

Export Administration Regulations

By Peter Burger

Are you a software development company with encrypted software that you sell to customers overseas? Do you send your salespeople overseas with laptop computers or other equipment? Does your company hire foreign nationals? Have you ever invited foreign nationals to visit your company for a plant visit and an explanation of your company's know-how? Have you ever had phone conversations with a customer overseas involving the transfer of production know-how? Do you sell your products internationally on the Internet?

If you answered yes to any of these questions, your company is subject to the Export Administration Regulations. Although you may not actually need a license to engage in such activity, your company should maintain the necessary paperwork evidencing that you are in compliance. Failure to comply can result in civil and criminal penalties; ignore the regulations at your peril.

As the prior examples indicate, your company can easily fall into the category of an exporter. As the world becomes more and more integrated, and Internet sales abound, knowledge of the Export Administration Regulations will likely become as common place as once obscure employment regulations.

Purpose of the Regulations.

The Export Administration Regulations are administered by the Bureau of Export Administration under the U.S. Department of Commerce (USDOC). The Department of

Commerce's charge is to assist U.S. businesses in exporting products. Thus, although the regulations by definition limit your freedom in exporting, the USDOC generally does everything within its power to facilitate your international transactions.

The policy behind the regulations is generally to protect U.S. national security so, clearly, any products with a military or nuclear purpose are likely to require a license before export. Consumer goods generally do not require a license even though their export is technically subject to the Export Administration Regulations.

Framework of Regulations.

The general framework of the Export Administration Regulations requires that you classify your product to determine whether it is the type of product that requires a license before exporting. In some instances, even if the product itself does not require a license, the regulations may prevent you from sending it to particular countries or to particular individuals who have a bad track record with the USDOC.

One current area of focus is the export of encrypted software. Because the encryption process itself has a national security component, the USDOC is scrutinizing closely companies that are exporting (via licenses) encrypted software. Thus, if you are a software development company, you ought to be paying attention to these regulations. The USDOC is also focusing on freight forwarders to ensure that they are following the export guidelines.

If you are a freight forwarder, you, too, should be paying close attention to the regulations.

Just because the Commerce Department is focusing on encrypted software and freight forwarders, your company should not fall asleep at the switch. Pay attention to what you are doing in this area, and know your customers. If you export, adopt an export compliance policy and keep good records. Compliance, while somewhat confusing, is not difficult; staying out of trouble is worth the effort of learning these regulations. ■