

BIS Issues Guidance to Financial Institutions on Best Practices for Compliance with the Export Administration Regulations

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This blog post was drafted with assistance from Sean C. Church, Paralegal

On October 9, 2024 the Department of Commerce's Bureau of Industry and Security (BIS) published guidance for financial institutions (FIs) which outlines best practices for compliance with the Export Administration Regulations (EAR). BIS provided recommendations for financial institutions to minimize the risk of violating the EAR.

These recommendations describe recommended due diligence practices, encourage transaction reviews, and clarify which types of real-time transaction screenings are considered to be the best practices. The guidance is yet another example of the U.S. Government's view that all parties to a transaction -- whether the exporter, financial institution, freight forwarder, or others -- have a role to play in compliance. Although FIs have historically focused diligence on sanctions and anti-money laundering laws, BIS has made it clear this approach will be insufficient to capture FIs risks under the EAR. This guidance for FIs focuses on General Prohibition 10 (GP 10), which prohibits both individuals and FIs from financing or servicing items subject to the EAR with the knowledge that a violation has occurred, is about to occur, or is intended to occur. The term "knowledge" includes an awareness of a high probability and violation has occurred or will occur. To avoid such violations and identify EAR violations associated with financial transactions, BIS provided several best practices listed below:

Screening customers during and after onboarding against the U.S. Consolidated Screening List; Customers of FIs that deal with EAR items should certify compliance with the EAR under certain circumstances; Establishment of risk-based procedures to identify and examine red flags after transactions and, where necessary, to take action to proactively stop violations of the EAR before proceeding with additional transactions involving the same customer or counterparties.

In this guidance, BIS also recommended that FIs closely review transactions involving Common High Priority List (CHPL) items to Russia since 2023. This is the second guidance that refers companies to the Trade Integrity Project as a source for diligence information. FIs will need to consider how to structure diligence to dig into customers' export compliance practices, which is an expansion of traditional know-your-customer diligence conducted by FIs.

Please contact our sanctions and export controls compliance team if you have any questions

regarding these latest developments.