

* Effective Import / Export
Management in 2010*

Presented by
BDG International, Inc

Tel: 847-760-0000 Fax: 847-760-0005
www.bdginternational.com
sales@bdginternational.com

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BDG International, Inc.
Lisa Victoria Waller

Credentials:

Bachelors of Science- Illinois State University
(International Business, emphasis of Eastern Studies)
Licensed Customs Broker
Certified Customs Specialist
Certified Export Specialist
IATA (International Air Transportation Association) Certified
DG (Dangerous Goods) Certified
Committee co-chair for Export Compliance of the CBFFAC
Committee member of Export Compliance of the NCBFFA



AIR | LAND | OCEAN

Compliance Diligence :
Discovering Solutions for
future RoadBlocks

Reliable Worldwide Transportation everytime, anywhere!



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What have you already know?

1. U.S. GOVERNMENT - Export regulatory agencies (short list):
DHS (CBP, TSA), DOC (BIS), CENSUS, TREASURY, STATE, DOD, DOJ, FMC, Congress, DOT
2. Export Corporate policies are in place:
 - Anti Boycott
 - Anti Diversion
 - Anti Trust
 - Foreign Corrupt Practices Act
 - Product Specific procedures per country that you may export to
3. Security procedures that effect export (under Safe Port Act)
 - TSA
 - Container Security Initiative
4. Export Regulations
 - FTR (Foreign trade regulations) - EAR (Export Admin Regulations)
 - OFAC (Office of Foreign Asset Control) - ITAR (International Traffic Arms Regs)
 - Federal Register

Code of Federal Regulations (CFR)

** for your review**

- CFR 15 - Commerce & Trade
 - Census Bureau Federal Trade Regulations 15 CFR, Part 30
 - Export Administration Regulations (EAR) 15 CFR, Parts 700-799
- CFR 19 - Customs
 - Customs Regs Title 19 CFR, Parts 1-199
- CFR 22 - Foreign Relations
 - State Department, ITAR, Title 22 CFR, Parts 120 – 130
- CFR 49 – Transportation CFR 46 - FMC

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>

Recommended websites

<http://www.gpoaccess.gov/ecfr/>

<http://www.gpoaccess.gov/fr/index.html>

Where are we today??
EXPORT
COMPLIANCE CHANGES

2010

Complicated system = less exports and lower compliance

- Our nations security is at risk due to the complicated overlapping of regulations.
- There are many redundancies, and over protecting, at times reducing our overall exports.
 - We need to be competitive in the Global Marketplace.
- The current system is based on
 - two different control lists administered two different departments
 - three different primary licensing agencies
 - a multitude of enforcement agencies
 - overlapping and duplicative authorities, and a number of separate information technology systems

Planned Export Compliance Reforms

- Four Key Reforms
 - Single Export Control List
 - Single Licensing Agency
 - Single Enforcement Agency
 - Single Information Technology

Three Phase Implementation

- ## PHASE I - Summer 2010
- Control List
 - **Refine, Understand and Harmonize Definitions**
 - Goals: End Jurisdiction Confusion / open for comment in July
 - Licensing
 - Implement Regulatory based improvements and streamline licensing.
 - Enforcement
 - Synchronize and de-conflict enforcement
 - IT
 - Determine Enterprise wide needs – Single portal for exporters

- ## Phase II– Fall 2010
- Control List
 - Restructure the two lists into identical tiered structures, apply criteria, remove unilateral controls
 - Licensing
 - Complete transition to mirrored control list system. Fully implement licensing harmonization for export authorizations
 - Enforcement
 - Expanded outreach and compliance
 - IT
 - Transition toward a single electronic licensing system.

Phase III - 2011

• Completes Transition to new system

**Export Routed Cargo
- Census – will clarify**

• § 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or re delegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

Routed Cargo ??

• Current wording is vague and meant to make Exports easier

• However, USPPI have decided that if it is routed they are not responsible.

- Cause confusion
- (USPPI) Exporters do not think they are responsible the FPPI is
- (FPPI) cannot legally audit the information they are hiring someone to do
- (USPPI) Cannot legally audit all of the information back from the routed freight forwarder unless they have written authorization from FPPI
- Routed Freight forwarder cannot legally give all details to shipper or chnee.
- Census will hold USPPI is 100% liable

Security Changes

AIRFREIGHT SECURITY IS
STILL IN ITS IMPLEMENTATION
PHASE ?@* 254


Comments from Gale Rossides

- The current Director Rossides is the "Acting Director" of TSA
- We will be able to reach 65% by August 2010
- 100 % screening may not happen until 2012
- Options on scanning
 - Scan by hand
 - Scan by a ETD – electronic transfer dissociation
 - X-Ray machine
- CARGO DESIGNATED TO MOVE ON A PASSENGER AIRLINE

When and who scans the cargo?

