

HOW TO SURVIVE AN EXPORT END-USE CHECK

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Finding out that the government wants to do an end-use check on your export is a lot like finding out that you're being audited by the IRS. Anxiety begins to take over. You may ask yourself, what did I do wrong?

The reality of the situation is that you may have been selected at random, so don't panic. Through the U.S. Bureau of Industry and Security—the agency that performs these checks—the government is attempting to verify that your exported goods are not being used by the wrong people or for the wrong reasons. Ultimately, end use checks are a proactive way to protect national security. They help the government inhibit the proliferation of weapons of mass destruction, limit support of terrorism, and identify unauthorized end users.

BEHIND THE SCENES: Although the government performs two types of end-use checks, one pre-license and one post-shipment, the majority of checks are post-shipment.

Fifty percent¹ of post-shipment end-use checks are conducted by Export Control Officers in U.S. embassies and consulates in Moscow, Beijing, Hong Kong, New Delhi, Singapore, and Abu Dhabi. The other fifty percent of checks are conducted by U.S. investigative officials. During each check, the exporter will be asked for all documentation related to a particular shipment. The Export Control Officer will then take steps to verify that the item is being used as intended by the end-user, at the stated location, as noted in the shipment's documents. This may involve physically visiting the foreign consignee's operations to verify location and correct use. If the officer discovers that the item is not in the location stated on the documents or is being used improperly, the check's results will be considered "unfavorable" and the exporter's future shipping activities will be monitored more closely by government officials or in some instances, completely prohibited.

AVOIDING UNFAVORABLE RESULTS: Loss of export privileges is a death sentence for U.S. companies that sell their products overseas. So how do you avoid "unfavorable" end-use check results? The answer lies in how well you complete your screening, know your customer, keep your records, and review your documentation.

Complete your screening. This one is simple. Don't attempt to ship your exports without knowing your screening requirements and completing them in full. If you export EAR99 goods, you are not exempt from these requirements.

Know your customer. Let's assume you've completed all of your screening requirements. Your foreign consignee didn't appear on any of the prohibited end-user lists. However, this doesn't mean that you truly know your customer and your customer's operations. The best way to do this is to actually visit your customer. So, plan a visit to the customer's facility. See with your own eyes what kind of operation your foreign customer is running.

Keep your records. Federal regulations require exporters to keep all transaction records for five years². Some of the documents that may be requested during a government end-use check include:

- commercial invoice
- purchase order
- airway bill or international bill of lading
- copy of electronic export information filing
- screening documentation, if available
- supporting documentation (i.e. shipper's letter of instruction)
- technical specifications

Review your documentation. It is important to review any export documentation prepared by you

and on your behalf. Your freight forwarder can help you with this process but make sure that you take time to carefully inspect the documents yourself.

- Look for incomplete and inaccurate information
- If documents share the same data, check to make sure that the data matches on each one
- Does the commercial invoice identify all parties to the transaction (the ship to and sold to parties, price payable to, etc?)
- Does the invoice include a commodity description sufficient enough to correspond to the schedule B number used?
- Are the serial numbers correct on the commercial invoice and other shipping documents?
- If your goods require a destination control statement³ does the statement appear on all of your documents?
- If a freight forwarder files your electronic export information (EEI), did you use a Shipper's Letter of Instruction to help prevent AES filing errors?
- Did you independently review the EEI for accuracy?
- If you didn't receive a copy of the EEI from your forwarder, did you request a copy? Does your compliance program include a procedure that requires a copy of every EEI from your forwarder?

The Bureau of Industry and Security expects every exporter to know their compliance responsibilities and to abide by them. It is up to you, the exporter, to determine exactly how. Protect your company from an "unfavorable" end-use check by completing your screening, knowing your customer, keeping your records, and reviewing your documentation.

¹Statistic taken from an online transcript of a presentation given by Jose Rodriguez on July 20, 2011 in Washington D.C. during the 2011 Update Conference on Export Controls and Policy. See http://www.bis.doc.gov/seminarsandtraining/update2011/end_use.pdf

²See "Records to be retained," Code of Federal Regulations, Title 15 Part 762.2

³See Code of Federal Regulations, "Steps regarding Shipper's Export Declaration or Automated Export System Record, Destination Control Statements, and Recordkeeping," Title 15 Part 732.5; "The Shipper's Export Declaration (SED) or Automated Export System (AES) Record," Title 15 Part 758.1; "Destination Control Statement" Title 15 Part 758.6; and Recordkeeping" Title 15 Part 762.