

BPE Global Hot Topic – April 2016

What to Do When “The Letter” Arrives



There are two types of outreach that BIS does. One is by the Office of Export Enforcement (OEE) and the other is a compliance outreach event by the Export Management Compliance Division, Office of Exporter Services (OExS). The OEE outreach events are driven by a variety of reasons. This Hot Topic will focus on the latter type of outreach event.

BIS' OExS has been doing these compliance outreach events since 2015. The intent of these types of compliance outreach visits are to discuss export compliance procedures generally and get an understanding of how different organizations handle export control compliance. This helps BIS OExS better appreciate the different approaches employed by companies and assists BIS in conducting compliance training for the public. It also has been extremely beneficial for BIS to learn firsthand what areas of the Export Administration Regulations (EAR) are not well understood to help in their other OExS outreach seminars. OExS' goal is to conduct 50 compliance outreach events in FY16. They've completed 20 so far this year and have 30 more visits pending. If and when you receive “The Letter”, it is prudent to respond to it in a timely and thorough manner and take the inquiry very seriously. In fact, once you receive “The Letter”, there's no way to stop the compliance outreach visit from occurring. BIS considers several factors when selecting companies for compliance outreach events and you may never know all of them. What you do need to understand is that you should truthfully and completely answer all questions that you are asked.

BIS OExS' goals for their compliance outreach visits are to understand the company's export control compliance program and their knowledge and familiarity with U.S. export control laws. Before their visit, OExS will review several months of Automated Export System (AES) filings to see if any anomalies exist. OExS will share those AES Internal Transaction Numbers (ITN) with you prior to their visit.

As you prepare for the compliance outreach visit, the first thing you should do is run your Automated Commercial Environment (ACE) export report and you should look for any inconsistencies or errors. You should look for anything in the report that sticks out such as unexpected ECCNs, uncommon license exceptions, unfamiliar consignees, destinations, potential diversion countries, potential end-use concerns and unexpected values. You should research every anomaly and if you do find errors, correct the Automated Export System (AES) Electronic Export Information (EEI) filings as soon as possible. The next preparation task is to review your Export Management and Compliance Program (EMCP) and make sure it is accurate and up to date. Also, be prepared to share your product matrix and provide information on your classification process. Plan on sharing an example of your classification analysis and audit trail. You should prepare to provide an overview of the process you use for determining export authorizations including obtaining licenses and utilizing license exceptions. Lastly, be prepared to share examples of your training materials such as your new hire training, your trade compliance training and your job specific trade compliance training for engineering, product management and logistics. It's even better to share your training logs to show that you provide training on a regular basis.

Both types of BIS outreach visits are cordial, routine and seem informal. They are not considered investigations by BIS. OExS are staffed with compliance specialists and they don't have any investigative authorities at all. The OExS visits are more a discussion or exchange, and learning on both sides should



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occur. But you should never forget that any outreach event could become the foundation for future investigations. Any statements that you make will become part of a written record of the visit. The results of an outreach visit can potentially lay the foundation for a criminal or civil case involving post-outreach violations.

During your actual compliance outreach visit, OExS will discuss the ITN anomalies they found and will ask you to correct them as needed. Hopefully you will have already identified and corrected these issues prior to the visit. Common types of corrections include revisiting the classification (ECCN) cited to ensure it is indeed accurate and not "over classified" for export control reasons. OExS also reviews license applications submitted by your company to BIS to see if any involve conditions with reporting requirements. They check to ensure that there are no issues there. If Deemed Exports licenses have been issued to your company, OExS typically ask about your technology control plans that are in place.

The outcome of the visit may include a list of recommendations on how to improve any gaps in your export process. When OExS reviews the processes being used, they do suggest, or share, thoughts on how to possibly strengthen the procedures in place. Common findings from compliance outreach visits include lack of training; classification errors, issues or concerns; EAR99 items listed in licenses; no written procedures or inaccurate EINs. The compliance outreach visit will likely include recommendations such as auditing EEIs filed by your company and agents on an ongoing basis for inconsistencies; developing flow charts or written procedures; increasing awareness and training on export compliance; and classifying your items correctly and documenting your classification determinations.

The bottom line is that you should already have your Export Management and Compliance Program in place and you should routinely audit your operations. That way, should you receive "The Letter," it will be a more manageable visit where you've had the opportunity to share your best practices in export controls. If you believe that your program may not stand up to an outreach event, now is the time to rectify your company's trade compliance issues and not after you've received "The Letter."

If you have any questions, or need help with your Export Management and Compliance Program, BPE Global is here to help!

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