

What happens if I violate Export Controls in the US – 07 March 2014

State/DDTC: Esterline Technologies Corporation of Bellevue, WA, Agrees to \$20 Million in Penalties (\$10 Million suspended) to Settle Charges of ITAR Violations

(Source: http://www.pmdtdc.state.gov/compliance/consent_agreements/Esterline.html)

Esterline Technologies Corporation settled allegations that it violated the AECA and the ITAR in connection with 286 charges for unauthorized exports and temporary imports of defense articles, including technical data, unauthorized provision of defense services, violation of terms and conditions of licenses or approvals granted, and violation of ITAR rules and regulations.

* Respondent: Esterline Technologies Corporation, 500 108th Avenue NE, Suite 1500, Bellevue, WA 98044, and its subsidiaries:

- a. CMC Electronics Aurora LLC of Illinois (49 charges)
- b. Hytek Finishes Co. of Washington (6 charges)
- c. Kirkhill-TA Co. of California (1 charge)
- d. Korry Electronics Co. of Washington (179 charges)
- e. Leach International Corp. of California (6 charges)
- f. Mason Electric Co of California (40 charges)
- g. Memtron Technologies Co. of Michigan (1 charge)

* Summary of Charges: "Conduct disclosed by Esterline included violations of many ITAR sections and can be generally characterized in the following manner: 1) improper classification of articles; 2) failure to administer properly licenses and agreements; and 3) incomplete or poor recordkeeping. The violations disclosed by Esterline entities were the result of (i) insufficient understanding and knowledge of the ITAR and (ii) corporate oversight and a corporate export compliance program that were insufficient to prevent the alleged violations. Although the corporate compliance function was reassured by the results of what appeared to be a generally favorable 2009-2010 external audit, program weaknesses discovered in the year that followed caused the corporate compliance function to reexamine the audit findings. . . . In late 2009, Esterline initiated an external audit at the request of the Office of Defense Trade Controls Compliance ("DTCC") . . . Esterline and seventeen of Esterline's subsidiaries, including many of the subsidiaries at issue herein, were audited. . . . In retrospect, however, the Department and Respondent agreed that the audit failed to identify persistent compliance issues at Esterline entities and inadequacies in Esterline's compliance program."

* Fine or Civil Settlement: \$20 million (\$10 million suspended if spent on corrective actions.)

* Debarred or Suspended from Export Transactions: Not if penalty is paid as agreed (See below mitigating factors justifying non-debarment.)

* Result of Voluntary Self-Disclosure: Partially

* Date of Order: 5 March 2013

* Available documents:

* Proposed Charging Letter:

<http://www.pmdtdc.state.gov/compliance/consent_agreements/pdf/Esterline_PCL.pdf>

* Consent Agreement:

<http://www.pmdtdc.state.gov/compliance/consent_agreements/pdf/Esterline_CA.pdf>

* Order:

<http://www.pmdtdc.state.gov/compliance/consent_agreements/pdf/Esterline_Order.pdf>

* Violations: Total of 282 violations charged

* Mitigating Factors:

- * Voluntary disclosure of most violations.
- * Many of the violating transactions would likely have been approved if the transactions had been the subject of properly submitted license requests.
- * Respondent's cooperation with the investigation and offer to settle matters with DDTC.
- * Respondent's self-initiated comprehensive remedial compliance measures before and during the course of government review.

* Aggravating Factors:

- * Information concerning certain violations was provided only after initiation of criminal investigations.
- * Extensive and ongoing nature of alleged violations.

* Corrective Actions (CAs): (Excerpts.)

- * Incorporate CAs upon acquisition of any new business entity engaged in ITAR-regulated activities.
- * Notify DDTC 60 days before sale of any entity engaged in ITAR-regulated activities and inform purchaser of CA requirements.
- * Ensure adequate resources are dedicated to ITAR compliance, including:
 - lines of authority
 - staffing increases
 - performance evaluations
 - career paths
 - promotions and compensation
- * Within 120 days, appoint Internal Special Compliance Officer (ISCO) who will:
 - report directly to DDTC and to VP/GM
 - conduct ITAR compliance review throughout ITAR-regulated business units
 - oversee implementation of all compliance measures.
 - have authority to hire staff and outside consultants to assist.
- * VP/General Counsel to brief Board annually re findings and recommendations of ISCO.
- * Retain outside consultant to conduct initial comprehensive audits of ITAR-regulated business units; follow two years later with additional audits to determine whether CAs were adequately implemented.
- * Implement comprehensive automated electronic export compliance system that will track ITAR compliance from sales order through exports, re-exports, to conclusion of compliance requirements.