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DDTC AUDITS & TIPS FOR COMPLIANCE READY PROGRAMS



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Topics



- **DDTC Audits**
 - Types
 - **DDTC Directed Audits – Client Experiences**
 - Voluntary Audits
- **Compliance Ready Control Programs**
 - Required Elements
 - Tips for Building

ADVISEMENT: This presentation is not a substitute for the advice of an attorney. If you require legal advice for a specific situation, you should seek the services of a competent attorney or other professional.

DDTC Audits



Who? State Department

- Directorate of Defense Trade Controls (DDTC)

What?

- International Traffic in Arms Regulations

Types of Audits

- Directed
 - Usually the result of a settlement or Voluntary Disclosure
- Voluntary
 - Proactive – part of an effective Compliance Program
- Internal
- External

DDTC Audits



■ DDTC Directed Audits

- Require appointment of third-party, independent auditor
 - auditor must be approved by DDTC in advance
- Detailed Audit Plan must be submitted and approved by DDTC in advance
 - plan must cover all compliance elements
 - DDTC likely will request changes to focus on areas related to the reason why the audit was directed
- Audit schedule
 - due date is typically dictated in settlement agreement
 - extensions available – plan ahead!

DDTC Audits



- **DDTC Directed Audits – Client Experiences**
 - **Pre-audit**
 - allows for correction/program enhancement
 - **Pre-visit preparation**
 - provide documents to auditors before on-site visit
 - assemble transaction records for on-site visit
 - **Audit scope**
 - likely established by DDTC, but don't assume so
 - establish before audit begins
 - consider length of time procedures have been in place – is there sufficient history to test effectiveness?

DDTC Audits



- **DDTC Directed Audits – Client Experiences**
 - **Transaction Testing**
 - DDTC generally allows sampling – don't over sample
 - auditor should select sample on arrival – company should quickly assemble documents for better efficiency
 - **On-site Visit**
 - obtain list of persons to be interviewed prior to visit
 - schedule on-site visit to ensure personnel availability
 - manage your interviewees – respect the auditor's time
 - build in flexibility – provide a site tour as an introduction

DDTC Audits



■ DDTC Directed Audits – Client Experiences

– Visit Close-out

- don't expect a formal report – might set unreasonable expectations by management
- develop list of open items – ensure one company person is responsible to manage the list

– Post visit

- auditor follow-up – be responsive
- don't waste the auditor's time – be honest and move on

– Audit report

- draft report should be closely reviewed
- prepare draft report review personnel in advance
- focus on accuracy of facts
- Legal review

DDTC Audits



■ Voluntary Audits

- Important, but can be dangerous
- Likelihood of noncompliance is high; therefore, audit must be conducted in a manner that anticipates discovery of violation.
- Preserve privilege as much as possible.
- Outside audits or internal audits directed by counsel, facilitate privilege preservation and provide objective assessment.
- Consider same factors as with a Directed audit (scope, timing, sampling, etc.).



Tips for Building a Compliance Ready Control Program



Compliance Programs



- **At a minimum, an export compliance program should include:**
 - **Compliance policy and export responsibility**
 - **Proper classification, licensing and checks**
 - **Screening of denied parties, end-uses/end-users and red flags**
 - **Training, audits, and updates**
 - **Recordkeeping**
 - **Safety valve**



Compliance Programs



■ Tips For Building a Compliance Ready Program

- Cover all DDTTC Compliance Program Guidelines elements (<http://pmddtc.state.gov/compliance/index.html>)
- Set initial control level according to business risk
- Periodically review controls and update as need
- Ensure documented controls accurately reflect actual practice
- Test your controls (regular internal reviews)
- Focus on early jurisdiction determination controls
- Watch cross-functional hand-offs – validate!

Compliance Programs



■ Tips For Building a Compliance Ready Program (cont.)

- Physical Access Controls: “walk the area”, check doors, locks signage periodically
- Logical Access Controls: system files and access controls – coordinate with I/T
- Establish Compliance visibility to new projects
- Recordkeeping – test it! Don’t assume custodians are following the records management plan
- Training – initial, on-going, tiered approach, documented
- Safety valve – have a process for investigation and disclosure of potential violations – consider Attorney-Client privilege

Questions?





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