own list of key elements may be longer, once you determine what unique export operations of your company should be reflected in your EMCP program and manual. Remember that the major benefit of implementing an effective EMCP is that it can minimize the risk of non-compliance with the EAR and it may be considered a mitigating factor, with "great weight", in determining administrative penalties in case of an export violation.

Investing time into developing an EMCP that is well integrated into your current business processes allows for operational consistency and increased compliance with the EAR. Additionally, your firm gains a strong audit posture, brand protection, a reduced risk profile and company-wide increased awareness of your trade compliance program to facilitate compliance.

Given the recent increase in enforcement activities, the heightened penalties for export violations and BIS's plans to extend enforcement actions to individuals, the EMCP is a program worth investing in now, and continuously, as your firm and your company's global strategy evolves.

*BPE is a global trade consulting and training firm.*

*An EMCP minimizes the risk of non-compliance with EAR.*

*Export enforcement actions are on the rise.*