Establishing an Export Compliance Management System

Presented By:
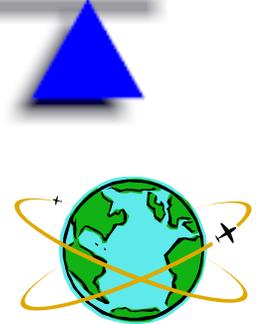
Akana Ma and John Graham

For

Aviation Suppliers Association Conference

June 25, 2012

Workshop Objective

To review regulatory requirements for ITAR/EAR compliance and explore solutions for satisfying applicable requirements

The review will demonstrate how small to mid-sized distribution companies can adopt practical solutions to comply with the numerous and sometimes confusing U.S. Export Laws and Regulations

Workshop Overview

➢ **Determine Applicable Legal Requirements**

➢ **Determine Impact of Regulations**

➢ **Apply Requirements to Business Processes**

➢ **Developing and Implementing the Plan**

➢ **Verifying Compliance**

➢ **Maintaining Compliance**
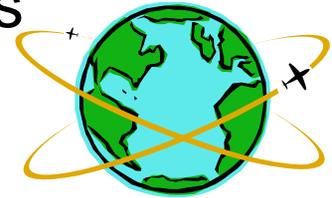
Determine Applicable Legal Requirements and Their Impact

Presentation

By Akana K.J. Ma

Partner, Ater Wynne LLP

Determining Applicable Regulations

Core Export Control Elements

➢ Management Commitment

➢ Continuous Risk Assessment

➢ Formal Compliance Management Program

➢ Ongoing Compliance Training

➢ Pre/Post Compliance Security & Screening

➢ Comprehensive Record Keeping

➢ Internal & External Compliance Audits

➢ Compliance Problem Process

➢ Corrective Action Response to Violations

Determine Approach

Export Compliance Management System
Development

Option 1
Stand Alone Export Compliance Program

Option 2
Integrated BMS Export Compliance Program

Determine Approach

Option 1

Stand Alone Export Compliance Program

The Stand Alone EC Approach
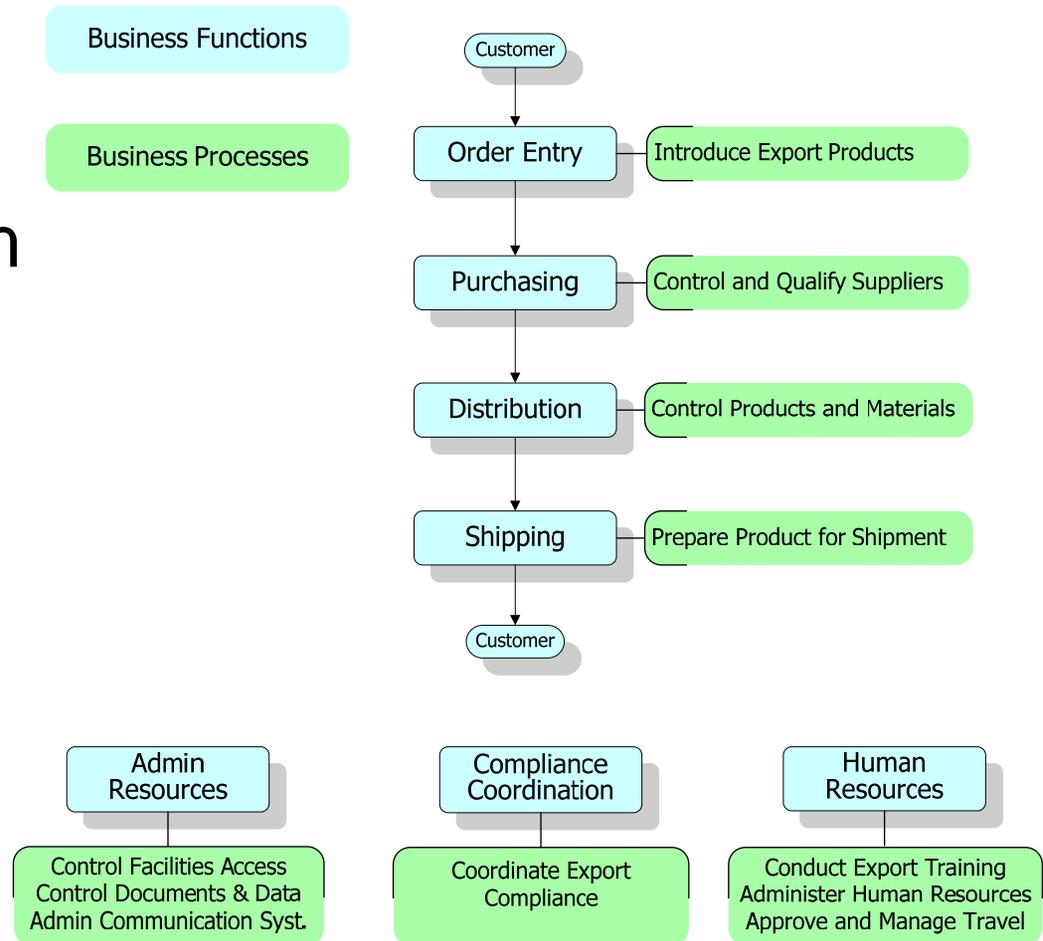
Stand Alone
Export Compliance
Management System
(Option 1)

