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ITAR Compliance Basics

- Goods or services that could be used for military and defense purposes MAY be ITAR controlled
  - Companies must be positioned to identify whether they are dealing in any ITAR items captured by the United States Munitions List (USML)

- Companies dealing in ITAR items are operating in a high-risk environment from an export control perspective and need a robust export compliance program in place
  - Significant regulatory fines as well as material reputational risks

- State Dept. views audits and self-assessments as a core and necessary part of any credible export control program
  - Critical to ensure that the Company has effective policies and processes in place to manage their ITAR related risks

Getting Started

- Determine Timing
  - Frequency and timing of audits are discretionary
  - ITAR is a high-risk area and audits/self-assessments should be at least annual

- Designate Internal Resources
  - Requisite background and knowledge to conduct an internal compliance audit of the company's ITAR processes

- Set Purpose & Scope
  - Goal is to verify that the Company has implemented the policies and procedures described in its ITAR manual, with a focus on high-risk areas
  - Obtain product classification and customer information as needed to help identify the focus of the review

Potential Focus Areas for Audit

- Dedicated resources and Tone at the Top
- Policy and procedures cover all relevant ITAR compliance requirements
- Jurisdiction and classification process (CJ process)
- Sales and order processing/Licensing determinations
- License and agreement management
- Facility and technology controls
- Investigation and corrective action management
- Training
- Recordkeeping

Next Steps

- Draft an audit roadmap

- Review current, relevant written policies and procedures

- Create questionnaires tailored to focus areas

- Interview relevant personnel

- Collect documentation and test efficacy of relevant ITAR controls/processes

- Analyze sample transactions

Case Study: ITAR Export License & Agreement Audit

- Export licenses and agreements may cover products, tech data (drawings etc.), software, defense services (engineering support etc.), and re-transfer of goods

- There are various types of export licenses and agreements, but they all:
  - All are end user specific
  - USML category specific
  - Have a set expiration date
  - Have value assigned to them

- Most importantly, ALL exports that occur under a licenses must be tracked!
  - Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper, and must be available upon request by USG (22 CFR § 122.5)

Case Study: Technical Assistance Agreements & Manufacturing License Agreements

- Authorizes technical data/software/manufacturing know how/defense services
- Examples of items to include in audit checklist:
  - Has the agreement been physically signed by all parties after USG approval?
  - Is the agreement still valid? (They can be issued for up to 10 years)
  - Is the Company's current activity fully described and covered under the license authorization?
  - Was the agreement amended or updated to meet any new program needs?
  - Have tech data transfers been properly logged?
  - Have any values associated with the agreement been exceeded?
  - Are all relevant parties properly identified by name & role in the agreement?
  - Have all provisos/limitations been followed?
  - Have annual reporting requirements been met?

Final Steps

- Upon completion of the audit, a detailed report should be drafted and submitted to executive leadership for review (e.g., General Counsel, CFO, COO or any other key executive stakeholder)
  - The audit report should include findings and recommendations

- Mitigation and corrective actions should be addressed as necessary
  - Prioritize, resource and project manage these actions against a set timeline for completion
  - Require accountable personnel to sign-off when an action item is completed

- Maintain all audit related documents in a secure, central database

- Foster an environment of continuous improvement, setting expectations that regular audits and self-assessments are part of any robust ITAR compliance program

Thank you!