



“ITAR Compliance”

2013 Department of Energy Export Control Coordinators Organization Conference

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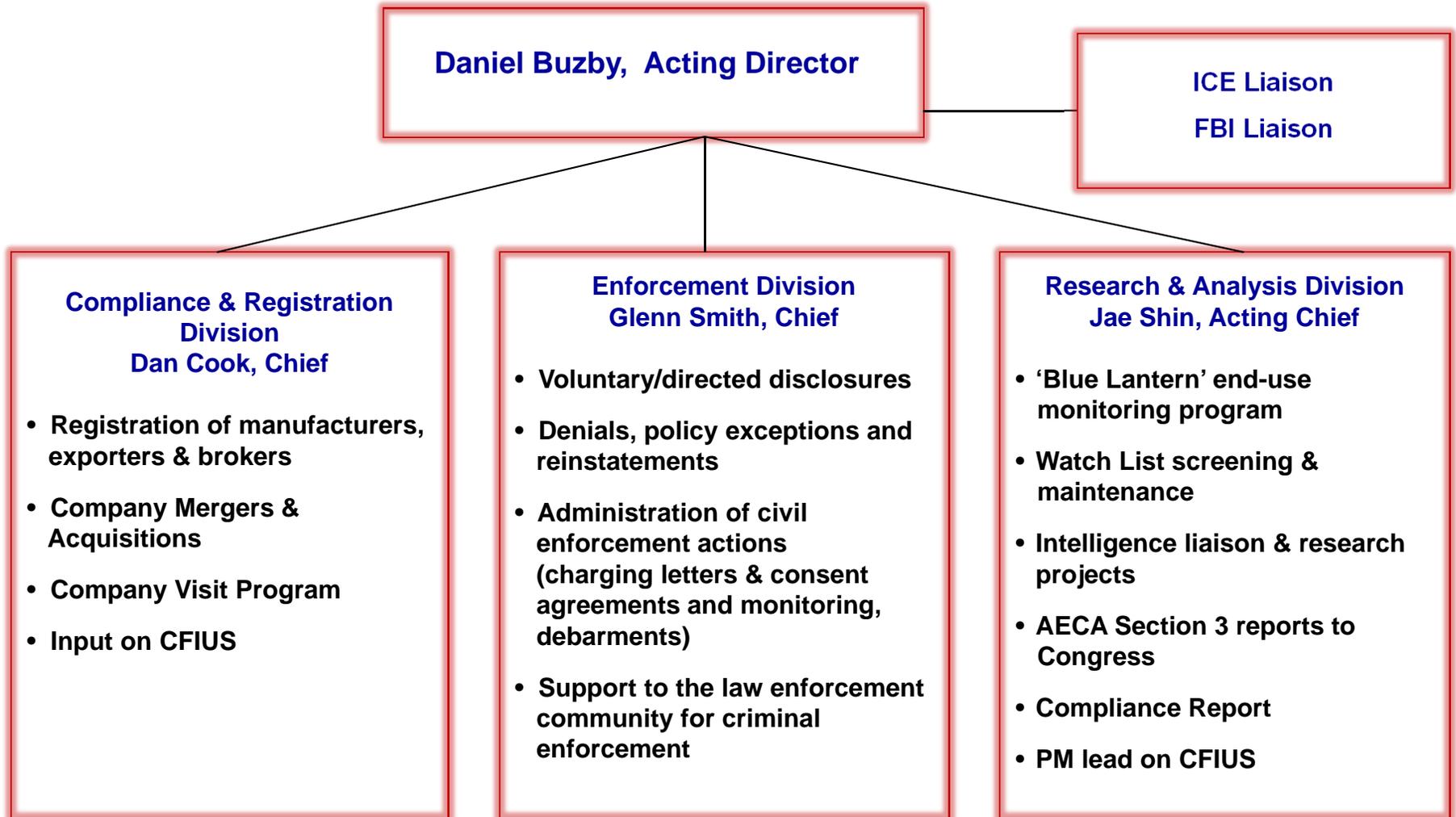


Office of Defense Trade Controls Compliance Presentation Topics

- Organization
- Responsibilities & Trends
- Compliance Program
- Voluntary Disclosures
- Case Studies



Office of Defense Trade Controls Compliance Organizational Chart





End-Use Monitoring, Red Flags, and Due Diligence

Research and Analysis Division



RAD's Role in Licensing

RAD vets foreign parties listed on license requests and identifies potential gray arms trafficking patterns