Business Functions

Business Processes

Customer

Order Entry — Introduce Export Products

Purchasing — Control and Qualify Suppliers

Distribution — Control Products and Materials

Shipping — Prepare Product for Shipment

Customer

Admin Resources	Compliance Coordination	Human Resources
Control Facilities Access Control Documents & Data Admin Communication Syst.	Coordinate Export Compliance	Conduct Export Training Administer Human Resources Approve and Manage Travel

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The Stand Alone EC Approach

Typical Export Compliance Processes

➢ Introduce Export Programs

➢ Coordinate Export Compliance

➢ Control and Qualify Suppliers

➢ Control Products and Materials

➢ Prepare Product for Shipment

➢ Control Documents and Data

➢ Approve and Manage Travel

➢ Control Facilities Access

➢ Conduct Export Training

➢ Administer Human Resources

➢ Administer Communication System

Integrated Export Compliance Approach

Requirements That Determine Business Processes

- ➢ Customer

- ➢ Industry Standards (ASA-100)

- ➢ Regulations (ITAR/EAR)

- ➢ Financial

Process Development

Process: a set of interrelated or interacting activities which transforms inputs into outputs

Requirements

Fulfillment Tools

Business Process

| ITAR/EAR | → | Documents People Processes Material Tools | ⇒ |

Who

Does What?

Records

Product

Desired Results

The Stand Alone EC Approach

**Stand Alone
Export Compliance
Management System
(Option 1)**

Business Functions

Business Processes

Customer

Order Entry — Introduce Export Products

Purchasing — Control and Qualify Suppliers

Distribution — Control Products and Materials

Shipping — Prepare Product for Shipment

Customer

Admin Resources
Control Facilities Access
Control Documents & Data
Admin Communication Syst.

Compliance Coordination
Coordinate Export Compliance

Human Resources
Conduct Export Training
Administer Human Resources
Approve and Manage Travel

