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§ 120.25 Empowered Official.

(a) Empowered Official means a U.S. person who:
(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
(2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
(3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
(4) Has the independent authority to:
   (i) Enquire into any aspect of a proposed export or temporary import by the applicant, and
   (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and
   (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

(b) [Reserved]
What is an “Empowered Official”?

An empowered official is authorized by a business enterprise to sign and process license applications on behalf of the company. An empowered official understands the provisions of ITAR. This individual has the authority within his/her company to inquire into any aspect of a proposed export and to verify the legality and accuracy of the information submitted for a transaction. An empowered official also has the authority to refuse to sign any license application without retribution from his/her company. This is important because an empowered official is held liable for any violations of ITAR.

Being an Empowered Official (EO) is not a “paper-pushing,” administrative job, but a position which requires detailed substantive knowledge of the International Traffic in Arms Regulations and the Arms Export Control Act. The position carries within it liability for both the company and the individual – a liability which emphasizes the need for an experienced, well-trained and competent Official.
ORGANIZATIONAL RESPONSIBILITIES to an Empowered Official:

Educate:  A) Knowledge of Regulations  
B) Knowledge of Organizational Operations

Authority: Organizational Structure/Position

Support/Resources: Resources/Personnel to Complete Task
Part 127 VIOLATIONS and PENALTIES

§ 127.1(b) holds:
“any person who is granted a license”

responsible “for the acts of employees, agents, and all authorized persons to whom possession of the of the defense article, which includes technical data, has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article abroad...

WHO SIGNS THE LICENSE APPLICATIONS?

The concept of an “accountable individual” may be found in the AECA’s implementing regulations, the ITAR “Accountable individual” is the “Empowered Official” as defined in ITAR § 120.25
EXPORT COMPLIANCE LIABILITY

Each “decision” creates individual and corporate liability
Judged by “reasonableness” standards

TYPES OF LIABILITY THAT APPLY

Civil/Administrative
Vicarious
Criminal
CIVIL AND ADMINISTRATIVE LIABILITY

Standard for liability varies from criminal
Does not require mens rea (intent)
Some situations result in strict liability – i.e., “you needed a license; you didn’t have one; it’s a violation”

VICARIOUS LIABILITY

Theory of “vicarious” liability applies: a form of liability that arises under the common law doctrine – the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party.
CRIMINAL LIABILITY

Section 127.3 Penalties and Violations

Any person who willfully:

(a) Violates any provision of §38 or §39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or any rule or regulation issued under either §38 or §39 of the Act, or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application, or report required by §38 or §39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

Shall upon conviction be fined for each violation not more than $1,000,000 or imprisoned not more than ten years, or both
EMPOWERED OFFICIAL VIOLATIONS INCLUDE:

FAILURE to VERIFY “LEGALITY” of TRANSACTION

“BLIND EYE” – or “NOT KNOWING”

RELYING on “CONFLICTING” U.S. GOVERNMENT STATEMENTS/REGS
(Sometimes called “Forum Shopping”)

NEVER ACCEPTABLE
EMPOWERED OFFICIAL - BASICS

KNOW the regulations, WHAT you are doing, and WHY (CYA)

Be able to justify decisions and the processes that lead to them

No deadline or deliverable should shortcut taking the right course

Understand the limits to your authority and be prepared to act accordingly

Get Assistance: Agencies
Organization Legal
Formal Ruling

Don’t be an Island

Think Ahead – look for potential pitfalls, you are steering the SHIP!
Y-12 JOWOG/MPC&A
Y-12 Transportation-Mailroom
Y-12 Property
Y-12 Personnel
Y-12 Technical Information Office (TIO)
Y-12 Procurements
Y-12 Security
Y-12 Travel

MDA & Nonproliferation Programs
Misc Foreign & External Transactions

FOREIGN NATIONAL VISITS & ASSIGNMENTS
High Risk Property Reviews

Atomic Energy Act (AEA)
US Dept. of Energy
US Dept. of Commerce
Nuclear Reg. Comm.
US Dept. of State

TECHNOLOGY TRANSFER
CRADAs, WFO, PDRD
External Presentations
Briefs, News Articles
Other external work

Foreign National Visits & Assignments

NNSA National Security Enterprise

Y-12 Export Compliance Office & “EMPOWERED OFFICIAL”