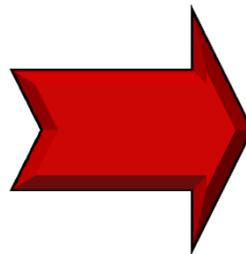
- Watch List persons and companies
- Unusual or suspicious parties or transactions
- Defense articles and technologies in demand by embargoed, proscribed, sanctioned parties and other undesirables
- Possible front companies, arms traffickers and gray arms networks
- Assessments of trustworthiness of foreign governments and private end-users and consignees



Blue Lantern End-use Monitoring Program

- End-use monitoring program required by Section 40A of the Arms Export Control Act (AECA), formalized 1996
- Verifies end-users, consignees, and end-uses of U.S. exports of defense articles and services
- Performed in cooperation with host governments worldwide by U.S. Embassy personnel

- Monitor transfer of sensitive hardware, technology, and services
- Build confidence between USG and defense trade partners
- Educate foreign governments and companies about U.S. export controls
- Impede "gray arms" trade

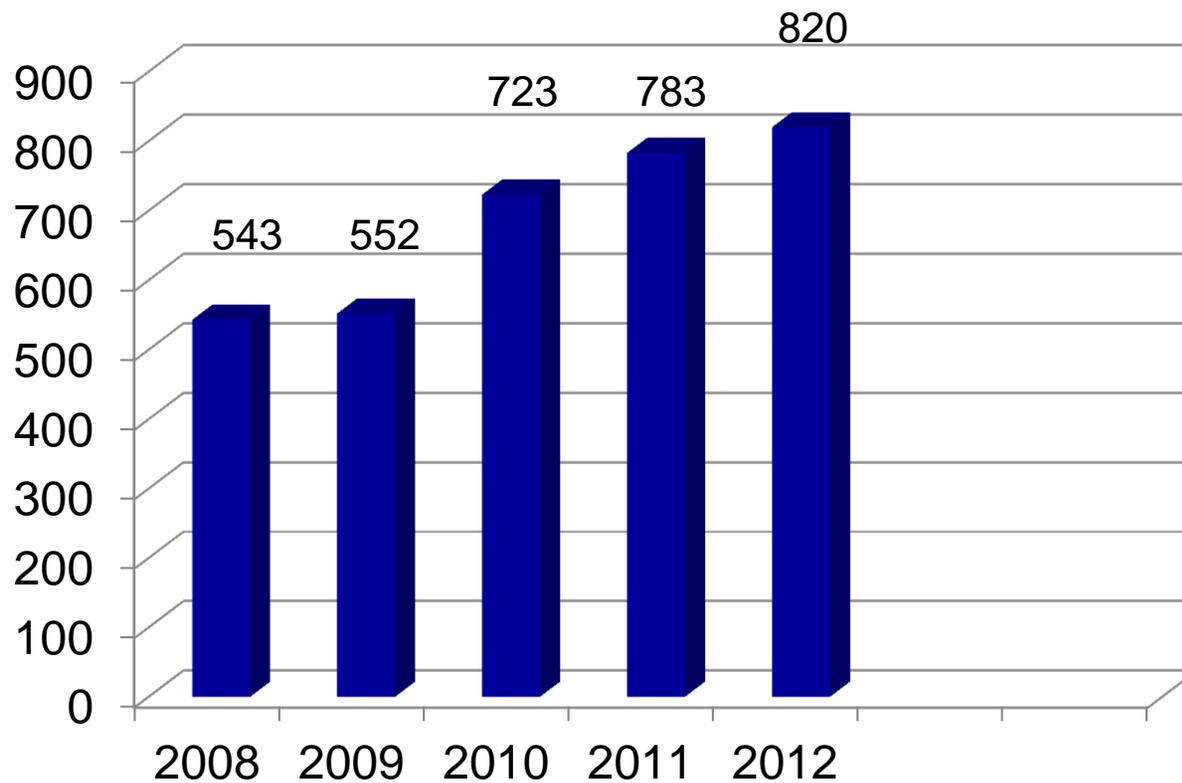


Improved
International
Security



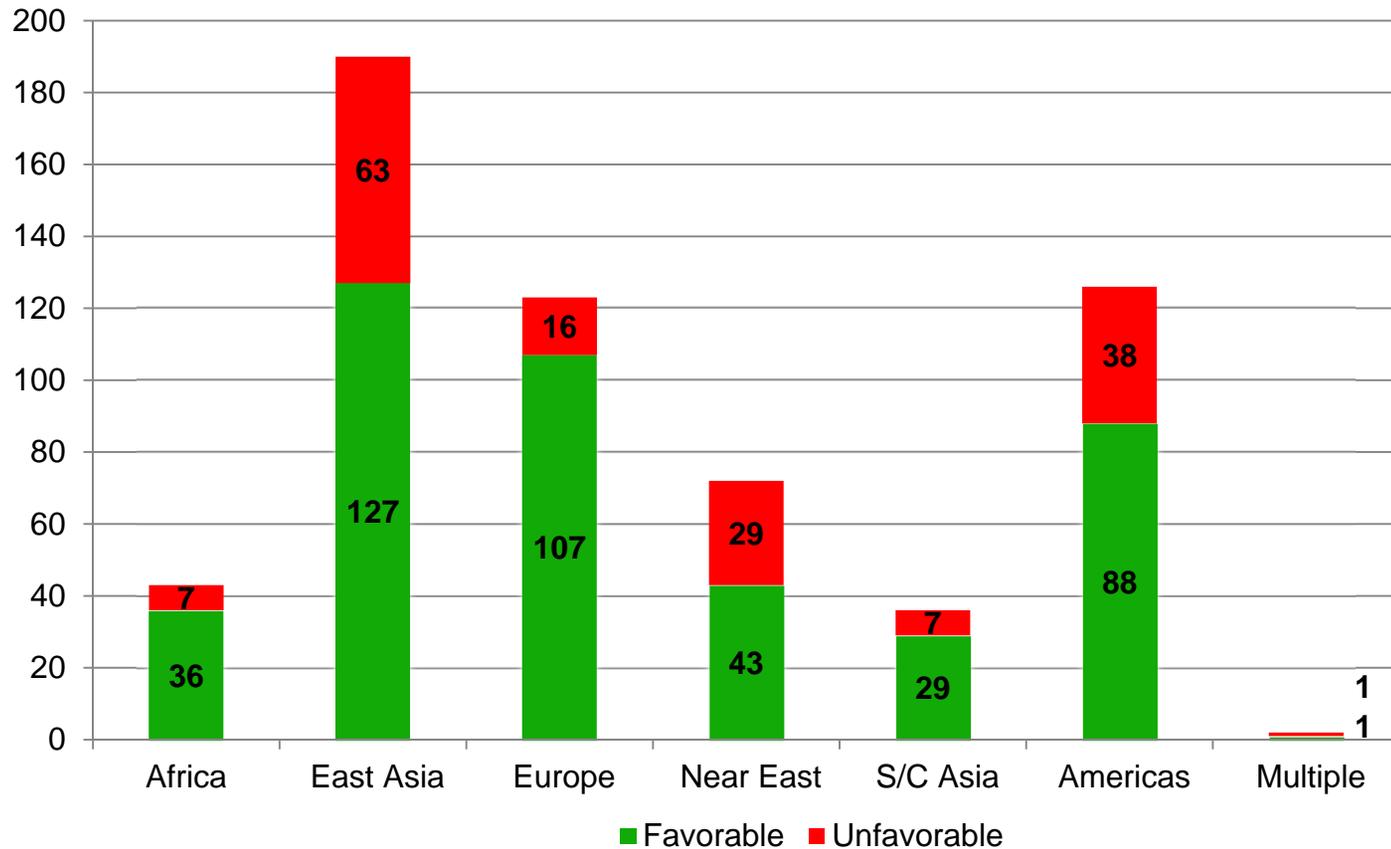


Research & Analysis Division Blue Lantern Trends





FY 2011 Blue Lanterns Closed By Region





Reasons for 'Unfavorable' Responses Number of Instances in FY 11

76	Derogatory info / unreliable recipient of USML
43	Unable to confirm order / receipt of goods
34	Diversion / retransfer / re-export
30	Unauthorized foreign party involved in transaction
12	Unauthorized brokering
12	Inability to confirm existence of foreign party
7	Refusal to cooperate
6	Lack of secure storage facilities
5	Unauthorized stockpiling



Warning Signs of Questionable Export

- **End-user / End-use Indicators**

- Unfamiliar end-user
- Reluctance or evasiveness by U.S. applicant or purchasing agent to provide information
- Payment in cash or at above-market rates
- Scanty, unavailable, or derogatory background information on end-user's business
- Incomplete/suspect supporting documentation
- Unfamiliarity of end-users with the product or its use
- End-user declines usual follow-on service, installation, warranty, spares, repair, or overhaul contracts



- **Commodity Indicators**

- Commodities/services appear excessive or inconsistent with end-user's or consignee's inventory or needs
- Commodities in demand by embargoed countries
- Especially sensitive commodities (e.g., night vision equipment, unmanned aerial vehicles, or cruise missile technologies)