There is a certification program for becoming a screening program.

- Warehouses, airlines, freight forwarders can call become certified
- Certified Shipper Cargo Screening Program
 - Pharma, Chemical, Food products



● Airlines were able to reach the 50% scanning goal – why is the next 25% so difficult?

- Scanned the easy cargo
- Individual packages being loaded
- Avoiding palletized cargo
- Increase of false positives requiring cargo to be opened



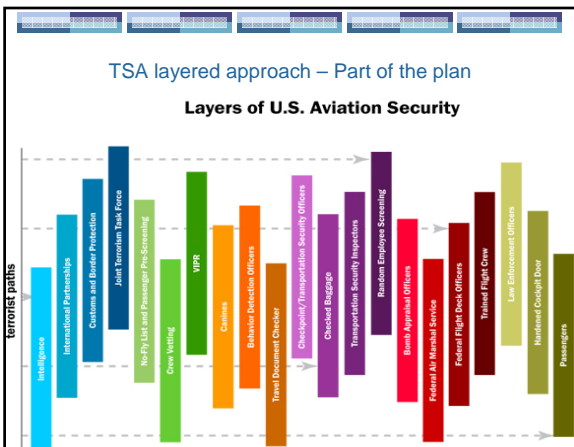
Upcoming results once 100%

● TSA:

- Following rules by Congress –
 - If the cargo is not screened it does not go on the plane

● Airlines:

- The Airline will not delay their flight to accommodate cargo that is unscreened.



**Electronic On Board Recorders &
ROADABILITY & Driver report card**

D.O.T. Changes coming soon

U.S. Dept of Transportation
**Federal Motor Carrier Safety
Administration**

04/02/2010 New Rule that will require interstate commercial truck companies with patterns of violations to install electronic on board recorders (EOBR)

- Record the number of hours driving
- Effective: June 01 2012

• Comprehensive Safety Analysis (CSA) 2010

- On- line reporting system for checking all violations, insurance, and other data

***** Roadability *****

**IEP – Intermodal Equipment
Providers Rule**

• To ensure that IEP, motor carrier and drivers share safety responsibility for intermodal equipment (IME) operating on our nation's highways.

• **FINAL RULE: Effective : Dec 17 2010**

- Safe, Accountable, Flexible, Efficient Transportation Equity Act:
 - A Legacy for Users (SAFETEA-LU), applicable to "Roadability." Section 4118 is codified in 49 U.S.C. 31151.

RESPONSIBILITIES

<p>IED</p> <ul style="list-style-type: none"> • Performing regular IME inspections. • Repairing the problem you find. • Maintaining IME between inspections. • Creating a recordkeeping system for the program. 	<p>DRIVER</p> <ul style="list-style-type: none"> • Perform pre-trip inspections • Complete DVIR inspection <ul style="list-style-type: none"> • Report on how the chassis is driving and if there are any issues <ul style="list-style-type: none"> • 9 issues <p style="text-align: center;">https://dataqs.fmcsa.dot.gov</p>
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Report card on the drivers?

- Drivers will be analyzed by UNSAFE, FATIGUE, FITNESS (PASS PHYSICAL BY CLINIC), CONTROL SUBSTANCES, VEHICLE MAINTAINANCE, SECURING FREIGHT, CRASH INDICATOR
- Report card on these details
 - Audit the carrier, information the carrier is not privy to, this info is not public

How does this effect the Carrier?

- Out of 125 drivers going in today there were 2.5 hours each truck of delay on 50 trucks due to chassis's being fixed.
- Issues when bringing equipment back. IED will not replace tires unless they are bad. IED keeps fixing tires.
- Truckers will still see bills for repairs.
- If truckers do not pay, they are out !!
 - Interchange agreement will not be allowed
- Level of management to prove documentation
- Continue search for qualified drivers
- Driver must be almost a certified mechanic to be able to adjust chassis, breaks, repair lights, testing equipment, go through a lot of training to be able to identify problems.

How does this effect the Importer / Export

New program = expect delays
New overhead = expect increases
Less drivers = less availability
Do what it takes to get the job done?
PONY EXPRESS !!
Many drivers connecting city to city trying to get the job done but not as quick.

Thanks to **AIM TRANSPORTATION** in Milwaukee for their comments.

Going from ROAD to WATER

The FMC is open to your comments – learn how !!

FMC – Federal Maritime Commission

- The Federal Maritime Commission regulates our ocean industry for Vessel Operators (VOCC) and Non Vessel Operators (NVOCC). In the past year they have made many in roads to modernizing the FMC.
- Appointed Chairman Richard A Lidinsky Jr. as the Chairman (top position) of the FMC.

FMC is here to listen and find solutions.

