

Know Your Customer Guidance

Certain provisions in the Export Administration Regulations (EAR) require an exporter to submit an individual validated license application if the exporter "knows" that an export that is otherwise exempt from the validated licensing requirements is for end-uses involving nuclear, chemical, and biological weapons (CBW), or related missile delivery systems, in named destinations listed in the regulations.

BIS has issued the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or revise the EAR.

1. **Decide whether there are "red flags."**

Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as "red flags." Included among examples of red flags are orders for items which are inconsistent with the needs of the purchaser, a customer's declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations which are incompatible with the stated destination (e.g.--120 volts in a country with a standard of 220 volts). Commerce has developed lists of such "red flags" which are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.

2. **If there are "red flags."**

If there are no "red flags" in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent "red flags" (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the customer's representations. However, when "red flags" are raised in the information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination.

The duty to check out "red flags" is not confined to the use of general licenses affected by the "know" or "reason to know" language in the EAR. Applicants for validated licenses are required by the EAR to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless "red flags" oblige you to take verification steps.

3. **Do not self-blind.**

Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate a company from liability, and

it would usually be considered an aggravating factor in an enforcement proceeding.

Employees need to know how to handle "red flags." Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

4. Reevaluate all the information after the inquiry

The purpose of this inquiry and reevaluation is to determine whether the "red flags" can be explained or justified. If they can, you may proceed with the transaction. If the "red flags" cannot be explained or justified and you proceed, you run the risk of having had "knowledge" that would make your action a violation of the EAR.

5. Refrain from the transaction, disclose the information to BIS and wait. [See how to [report a possible violation](#)]

If you continue to have reason for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BIS in the form of an application for a validated license or in such other form as BIS may specify.

Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BIS will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a "red flag," you may [contact BIS's Office of Export Enforcement](#) or use this [form](#) to submit a confidential tip.

[Please note that use of the form will not generate any return e-mail to you so that the information you submit will remain confidential.]

Red Flag Indicators

Things to Look for in Export Transactions

Use this as a check list to discover possible violations of the Export Administration Regulations. You may also wish to visit our page that provides "[Know Your Customer Guidance](#)".

- The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] list of denied persons. [Case example](#).
- The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product's performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.

If you have reason to believe a violation is taking place or has occurred, you may report it to the Department of Commerce by calling its 24 hour hot line number: 1 (800) 424-2980. Or if you prefer use our [form](#) to submit a confidential tip.