- **Country / Shipment Indicators**

- Unusual routing, trans-shipment through multiple countries or companies
- Location of end-user or consignee in a Free Trade Zone (FTZ)
- New/unfamiliar intermediary
- Vague or suspicious delivery dates, locations (such as P.O. boxes), shipping instructions, packaging requirements, etc.
- Designation of freight forwarders as foreign consignees or foreign end-users
- Foreign intermediate consignees (trading companies, freight forwarders, export companies) with no apparent connection to the end-user



Due Diligence

- **Obtain Complete End-User/Use Certification**
 - End-User
 - End-Use (include platform, i.e. aircraft type)
 - Intermediate Consignees
 - Customer
 - Customer's customer (when applicable)
 - Freight Forwarder
 - Maintenance and Repair Providers
 - Any company that will take possession of the item
- **Ask for Additional Supporting Documentation**
 - Non-Transfer and Use Certificate (DSP-83)
 - Contract
 - Purchase Order
 - End-Use Statement on Government Letterhead
- **Request Contact Information**
 - Specific name and all available contact information for end-user and intermediate consignees.
- **Conduct Basic Research on Foreign Parties**
 - Visit websites and learn about their line of business



Blue Lantern Case Study 1: Phony End-User and Consignee

Export License Application

- Commodity/End-Use: Bell 206 parts
- End-user: Unfamiliar European Organization
- Foreign consignee: Unfamiliar European Company
- No documentation from end-user
- Procurement inconsistent with end-user's needs
- Foreign consignee's website described history of work on USML, however it had never previously appeared on a DDTC license.

Findings

- End-use statement was falsified by foreign consignee
- Foreign consignee admitted it was front company

Lessons

- Conduct basic inquiry on unfamiliar parties and their line of business
- Confirm that commodity matches end-user's line of business



Blue Lantern Case Study 2: Reseller Listed as the End-User

Export License Application

- Commodity/End-Use: Large quantity of NVDs
- End-user: European Reseller
- End-use: Government security operations
- Request for hardware not normally retailed by the company
- Large number of NVDs for a private end-user

Findings

- End-use statement falsified
- Named end-user denied placing the order with the U.S. exporter

Lessons

- Conduct basic inquiry on unfamiliar parties and their line of business
- Confirm that commodity matches end-user's line of business



Summary

- Ensure all parties are identified, end-use is clear and logical, and that all available supporting documentation is provided
- Conduct basic due diligence on unfamiliar parties
- Information discovered during the course of a Blue Lantern may result in a Directed Disclosure
- Perform thorough due diligence up front and avoid violations



Compliance Programs and Disclosures

Enforcement Division



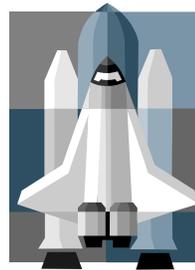
Responsibilities of the Enforcement Division (END)

- Disclosures – Voluntary & Directed
- Civil enforcement actions:
 - Charging letters and consent agreements & monitoring
 - Debarments
- Denials, policy exceptions and reinstatements
- Review authorization requests with enforcement nexus (i.e. disclosure, involvement of debarred parties/transaction exceptions)
- Support to the law enforcement community for criminal enforcement
 - Pre-trial and trial certifications and database record searches.



Compliance Program

ITAR Compliance Manual



Revised February 2013



Compliance Program

Why Bother?

- Affects foreign policy & national security
- Impacts your reputation & your bottom line
- Provides organizational structure and oversight
- Becomes expensive if you don't – fines & penalties!

Penalties for Violations of the AECA and ITAR Include:

Civil Violations

- \$500,000 for each violation
- Extra compliance measures
- Debarment

Criminal Violations

- \$1 million for each violation
- 20 years imprisonment
- Debarment



Compliance Program Key Factors

Senior Officer Commitment:

- Sets the company tone and overall message on export controls
- Has general knowledge of export controls and their importance
- Creates organizational structure and provides resources
- Designates empowered official
- Serves as final appeal authority for internal dispute resolution
- Signs registration documentation (ITAR §122.2 and § 129.4)
- Informed on voluntary disclosures (ITAR § 127.12(b)(3)(v))

Resources Dedicated to Compliance:

People – the right number & experience

Budget – export control expenses

Physical space – security



Compliance Program Key Factors

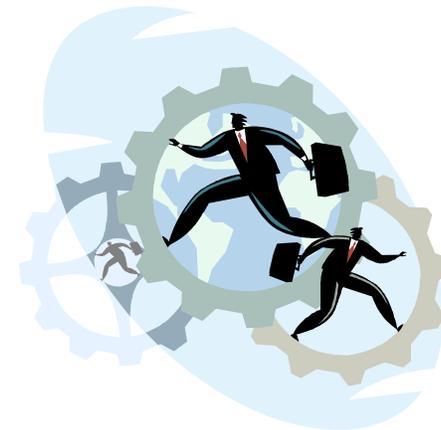
Role of the Empowered Official (ITAR §120.25)

- Designated by senior management for supervision of export control responsibility
- Directly employed by applicant or a subsidiary
- Legally empowered in writing to sign license applications
- Understands export control statutes and regulations
- Understands criminal and civil liability and administrative penalties for violation of AECA/ITAR
- Has **independent** authority to:
 - Inquire into any aspect of proposed export/temporary import
 - Verify legality of transaction and accuracy of information
 - Refuse to sign any license application without prejudice or adverse recourse



Compliance Program Elements

1. Organizational structure
2. Compliance Resources
3. Product classification
4. Contracts/marketing screening
5. License preparation & implementation
6. Exemption Implementation
7. Non-U.S. person employment
8. Physical security of the ITAR facility
9. Computer network security
10. Foreign travel
11. Foreign visitors
12. Record keeping
13. Reporting
14. License / Agreement maintenance
15. Shipping & receiving processes
16. ITAR training
17. Internal monitoring and audits
18. Disclosures
19. Violations and penalties
20. Brokering



Compliance Program Guidelines Available on DDTC's website:

http://www.pmdtdc.state.gov/compliance/documents/compliance_programs.pdf



Voluntary Disclosures

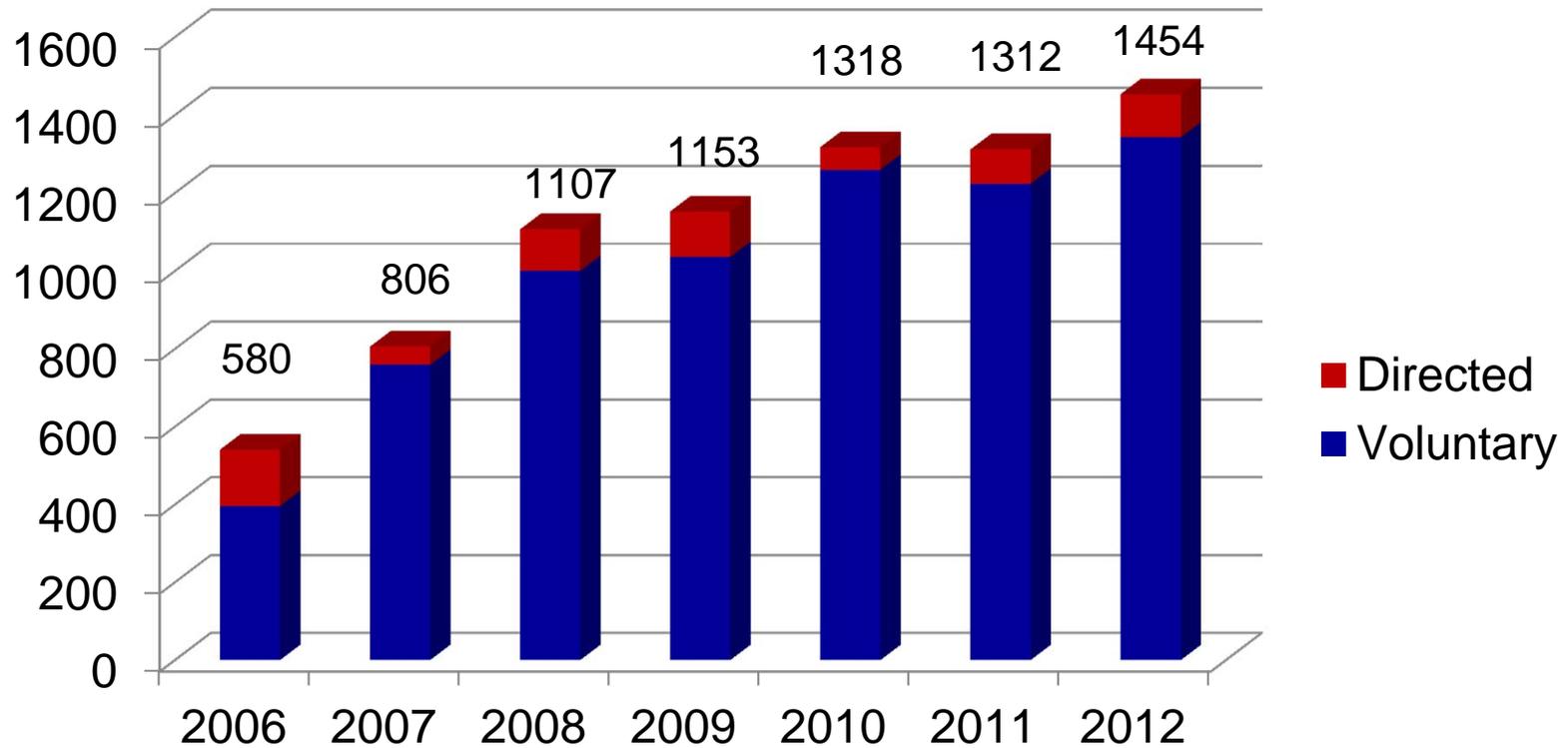
ITAR Section 127.12 VIOLATIONS & PENALTIES

