Top 10 Red Flags for Potential Export Violations

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If your business exports goods or services, it cannot afford to run afoul of the Commerce Department's Export Administration Regulations (EAR). Criminal penalties can reach up to 20 years imprisonment and $1 million per violation. Administrative penalties can reach as high as $120,000 per violation, plus denial of export privileges.

Nor can U.S. companies simply delegate their EAR compliance obligations. Section 758.3 of the EAR specifically states that "All parties that participate in transactions subject to the EAR must comply with the EAR." Moreover, reliance on a freight forwarder or other exporting agent "…does not in and of itself relieve anyone of responsibility for compliance with the EAR."

With this in mind, exporters should keep an eye out for the following "red flags" that can signal potential EAR violations:

- The customer is reluctant to provide information about the end-use of the exported product.
- The customer is evasive when asked whether the produce is for domestic use or re-export.
- The customer is not familiar with the product's features or performance characteristics yet is eager to proceed with the shipment.
- The transaction involves a first time customer with a limited international business background.
- The product does not match the prospective buyer's line of business. For example, it is a red flag if a lumber mill orders semiconductor manufacturing equipment.
- The customer is willing to pay in cash when the sale would normally be financed.
- The customer declines routine installation, training or maintenance services. This may indicate that the customer is not the ultimate end-user or the customer does not intend to utilize the product for its normal commercial use.
- The customer's name or address is similar to one of the parties found on the Lists of Parties of Concern maintained by the Commerce Department's Bureau of Industry and Security.
- The shipping or delivery instructions are suspicious: vague delivery details, odd shipping routes, final delivery address associated with freight forwarder or other non-customer address, etc.
- The product does not fit with the country to which it is being shipped. For instance, a landlocked country would not normally generate orders for software related to underwater noise reduction technology.

These red flags should prompt additional due diligence prior to shipping. If concerns persist, it is appropriate to either refrain from the transaction altogether or to contact the Bureau of Industry and Security's Office of Export Enforcement. When it comes to EAR violations, it is always better to be safe than sorry.

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