

ELEMENT 1: DENIED PERSONS SCREEN

A system for screening all customers against the most current Denied Persons List (DPL). (General Prohibition Four)

OBJECTIVE: To ensure that transactions involving U.S.-origin items covered by the EAR do not involve persons or entities whose export privileges have been denied by the U.S. Department of Commerce.

PROCEDURE: The EMS Administrator may wish to establish a procedure for complying with restrictions on transacting international commercial activities with parties that have been issued a denial order.

Denial orders are designed to cut off the access of denied parties to U.S.-origin items not only by denying such parties the right to export, but also by prohibiting third parties from dealing with a denied party in a transaction involving U.S. items. General Prohibition Four, found in Part 736 of the EAR, prohibits engaging in actions prohibited by a denial order. Denial orders generally apply to all items subject to the EAR, “No License Required” or License Exception eligible items as well as to items that require a license.

Note that it is necessary to screen not only against exporting or reexporting to a denied party, but also against (1) intra-country transfers abroad of U.S.-origin items to a denied party and (2) the servicing of a denied party's U.S. origin items. All such dealings are prohibited unless the facts are made known to and permission is received from the Office of Exporter Services to engage in a particular transaction.

Screening Procedure

It is recommended that the denied persons screen be performed by using one of two methods. Either the customer or transaction based method should be used. The procedures for customer and transaction based screening are given below. Note the differences.

Customer Based Screening:

- ◆ Check the customer list against the DPL and each update. Look specifically for the name of each customer's firm and principals.
- ◆ Establish a method for keeping the customer base current.
- ◆ The names of the firm and principals of each new customer should be checked against the DPL and each update before adding that customer to the customer list.

Transaction Based Screening:

- ◆ For each order received, check the names of the ordering party's firm and principals as well as the name of the end user, if available, against the latest DPL.
- ◆ Screen backlog orders, orders in process, and orders ready to ship when a new list or update is published.
- ◆ Export transactions should be screened before accepting an order and again immediately prior to shipping, particularly when turnaround time on an order is more than one week.

Documentation of Screen

The denied persons screen should be documented. Documentation consists of noting the name or initials of the individual performing the check, the date the check is performed, and the date of the most current denied persons information used to perform the check. The documentation may be made on the individual order (e.g., in the case of screening on a transaction base) or on the customer list (e.g., in the case of screening on a customer base).

COMMENTS: To perform the denied persons screen, firms should use the DPL found in Supplement No. 2 to Part 764 of the EAR. This list should be updated by reviewing the daily publications of the Federal Register. Additionally, BXA's home page has a link to the DPL; the address is: <http://www.bxa.doc.gov>.

Regardless of the screening technique chosen, customer based or transaction based, it is important that the person(s) responsible for conducting the check use the most current denied persons information to perform the screen. In both screening techniques, copies of denied persons information, and updates thereto, should be distributed as soon as they are available.

Choosing a Denied Persons Screening Technique

A firm that adopts an EMS program should decide for itself whether to screen its export transactions using the customer based method, or the transaction based method. Firms that receive export orders from a wide variety of new end-customers may want to opt for the transaction based method. However, firms receiving orders from a fairly stable and consistent customer base may want to select the customer based method. Regardless of the method used, all firms need to develop a procedure to stop orders to customers who appear on the DPL.

Treasury and State Department Sanctions, Embargoes and Debarments

Firms need to be aware of other trade-related sanctions, embargoes or debarments imposed by the U.S. Departments of the Treasury and State. Actions taken by these agencies are published in

the Federal Register. Therefore, firms should also review the Federal Register for announcements from these agencies.

The Department of the Treasury's, Office of Foreign Assets Control (OFAC), imposes prohibitions on transactions by U.S. persons with "Specially Designated Terrorists" (SDT)", and "Specially Designated Nationals" (SDN) of countries that are under foreign policy embargoes. Transfer of items to these entities and individuals, located worldwide, is prohibited without authorization from OFAC.

Exporters are urged to routinely check the Federal Register for additions to, and deletions from, these lists.

Information regarding SDTs and SDNs may be obtained from:

Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220
Website address: <http://www.ustreas.gov/treasury/services/fac>

Tel: (202) 622-2000

The Department of State's Bureau of Politico-Military Affairs imposes trade-related sanctions or issue suspensions and debarments. Information on trade relation sanctions may be obtained from:

Assistant Secretary for Politico-Military Affairs
U.S. Department of State

Tel: (202)647-9022

Information on suspension or debarments may be obtained from:

Center for Defense Trade
Office of Defense Trade Controls
Compliance Analysis Division
U.S. Department of State
Washington, DC 20522
Tel: (703) 875-6650