<p>§ 127.12 Voluntary disclosures. (a) <i>General policy.</i> The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons (see § 120.14 of this subchapter) that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, order, license, or other authorization issued under the authority of the Arms Export Control Act. The Department may consider a voluntary disclosure as a mitigating factor in</p>	<p>determining the administrative penalties, if any, that should be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests, and will be an adverse factor in determining the appropriate disposition of such violations. (b) <i>Limitations.</i> (1) The provisions of this section apply only when information is provided to the Directorate of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this Subchapter [Etc.]</p>
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- *“The Department **strongly encourages** the disclosure of information to the Directorate of Defense Trade Controls by persons...that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, order, license or other authorization...”*
- *“Voluntary self-disclosure may be considered a mitigating factor in determining...penalties.”*
- Failure to report will be a factor in determining penalties.



Disclosure Trends





Factors for Disclosure Trends

- Increased number of license approvals
- Growth in defense exports & business activity
- Increased industry awareness and training
- Industry audits – voluntary
- Mergers & acquisitions – *due diligence* by companies
- More USG outreach and inter-agency cooperation
 - “Project Shield America” – DHS/ICE
 - “Domain Program” – FBI
- DDTC’s analysis of registration & subsequent actions



Voluntary Disclosures

Discovery of Violations

Violations are discovered when:

- Updating registration
- Initiating export/import activity
- During training
- Preparing a new license submission
- Internal or external auditing
- Merging with or acquiring another company



Voluntary Disclosures Preparation & Submission

- Format detailed in ITAR §127.12(c)
- Summary – **who**, what, **when**, where, **how**, why...
- Corrective actions taken – be thorough and explicit
- Provide all relevant documentation and attachments (on CD if voluminous)
 - license history and copies of approvals
 - descriptive literature on hardware
 - technical data documents or details on defense service
 - CV/resume on foreign persons
- Confirmation that senior officer has been informed



Voluntary Disclosures Specific Details to Include

- What was the general nature of the violation – unauthorized export/re-export, terms/conditions of license approval, loss/theft, recordkeeping, etc.
- What item was involved – hardware, technical data, defense service, USML category & sub-category
- When did it occur – beginning, duration, end, discovery and reporting
- Who was involved – name, citizenship, title, function, employer, all parties to the export, person who authorized the transaction, person responsible for export compliance
- Where did it occur – U.S. or overseas, city, state, country
- Why did it occur – root cause, were prevailing policies/procedures adequate, any previous violation and previous mitigation measures



Voluntary Disclosures Suggestions

- Submit on company letterhead, not outside consultant or counsel
 - Outside counsel may submit the voluntary disclosure with a cover letter
- One original and one copy, more will be requested if required
- Provide a matrix or timeline for multiple or complex violations
- In-depth analysis of violation demonstrates your knowledge
- Provide point of contact – name, title, phone/fax and e-mail
- Do not send via fax or email
- Consider a summary at beginning that identifies: violation & ITAR section, commodity, USML category, date of violation, foreign party(s) and any related license(s)



Voluntary Disclosures More Suggestions

- Initial notification *immediately* after a violation is discovered, then a thorough review
- DTCC will issue a VD case #
 - provided in a 60-day Notification Letter
 - wait for the VD case # before submitting related licenses –
DO NOT cite anything other than a correct VD case # on a license application
- Review thoroughly but quickly – ensure enough resources



Voluntary Disclosures More Suggestions

- Acknowledge underlying error/violation – enhance credibility
- Review all export-related transactions and policies – discover and disclose any other violations
- Keep END apprised, ask for extensions in advance
- Implement remedial actions promised to END, verify effectiveness



