

# Verification of Appropriate Destination, End-Use and End-User

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## Introduction

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## **1. Background**

The trade embargoes maintained by the U.S. generally involve one or more of the following types of restrictions:

- Prohibitions on the export and re-export of U.S. origin commodities, technology (including software), and services to embargoed countries and their Specially Designated Nationals,
- Restrictions on transactions involving embargoed countries and designated persons, including “blocking orders,” freezing all assets of the embargoed country in the U.S. or in the possession or control of U.S. persons, and
- Restrictions on imports into the U.S. of goods or services originating in the embargoed country.
- Restrictions on transactions involving embargoed countries and denied persons and prohibitions on the export and reexport of any commodity, technology (including software), and service to embargoed countries and denied persons by U.S. persons (companies and individuals) wherever located.

In addition to embargoed countries, OFAC sanctions programs prohibit dealings with parties designated on the basis of their involvement in terrorism, narcotics trafficking, proliferation of weapons of mass destruction and other foreign policy and national security related concerns. A comprehensive list of current OFAC sanctions programs is available at <http://www.treas.gov/ofac>.

Therefore, adequate due diligence procedures shall be developed by the Company, Inc located in the United States (hereinafter referred to collectively as “the Companies” or individually as “the Company”), before any bid, sale or order approval is finalized, for verifying appropriate destinations, end-users, and end-uses.

The Company, Inc policy relating to that verification is as follows.

## **2. Obtaining written end-user / end-use assurance from the customer**

When the customer does not identify specifically the destination, end-use and end-user, in the request for proposal or the order, (including for spare parts), the Company shall obtain written end-use / end-user assurance.

For parts (mainly controlled under ECCN 5A002), the customer shall complete the “Final use and/or ultimate destination certification” (see in **Attachment 1**) and return it to the Company for review.

For items controlled under the EAR, the customer shall fill the “End-user / End-use Statement” (see in **Attachment 2**) and return it to the Company for review.

Other forms may be developed for specific businesses.

## **3. Verifying appropriate destinations, end-use and end-user**

Company, Inc has chosen the most easily accessible, most easily used, and most frequently updated method of screening the parties to its export transactions. Company, Inc subscribes to an intranet based software service to:

- Screen the customers, consignees, suppliers, subcontractors, agents, service providers against official lists. These lists are updated automatically each day, directly from international bodies such as the U.S. Government (e.g., Specially Designated National and Blocked Persons List, OFAC sanctions, BIS Denied Persons List, BIS Entity List and Unverified List, Arms Export Control Act Debarred Parties, Foreign Terrorist Organizations, non-proliferation orders), the European Union and the United Nations (list of terrorist suspects), other authorities (for example: Japan foreign end-users of concerns, Interpol recently wanted), the banks (politically exposed persons in money laundering risks, ineligible firms).
- Screen the destinations against the U.S. embargo chart and the Federal Register Notices.

The Company Export Control Officer (“ECO”) is responsible for verifying, with the help of the Visual Compliance™ software, that none of the parties involved in the transaction (e.g., end-customers, consignees, dealers, partners, purchasers, and banks) are on the Denial Lists and that the destination country is not subject to an arms embargo or other trade embargo. If a party is on one of the lists, the ECO should determine whether the transaction can proceed. The Export Control Officer shall maintain a list of parties screened and add these parties to the approved customer list, if any.

#### **4. Screening against prohibited end-uses**

Regardless of whether a product or technology is designated as NLR or requires a license prior to export, the exporter is prohibited from exporting when it has “reason to know” the product/technology will be used for the purposes of designing or producing weapons of mass destruction (chemical, biological or nuclear) or missile delivery systems. The ECO should review information for each transaction to confirm that it does not involve any of these prohibited end uses. If it does, the transaction may not proceed. If there is doubt, consult with BIS.

BIS provides an End-Use Screening procedure to respond to end-use inquiries if the Export Control Officer feels it is necessary to evaluate a customer or end-user further. The Export Control Officer may send a letter by fax to request approval of the customer. The letter must include the name and address of the end-user. In response to a letter, BIS advises if an end-user is suitable for export or if an export license is required. The Export Control Officer shall maintain a list of parties submitted to BIS for approval and the outcome of BIS’s determination.

#### **5. Assessment of the circumstances (“red flags”) that indicate a potential diversion risk**

Under the EAR, U.S. exporters may not sell, transfer, export, re-export, finance, order, buy, remove, conceal, store, use, loan, dispose of, transfer, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR that has been or is to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item.

Therefore, the Export Control Officer shall ensure that transactions do not involve any of risk factors or “red flags” indicating potential problems. A High Risk Diversion Profile is available in **Attachment 3**.

Sales and Sales Operations personnel shall receive training about the High Risk Profile in the EAR. They shall be instructed to check for these signs and hold any order until questions may be resolved by the Export Control Officer.

When any of the “red flags” characteristics are identified, and through follow-up inquiries or investigation these questions have not been satisfactorily resolved, the Company should not transact any business with the customer. An explanation of the basis for the concern regarding the proposed customer should be provided ECO.



## Attachment 2

### End-user / End-use Statement

<b>End-Users</b>	
<b>Address</b> (must provide complete address. No P.O. boxes allowed)	

<b>Intermediate consignee 1</b> (if applicable)	
<b>Address</b> (must provide complete address. No P.O. boxes allowed)	
<b>Role</b>	

<b>Intermediate consignee 2</b> (if applicable)	
<b>Address</b> (must provide complete address. No P.O. boxes allowed)	
<b>Role</b>	

<b>Intermediate consignee 3</b> (if applicable)	
<b>Address</b> (must provide complete address. No P.O. boxes allowed)	
<b>Role</b>	

<b>Purchaser</b>	
<b>Address</b> (must provide complete address. No P.O. boxes allowed)	
<b>Role</b>	

<b>Consignor/ Freight forwarder</b> (if necessary)	
<b>Address</b> (must provide complete address. No P.O. boxes allowed)	

<b>Commodity being ordered</b>	
<b>Quantity</b>	
<b>Product / program</b>	
<b>Platform</b>	
<b>Commodity purpose and usage in the product / program</b>	
<b>Comments / Miscellaneous</b>	

<b>Name</b>		<b>Signature</b>
<b>Title</b>		
<b>Date</b>		

### Attachment 3

#### High Risk Diversion Profile

- (A) The customer or purchasing agent is reluctant to offer information about the end-use (or end-user) of a product or technology.
- (B) The product or technology's capabilities do not fit the buyer's line of business; for example, a small bakery places an order for several sophisticated lasers.
- (C) The product or technology ordered is incompatible with the technical level of the country to which the product/technology is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.
- (D) The customer has little or no business background. For example, financial information unavailable from normal commercial sources and corporate principals unknown by trade sources.
- (E) The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.
- (F) The customer is unfamiliar with the product or technology's performance characteristics but still wants the product/technology.
- (G) Routine installation, training or maintenance services are declined by the customer.
- (H) Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.
- (I) A freight forwarding firm is listed as the product/technology's final destination.
- (J) The shipping route is abnormal for the product/technology and destination.
- (K) Packaging is inconsistent with the stated method of shipment or destination.
- (L) When questioned, the buyer is evasive or unclear about whether the purchased product/technology is for domestic use, export, or re-export.
- (M) Customer uses only a "P.O. Box" address or has facilities that appear inappropriate for the items ordered.
- (N) Customer's order is for parts known to be inappropriate, or for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought).
- (O) Customer is known to have, or is suspected of having unauthorized dealings with parties and/or destinations in ineligible countries.
- (P) The Customer's name, or its address, is similar to a party listed on one of the denied entities lists.