- Restored a Managing Director position to oversee "fair and efficient ocean transportations"
- Gave priority to disputes w/in the industry and trade
 - Appointed Commission Rebecca Dye to look into the complaints from trade regarding the ocean lines
- Opened an investigation on recent space shortage, container shortage and dramatic increases of rates from the ocean lines.
- The FMC wants your comments on the effect to industry: 202-523-5715 refer to Fact Finding or email: factfinding@fmc.gov

What about import??

- All exporters are potential importers.
- Be aware of the ISF (Importer Security Rules)
- Train your export and international sales staff to have a plan for potential imports.
- Potential imports: Samples, Packaging, Test Equipment, Warranty returns, U.S. Goods returned, Leases coming back, Trade shows coming back.

Sales or Purchase Agreement

- **Between the buyer and the seller there must be a formal**
- defines the terms and conditions of the purchase.
- include any type of marking, packing, and shipping requirements.
- designate liability for each party and hold that party responsible.
- How to handle samples, test equipment, returns of any type
- define government regulations and hold the shipper responsible for:
 - illegal conduct, breach of security or acts against the regulations

Review

- Changes in overall Export Compliance
 - Development of a new office
- Continued efforts at the TSA for 100%
- New rules for truckers from DOT
- Investigating the Ocean lines from the FMC – open for comments
- Exporters must have an import plan

Can you Ship to that country?

OFAC - Office of Foreign Assets Control

Office of Foreign Assets Control (OFAC)

- OFAC administers and enforces economic and trade sanctions based on US foreign policy and national security goals :
 - against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

<http://www.treas.gov/offices/enforcement/ofac/>

Register on line with the Treasury for updates.




OFAC – issues to know

- **Sending / Receiving money to / from Sanctioned parties or countries**
 - May have to request a license to send out money
 - Payments may be delayed for research by OFAC while the money is transferring to/from a US bank to/from a foreign bank

- **Cuba – License for travel personal and business abilities**

- **Insurance – if OFAC is involved and you did not apply for a license properly you may not have insurance to cover your move. * FDIC, Marine insurance also Employee W/C etc.**

- **License - Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA)**
 - Customized per Sanctioned party



OFAC - NGO


NON – GOVERNMENT ORGANIZATION – NGO
<http://www.treas.gov/offices/enforcement/ofac/faq/answer.shtml#52>

NGO Registration Numbers

- **How do I get an NGO registration number?**

A NGO may be issued to nongovernmental organizations involved in humanitarian or religious activities in certain area of Sudan and Burma.

- **Do I need a registration number or license to donate goods?**
 Most OFAC sanctions programs provide exemptions to their prohibitions for certain donated goods, such as articles to relieve human suffering. This is not the case for all programs, however. (SUDAN and BURMA)



CENSUS

U.S. Census Bureau Federal Trade Statistics

- leading source of quality data about the nation's people and economy
 - In charge of gathering all the numbers for informed decisions
 - Bad data – bad decisions
 - Good data – better decisions
 - Obtains data from Customs and Border Protection via AES

Automated Export System (AES)

When is an AES required?

- Items over \$2500 in value per Schedule B number
- Items that are licensable or to a restricted country
- Items to a validated end user

Schedule B# vs. ECCN#

- Schedule B # =
 - Customs & Border Protection
 - COUNTS what commodities, their value, and quantity, via the AES
 - Does not restrict trade
- ECCN = Export Control Classification Number
 - Bureau of Industry & Security
 - Tracks commodities of national concern
 - Restricts trade for possible entities, commodities or countries

Export Control Classification Number (ECCN)

- - ECCN number is determined by the BIS * Help desk 202-482-4811
- - Five-character code in format of NANNN, * N = numeric A = Alpha

Classification Requests from BIS:

- All classification requests submitted in accordance with procedures in 748.3.a /b,
- EAR is required to answer these requests within 14 calendar days.
- Advisory Opinions: 30 calendar days

- **Category – 1st digit**
- **Group – 2nd digit**
- **Entry – other**

Example: 3A001

EAR99

- Items that are not licensable / not restricted by BIS will have the general license of EAR99

- EAR99 (items subject to the EAR not listed on the CCL) EAR99, destination control statement ...758.6
- EAR99, steps732.3(b)(3); (d)(5)
- EAR99, steps732.3(i)
- EAR99, transit, steps732.3(k)
- EAR99, subject to the EAR.....734.3(c)
- EAR99, Shipper's Export Declaration. . 758.1(g)(3)

EAR99 - NLR

- **No License Required (NLR) = "NLR"**
 - designation when the items to be exported are subject to the EAR but not listed on the Commerce Control List &
 - and when the items to be exported are listed on the CCL but do not require a license.
 - General Prohibition Four (Denial Orders) applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.
 - The de minimis exclusion under paragraph (c)(1) only applies to software that is listed on the Commerce Control List (CCL) and has a reason for control of anti-terrorism (AT) only or software that is designated as EAR99

