Play by the rules, or pay the price

Learn how compliance with export regulations can make or break your business

Michael Allocca, president, Allocca Enterprises, Inc

In today's global marketplace, companies can avoid a world of trouble if they comply with federal exporting regulations and perform due diligence in meeting the necessary requirements, according to Michael Allocca, president, **Allocca Enterprises, Inc.**

"I've learned that compliance is an integral component of shipping, whether it's exporting or importing, and that there's a big need for companies to learn how to be compliant with all the regulations," he said. "There's enormous opportunity internationally for exporting and importing, and it's better to be proactive than to hope you don't get caught and then be reactive."

Allocca, who won the Tech Valley Global Business Network's (TVGBN) 2008 "Globie" Award for Trade Partner, works with businesses on writing procedures, performing audits and training employees in export compliance, including using the correct "incoterms" — the three-letter codes of responsibility that divide obligations and risks between buyers and sellers.

Although his export compliance training guidelines literally fill a book, Allocca offers these four general tips for ensuring compliance with exporting regulations:

Have written export procedures

Many companies don't document their exporting process, making it more difficult for new hires to get up to speed. "Think about how much more productive a new employee would be if they had an export manual giving them an overview of their job and how an export flows to their company," Allocca said.

Conduct an audit

By performing an audit before exporting goods, companies can determine which areas of compliance need improvement, thereby avoiding costly penalties down the road.

"It all boils down to having insurance in the bank or having a competitive advantage," Allocca said. "The Bureau of Industry and Security (BIS) says if you have an export penalty, but you have written procedures in place, they'll start the penalties at 50 percent of the maximum and go down from there."

Publicly-traded companies must comply with Export Administration Regulations (EAR), the U.S. Department of State, and the Securities and Exchange Commission (SEC) requirements, as well as the Sarbanes-Oxley Act — and directors for these companies can be held personally liable for violations, Allocca noted.

Companies that conduct an audit can also maintain their competitive advantage in the global marketplace, because they may correct compliance deficiencies that their competitors fail to even detect.

Don't export without an export license

Companies should visit the BIS Web site, read the commerce control list and make sure they have an export license, if necessary, or else the costs could be steep.

"There's now a $250,000 fine for each violation going back five years or longer if they're documented," Allocca said. "Most companies don't know how to fill out an export license; even though it's supposed to be electronic, they'll give a hard copy to the freight forwarder, who then files it electronically."

A Shipper's Export Declarations (SED) is the only export customs formality in the United States. "If we lived in England, France, Germany or China, you'd not only have to clear import customs but also export customs," Allocca said. "Here, we don't have export customs, all we have is SED."

The name of the SED has been changed to EEI, which stands for Electronic Export Information, and Allocca encourages companies to handle their EEI themselves.

"What I try to do is convince companies to file their own SED or EEI electronically for free," Allocca said. "If the forwarders get it wrong, the penalty is usually going to the exporter, and the exporter might not be able to meet record-keeping requirements because they don't have a copy of the one the forwarder filed electronically and they never audited it."

Be aware of successor liability

With the state of the worldwide economy and international markets, Allocca foresees a buying binge and consolidation of all types of companies in the year ahead, and companies involved in acquisitions need to learn as much as they can about the companies they're pursuing.

"The acquiring company will acquire all previous export violations of the company they're about to purchase, even if the attorneys write into the contract that the buyer is not going to be held accountable for any EAR, Department of State or import violations," he said. "It's a real factor, and these companies need to do due diligence, take reasonable care and look at who they're buying because they're buying their violations."

By complying with these and other federal exporting regulations, companies in Tech Valley can capitalize on the multitude of business opportunities that await them around the world. "Ninety-four percent of the world's economy is outside the United States, and businesses have to look at the global marketplace to weather the current economic storm," Allocca said. "Companies can survive off the U.S. market, but you need to have balance between your domestic and international sales. Export compliance makes the costs of doing business go away and increases your competitive advantage."