Voluntary Disclosures

What USG will be Reviewing

- Harm to U.S. foreign policy or national security
- Adherence to law, regulations and DDTC's licensing and compliance policies
- Severity of violation (minor or substantive, procedural or judgmental, once or repeated, unique or systemic)
- Company's approach & commitment to compliance
 - Nature of investigation
 - Implementation of remedial measures
 - Improvement of company's compliance program



Voluntary Disclosures

Factors in Determining Disposition

- Whether violation continues or has ended
- Severity of violation (minor or substantive, procedural or judgmental, once or repeated, unique or systemic)
- Whether transaction would have been authorized
- Number of locations, programs and business units
- Root causes identified and addressed

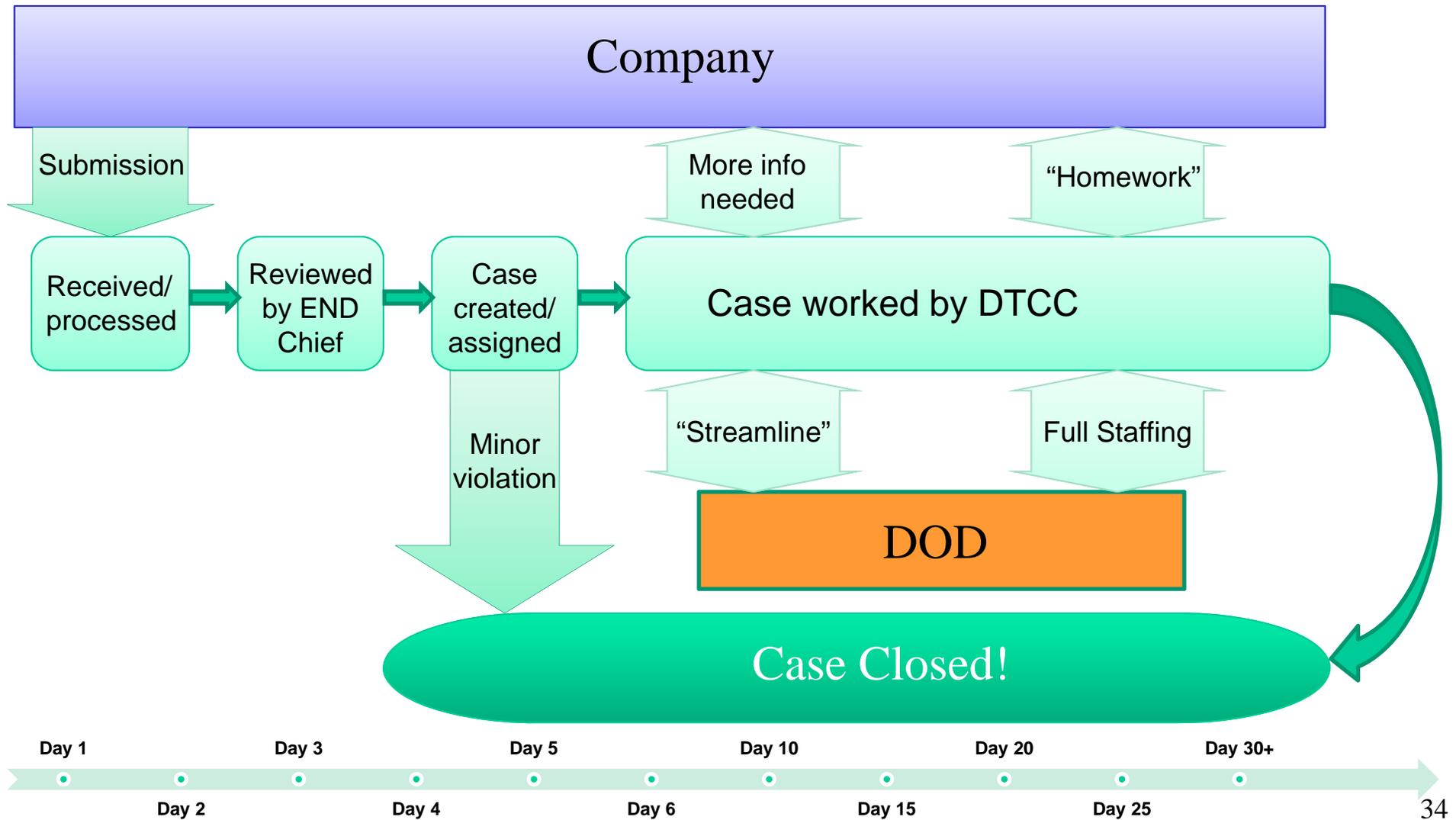


Voluntary Disclosures Factors in Determining Disposition

- Remedial training provided
- Policies & procedures reviewed and reconsidered
- Violator cautioned or disciplined
- System implemented to report repeat violation
- Degree of cooperation



Lifecycle of a Voluntary Disclosure





Voluntary Disclosures Disclosure Results

Most cases closed without further action.

