



Compliance Overview

*Office of Defense Trade Controls
Compliance (DTCC)*

**DDTC In-House Seminar
December 14, 2016**



Agenda



- DTCC Office Overview
- Compliance Program
- Disclosures
- Company Visit Program
- Conclusion



DTCC Office Overview



DDTC Mission Statement



Ensure commercial exports of defense articles and defense services are consistent with U.S. national security and foreign policy objectives.



Key Responsibilities



- Review potential ITAR violations, including industry disclosures
- Work with industry to address compliance failures
- Impose and manage civil/administrative penalties, including debarments, denials, and consent agreements
- Maintain Watch List and screen export authorization requests
- Company Visit Program
- Serve as the Bureau of Political-Military Affairs' representative to CFIUS (Committee on Foreign Investment in the U.S.)



Key Responsibilities



- Report to Congress, as required by law, violations involving the unauthorized retransfer, inappropriate end-use or diversion/misrouting of USML material or tech data
- Administer DDTC's registration system for manufacturers, exporters, and brokers; handle mergers, acquisitions, and divestitures
- Coordinate with law enforcement
- Perform industry outreach and provide training to help drive compliance (DDTC: 100+ events annually)



Metrics



- Voluntary and directed disclosures
 - ✓ Processed ~1,000 disclosures in FY 2016
 - ✓ Vast majority of disclosures are voluntary
- Civil enforcement actions: charging letters, consent agreements and monitoring, and debarments
 - ✓ Monitoring 6 active consent agreements
 - ✓ 2 consent agreements in 2016
 - ✓ Potential increase in frequency due to ECR (most sensitive items → more serious violations)



Department of State

Secretary of State

John F. Kerry

**Under Secretary for Arms Controls
& International Security (T)**

Tom Countryman, Acting

**Assistant Secretary of Political-
Military Affairs (PM)**

Ambassador Tina S. Kaidanow, Acting

**Deputy Assistant Secretary for
Defense Trade Controls**

Brian Nilsson

Compliance (DTCC)

Arthur Shulman, Acting

Licensing (DTCL)

Terry Davis, Acting

Policy (DTCP)

Ed Peartree

Management (DTCM)

Anthony Dearth,
Acting



Organization

**Acting Director
Arthur Shulman**

**Senior Advisor
Daniel Buzby**

*40 staff:
civil service & contractor*

**Compliance,
Registration, &
Enforcement Division**

Div. Chief: Daniel Cook

Policy and Operations Team

- Compliance & enforcement policies & procedures
- Intra-DDTC and internal Ops
- IT coordination
- Company Visit Program
- Senior liaison w/ law enforcement
- Mergers and acquisitions
- CFIUS (PM lead)

Compliance and Enforcement Team

- Voluntary and directed disclosures
- Debarments, denials, reinstatements, policy exceptions
- Consent agreements and monitoring
- Coordination with law enforcement
- Section 3 investigation/reporting

Registration Team

- Registration of manufacturers, exporters & brokers
- Registration fee collection



Compliance Program



ITAR Compliance Manual



*Version 6,2
February 17, 2016*



Compliance Matters to All

- Affects America's national security and foreign policy
- Affects your reputation and business opportunities
- Compliance failures cost money: work hours and potential penalties

Maximum penalties for AECA and ITAR violations include:

Civil Violations

- \$1 million for each violation
- Extra compliance measures
- Debarment

Criminal Violations

- \$1 million for each violation
- 20 years' imprisonment
- Debarment

**Note: civil penalties adjusted for inflation on August 1, 2016*



Compliance Program Elements



1. Organizational structure
2. Compliance Resources
3. Product classification
4. Contracts/marketing screening
5. License preparation & implementation
6. Exemption Implementation
7. Non-U.S. person employment
8. Physical security of the ITAR facility
9. Computer network security
10. Foreign travel
11. Foreign visitors
12. Record keeping
13. Reporting
14. License / agreement maintenance
15. Shipping & receiving processes
16. ITAR training
17. Internal monitoring and audits
18. Disclosures
19. Violations and penalties
20. Brokering



Key Factors

- Senior officers' commitment to compliance
- Experienced personnel and training to maintain knowledge base
- Established protocols and procedures
- Adequate resources dedicated to compliance

The best compliance programs are tailored to the company and its business. They don't need to be complicated – they need to work. For general guidelines, see: http://www.pmdtcc.state.gov/compliance/documents/compliance_programs.pdf.