How is the ECCN determined?
COMMERCE CONTROL LIST (CCL) STRUCTURE
 (EAR 738)

Category: 0 - 9 Group: A-E

<ul style="list-style-type: none"> 0 - Nuclear material, facilities, ... 1 - Materials, Chemicals, Microorganisms, and Toxins 2 - Materials Processing 3 - Electronics 4 - Computers 5 - Telecommunications, and information security 6 - Lasers and sensors 7 - Navigation and avionics 8 - Marine 9 - Propulsion systems, space vehicles and related equipment 	<ul style="list-style-type: none"> A - Equipment, Assemblies and components B - Test, inspection and production equipment C - Materials D - Software E - Technology
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3A001

Microprocessor

3 = Electronics
A = Equipment
0 = National Security (NS)
0 = Unilateral
1 = First Item

EXCEPTION CHART: EAR 740
 - YES - N/A

If there is an exception then comply with these rules, but you still have to look at the embargoed countries.

NO EXCEPTIONS continue and refer to COUNTRY CHART

LIST OF ITEMS CONTROLLED
 - Units (pcs, kgs, tons)
 * was not licensable before but now you are shipping 100 units (now licensable)

RELATED DEFINITIONS (EAR 772)
 * Information that defines this entry

RELATED CONTROLS
 * other government agencies will control this item / POSSIBLE REVIEW

ITEMS
 * detailed list of COMMODITIES controlled under this entry

Embargoed Countries

<ul style="list-style-type: none"> Cuba Iraq * * some restrictions have been removed North Korea Iran Rwanda Syria 	<p>744.22</p> <p>Other government agencies embargoes or sanctions will be recognized</p>
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IN - TRANSIT

Do not T/S or In Transit times through – READ YOUR LICENSE !!

<ul style="list-style-type: none"> • Albania • Armenia • Azerbaijan • Belarus • Cambodia • Cuba 	<ul style="list-style-type: none"> • Georgia • Kazakhstan • Laos • Mongolia • North Korea • Russia** • Tajikistan • Turkmenistan • Ukraine • Uzbekistan • Vietnam
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DENIED PARTIES LIST

Who is a party?

- - Supplier
- - Transferee
- - Ultimate End - User
- - Intermediate Consignee
- - Any party in the transaction

OFAC - ITAR - BIS lists

www.bis.deniedparties.gov

Know your Customer "Red Flag" indicators

EAR 732 Supp 1

<ul style="list-style-type: none"> • - Reluctant to offer end use • - Product does not fit buyer's line of business • - Product ordered is incompatible with the countries technology • - No business background • - Willing to pay cash, when you offer terms • - Unfamiliar with product but still makes an order • - Declines installation, training, and maintenance plans 	<ul style="list-style-type: none"> • - Delivery date and final dest are vague • - Freight forwarder is listed as the final dest of the product • - Shipping Route is abnormal • - Packing requirements are inconsistent with method of shipping <p><small>*heavy duty crate for air shipment and not normally required *not normally shipped by air *shipping to a typical transshipment country (Canada, UK, Germany, UAE, Singapore, Hong Kong* (*free trade zones))</small></p>
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Do not Self Blind
EAR Supp #3 Part 732 Pg 1

"Do not cut off the flow of information that comes to your firm in normal course of business."

- Do not have a Policy to refrain from discussing
 - End Use
 - End User
 - Ultimate Destination
- Considered aggravating factors
 - Bad information - Bad Policies
- example (selling to Canada and cargo is re-sold to Cuba)

Know how to handle "Red Flag" information

- Clear policies
- Compliance Procedure
- Evaluate Knowledge
- Research "Red Flags"
 - Refuse order or
 - Go to BIS and research further (then make decision)
- Export Compliance Attorney to assist with wording and how to follow regulations

LICENSE APPLICATION PROCESS

License Application

- SNAP (Simplified Network Application Procedure)

www.bis.doc.gov/SNAP/index.htm
 - MANUAL - confirm that you have the most up to date forms (202-482-4811)
 - STELA - Track your application on (System for Tracking Export License Applications).
 - TIME FRAME: All lic. submitted considered complete will be resolved no later than 90 calendar days from the date of the BIS registration. OGA, pre-license check,

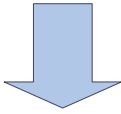
 - Normally valid for 24 months, Short Supply - 12 months, and OGA requirements may apply.

* **Tolerance apply (units, value, area, weight or measure)**
 - Licenses may be extended upon request.
 - LICENSE - Read the License or License Exception**

 - * Orders
 - * Terms
 - * Conditions

IMPORT CERTIFICATE (into USA):
supplement no 5, to part 748 *
Export government may ask for proof of import cert

Informed Compliance



Enforced Compliance

BDG International, Inc.

Thank you for your time.