When warranted, most common actions by DTCC:

- 12% request additional information and identify additional violations
- 10% review company compliance manual
- 10% recommend additional compliance measures
- 5% recommend audit of compliance program
- 2% recommend submission of CJ request
- 1 disclosure resolved under a consent agreement



Voluntary Disclosures Beneficial Results

- Greater appreciation and understanding of defense trade controls
- Senior management attention & support for compliance
- Enhanced compliance program
- Designated, full-time export control official & other resources
- Improved ability to identify & prevent violations



Voluntary Disclosures National Research Universities

- Since 2006, received **55 Voluntary Disclosures** and two **Directed Disclosures**

Types of Violations	Number
Unauthorized export of technical data and defense services to foreign persons within the facility	23
Unauthorized export of technical data, including Web posting	17
Unauthorized export of defense articles (hardware)	7
Violating terms of authorizations	2
Administrative violations	2



Voluntary Disclosures Research Entities w/in Companies

- Since 2006, received 50 Voluntary Disclosures and six Directed Disclosures

Types of Violations	Number
Unauthorized export of defense articles (hardware)	25
Unauthorized export of technical data, including Web posting	15
Unauthorized export of technical data and defense services to foreign persons within the facility	11
Violating terms of authorizations	3
Failure to register	3



Voluntary Disclosures USG & Company Laboratories

- Since 2006, received **55 Voluntary Disclosures** and two **Directed Disclosures**

Types of Violations	Number
Unauthorized export of technical data and defense services to foreign persons within the facility	23
Unauthorized export of technical data, including Web posting	17
Unauthorized export of defense articles (hardware)	7
Violating terms of authorizations	2
Administrative violations	2



Voluntary Disclosure Case Study

Failure to Properly Establish Jurisdiction

Company:	U.S. manufacturer of microcircuits
Violations:	Unauthorized exports of radiation tolerant microcircuits prior to, during the pendency of and following receipt of a CJ determination that the microcircuits were ITAR-controlled.
Referral Source:	Voluntary disclosure after CJ.
Causes:	Company submitted CJ after customer inquiry. Manual safeguards failed to stop exports while CJ was pending. Earlier disclosure after an internal audit revealed other unauthorized exports caused by incorrect jurisdiction determinations, and assured that corrective measures had been implemented.
DTCC Action:	Consulted DOD - unlikely harm to national security. Obtained from the company details on past ITAR exports, audit implementation, and policies and training on jurisdiction determinations and other compliance aspects.
Outcome	Company reviewed exports, disclosed more violations and revised compliance policies and training. Second CJ determined more products were USML.



Disclosure Case Study

Release of Technical Data on Website

Company:	U.S. University / Laboratory
Violations:	Unauthorized release of technical data on a personal website
Referral Source:	Lab voluntarily disclosed. Company took immediate action once activity was discovered, terminating employee and had the site closed.
Causes:	Employee was not following ITAR compliance protocol. Failed to take ITAR compliance seriously.
DTCC Action:	Reviewed company due diligence and had the lab bolster its ITAR compliance training and awareness.
Outcome:	Verified that the lab instituted a more robust compliance training program. Civil case closed favorably for company.



Voluntary Disclosure Case Study

Unauthorized Export of Technical Data

Company:	U.S. Research Center
Violations:	Unauthorized exports of technical data involving optical components to a foreign-person employee
Referral Source:	Voluntary disclosure. Violation discovered during awareness training
Causes:	Failed to implement the required Technology Control Plan (TCP). Insufficient ITAR compliance program. Lack of communication on the license provisos.
DTCC Action:	Consulted DOD - unlikely harm to national security. Ensure implementation of the TCP. Verified foreign-person employee screening and policies and procedures on obtaining authorizations. Evaluated the process on regular audits of license compliance.
Outcome	Establishment of a new position, Director of Export Compliance dedicated to ITAR compliance. Introduction of a comprehensive ITAR training program. Lessons learned communicated to all employees. No further civil action was taken.



Summary

- Company commitment
- Management's support toward ITAR compliance
- Sufficient human, financial and capital resources
- Compliance manual & implementation
- U.S. & foreign party screening data
- Education and training



Leads, Tips, Questions

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General Questions

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