Key Factors

Senior officers' commitment to compliance

- ✓ Sets the company tone and overall message on export controls
- ✓ Has general knowledge of export controls and their importance
- ✓ Creates organizational structure and provides resources
- ✓ Designates Empowered Official(s)
- ✓ Signs registration documentation (ITAR §122.2, §129.3)
- ✓ Involved with voluntary disclosures (ITAR §127.12)



Key Factors

Experienced personnel and training to maintain knowledge base

- ✓ One size does not fit all
- ✓ Tiered, documented training program
 - Awareness training for all/most
 - In-depth training for subject matter experts
 - Focal points for additional information
- ✓ Frequency: regularly scheduled and as needed
- ✓ Ensure trainers are subject matter experts
- ✓ Confirm training is received and maintain records



Key Factors

Established and documented protocols and procedures, in areas such as:

- ✓ Reporting structure for potential and actual problems/violations
- ✓ Product classification
- ✓ Supplier and customer vetting
- ✓ License maintenance, if applicable
- ✓ Security of technical data and defense articles
- ✓ Record keeping
- ✓ Internal monitoring and audits



Key Factors

Adequate resources dedicated to compliance

- ✓ Staffing – the right number of people, in the right roles, with the right experience and training
- ✓ Infrastructure and security:
 - Information Technology – systems are secure and allow technical data to be handled and stored correctly
 - Physical security – the site is secure and defense articles and technical data are handled and stored correctly
- ✓ Budget covers regular costs of compliance



Disclosures



Types

Voluntary Disclosure (VD)

Persons voluntarily disclose circumstances to DTCC which they believe may have violated any export control provision of the AECA, or any regulation, order, license, or other authorization issued

ITAR §127.12

929 voluntary disclosures in FY 2016

Directed Disclosure (DD)

In the form of a letter, DTCC requests information regarding a potential or actual violation, based on other information received from other sources

Information sources: calls, emails, inter-agency, intra-agency, other disclosures

Based on ITAR §122.5(b)

56 directed disclosures in FY 2016

Failure to report is considered when assessing penalties



Discovery of Violations



Violations are often discovered when:

- ✓ Updating registration
- ✓ Initiating export/import activity
- ✓ During training
- ✓ Preparing a new license submission
- ✓ Auditing
- ✓ Merging with or acquiring another company
- ✓ Working with other businesses/parties



Common Violations



- Failure to register
- Failure to properly implement and manage licenses or agreements
- Violation of proviso(s)
- Unauthorized access to defense articles and technical data
- Misuse of ITAR exemptions
- Shipping mistakes



Voluntary Disclosure Notification



- Provide initial notification **immediately** to **DTCC** after a violation is discovered, then a full disclosure after thorough review
 - ✓ 60 day period to submit, per ITAR §127.12(c)(1)(i)

OR

- Provide full disclosure **immediately** after a violation is discovered

Full disclosure to DTCC should include all information identified in ITAR §127.12(c)(2)

If potentially a criminal violation, your counsel may also advise disclosure to Department of Justice



Preparation and Submission



- ITAR § 127.12(c) identifies info to include in disclosure
- Who, what, when, where, how, why – provide specifics
- Identify any past related disclosures
- Acknowledge underlying error/violation – enhances credibility
- Review related transactions and policies – discover and disclose any other violations
- Provide a matrix or timeline for multiple or complex violations
- Describe corrective actions taken; explain how corrective actions resolve the violation and prevent future violations



Submission Suggestions



- **Submit:**

- ✓ Only once in hard copy (emailed and faxed copies not necessary)
- ✓ One original; more copies will be requested, if needed
- ✓ On company letterhead
 - Outside counsel may submit the disclosure with a cover letter but this requires certification from the Empowered Official
- ✓ Point of contact
- ✓ All relevant documentation and attachments
 - License history
 - Descriptive literature on hardware
 - Technical data documents or scope of defense service
 - CV/resume of any foreign persons involved
- ✓ Voluminous attachments on a DVD/CD



Submission Suggestions

- Independent review prior to submission – make sure it makes sense
- If complicated, provide summaries, timelines, charts, etc.
- Provide concrete corrective actions specific to violation(s)
- Generally show investigation was complete and thorough
 - Put your best foot forward
- Don't be afraid to pick up the telephone!

Keep DTCC apprised of status and ask for extensions in advance



Assessment & Review

After a disclosure is received, DTCC issues a case number

- Provided in response to initial notification (60-day letter)
- Wait for the case number before submitting related licenses
- DO NOT cite anything other than a correct case number on a license application
- Email DTCC-CaseStatus@state.gov



DTCC reviews the submission; factors considered include:

- Harm to U.S. foreign policy or national security
 - Destination (126.1 countries) and parties involved
 - Whether transaction would have been authorized
- Adherence to law, regulations, and DDTC's licensing and compliance policies
 - Severity of violations
 - Procedural or judgmental
 - Repeated violations or an isolated incident
 - Number of locations, programs, and business units affected
- Review periods vary greatly, depending on complexity of the case, company history, interagency staffing, and workload

Possible outcomes:

- Closed
- Closed with action
- Directed audit
- Penalty





Penalties & Procedures

- **Penalties associated with AECA/ITAR violations:**

- ✓ Administrative penalties under ITAR §128

- Civil: \$1 million/violation, extra compliance measures, debarment
- Generally settled through a negotiated Consent Agreement

- ✓ Criminal penalties pursuant to AECA 22 U.S.C. 2778(c)

- \$1 million/violation, 20 years' imprisonment, debarment

What is a Consent Agreement?

- Agreement that includes a monetary penalty and/or enforceable conditions, such as:
 - Review, audit, and reporting requirements
 - Compliance program improvements
 - Debarment, if applicable
 - Appointment of a Special Compliance Official
- Typically run 3-4 years
- Monitoring by DTCC



Active & Recent Agreements



Agreement Type	Company	Year	Penalty (USD)	# of Proposed Charges
Oversight Agreement	Rocky Mountain Instrument Company	2016	N/A	N/A
Consent Agreement	Turi/TDG	2016	200,000+	2
	Esterline Technologies Corporation	2014	20,000,000+	282
	Aeroflex, Inc.*	2013	8,000,000+	158
	Raytheon Company	2013	8,000,000+	125
	Sikorsky/Lockheed Martin**	2012	N/A	N/A
	BAE Systems, plc*	2011	79,000,000+	2,591
	Microwave Engineering Corporation (penalty only)	2016	100,000	1

*CA has not yet concluded

** UTC CA concluded; terms/requirements followed Sikorsky divestment to Lockheed Martin, remain in effect

+ Suspended in whole or in part as provided in the Consent Agreement



Company Visit Program (CVP)



CVP Overview

- Administered by the Office of Defense Trade Controls Compliance (DTCC)
- **Two (2) Types of Visits:**
 - **CVP-Outreach (“CVP-O”):**
 - an extension of DDTC’s outreach activities, e.g., speaking at conferences. Intended to be a learning exercise for both parties. Provides an opportunity to see examples of how industry does ITAR compliance, discuss challenges, learn how industry is adapting to ECR, and offer suggestions or best practices. CVP-O site visits are unrelated to specific compliance matters.
 - **CVP-Compliance (“CVP-C”):**
 - visits are designed for DTCC oversight activities, for example as part of Consent Agreement monitoring. These visits may require a more in-depth look at a company’s compliance program.



CVP Goals

- Advance DDTC's understanding of how different companies establish and maintain an overall defense trade control program to **fit the needs of their business**, e.g., company size, technology, customers, types of export authorizations, business changes in response to ECR
- Allow DTCC to review company defense trade compliance programs in the context of a **consent agreement (CA)** or adjudication of a voluntary disclosure (VD), directed disclosure (DD), or another compliance matter (**CVP-C only**)
- Gather information to support the Directorate's **development of regulatory policy and practice**
- For DTCC to assess and **disseminate industry best practices**, recommendations, and trends to benefit compliance programs and increase transparency



CVP Process



- Company selection
 - Referral, type and sensitivity of technology, volume of ITAR activity, geographic location, alignment with CVP goals
- DDTC team selection—prefer cross-Directorate participation
- Visit preparation—ask company for info on compliance program
- Site visit
 - Presentations and conversations with personnel
 - Close-out briefing to senior management and export control staff
- Post-visit
 - Close-out letter to company, noting positives, areas for improvement, if any, and DTCC “takeaways”



Conclusion



You Can Help Us...

... by watching for red flags and helping to educate your peers, suppliers, and business partners

- **Request confirmation** that providers of defense articles and services are registered with DDTC. ITAR §122.1 requires DDTC registration by “[a]ny person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles or furnishing defense services[.]”
- **Help educate industry.** Point others to the ITAR and encourage them to contact the DDTC Response Team (next slide) if they have questions regarding their activities.
- **Be on the lookout for red flags.** For example, suppliers who aren’t aware of their ITAR responsibilities or who make promises without regard to the regulations (e.g. next day export of sensitive defense article).
- **Refer potential violations** to us and/or encourage companies to avail themselves of ITAR §127.12 to self-report potential violations.



Contact Information

- To check on correspondence from our office or find out which Compliance Specialist is assigned to your disclosure, email DTCC-CaseStatus@state.gov
- For all other matters, including substantive questions and inquiries regarding registration submittal or status and referrals, contact the **DDTC Response Team**
 - Phone number: (202) 663-1282
 - E-mail: DDTCResponseTeam@state.gov
- For general information, please visit DDTC's website
 - <http://www.pmdtcc.state.gov/>