The Stand Alone EC Approach

Typical Export Compliance Processes

➢ Introduce Export Programs

➢ Coordinate Export Compliance

➢ Control and Qualify Suppliers

➢ Control Products and Materials

➢ Prepare Product for Shipment

➢ Control Documents and Data

➢ Approve and Manage Travel

➢ Control Facilities Access

➢ Conduct Export Training

➢ Administer Human Resources
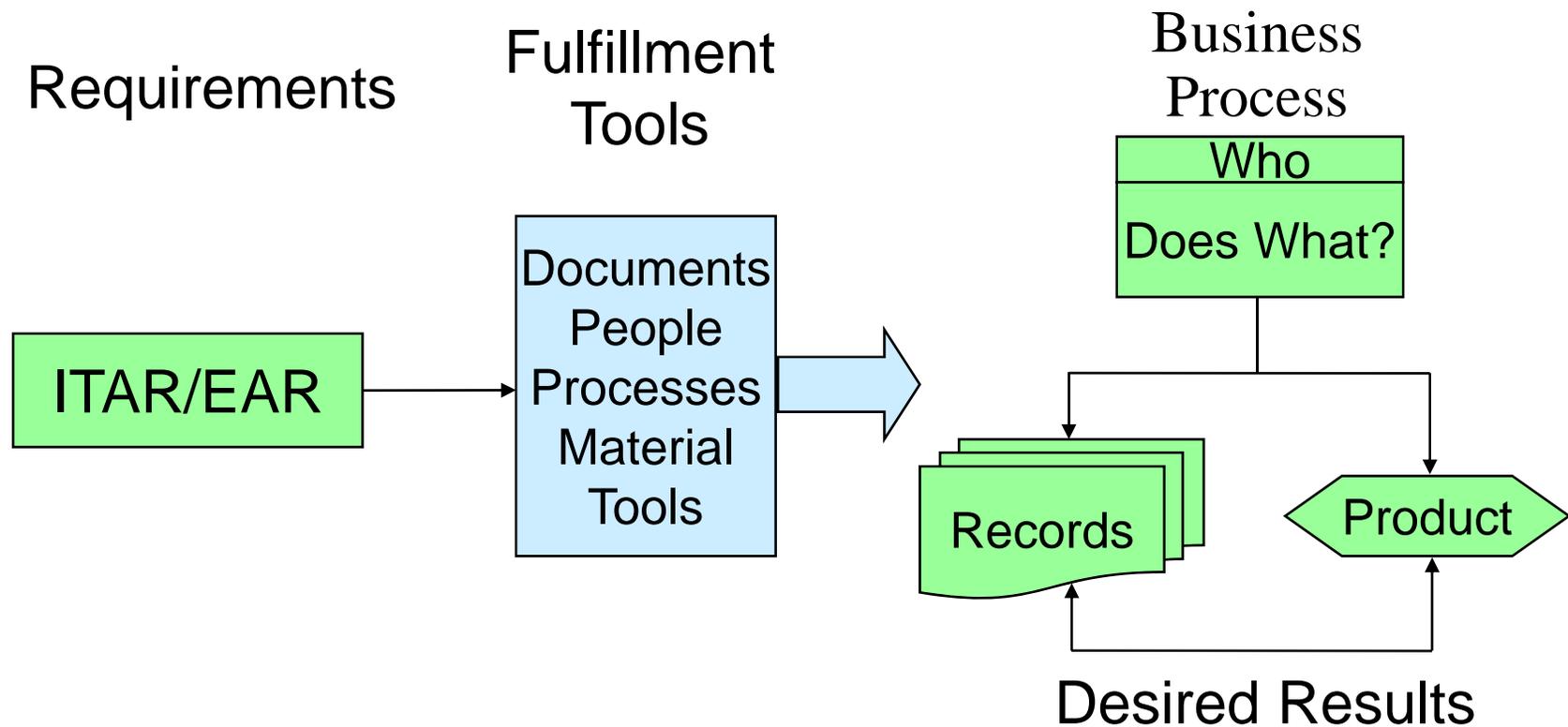
➢ Administer Communication System
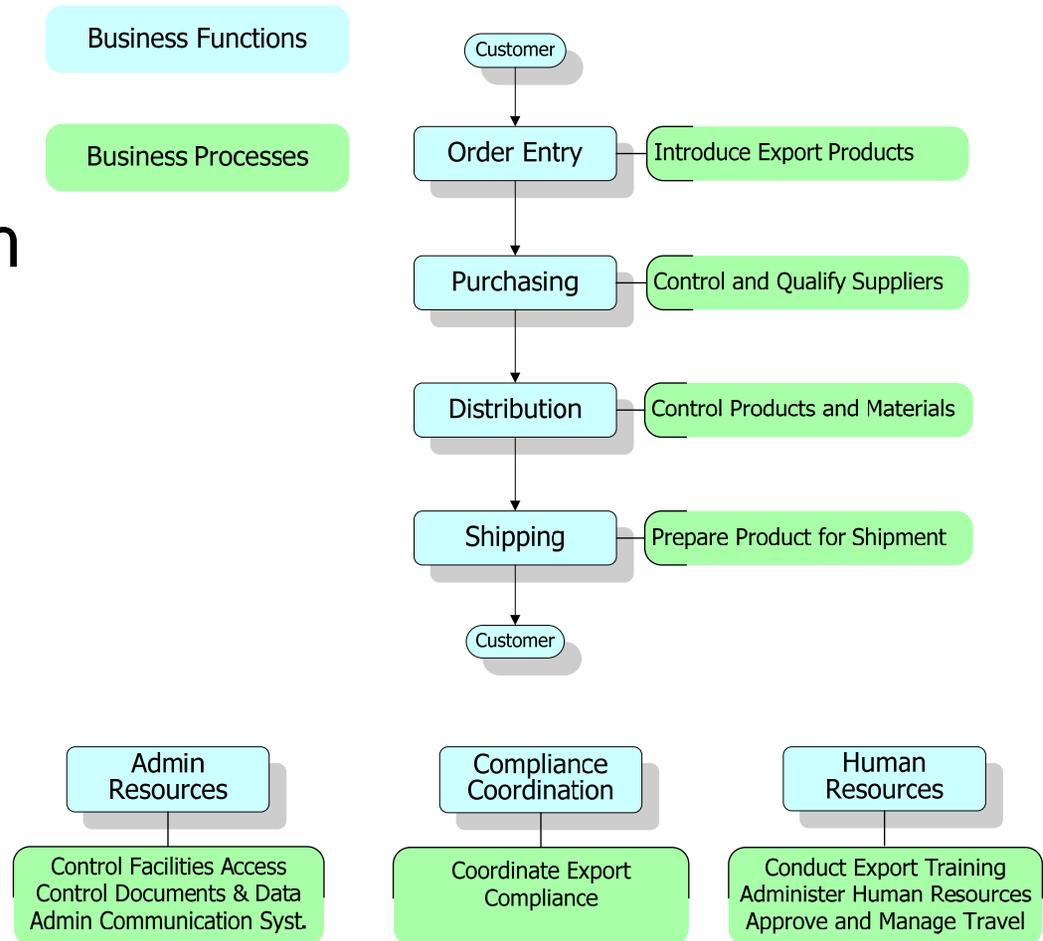
Determine Approach

Option 2

Integrated BMS Export Compliance Program

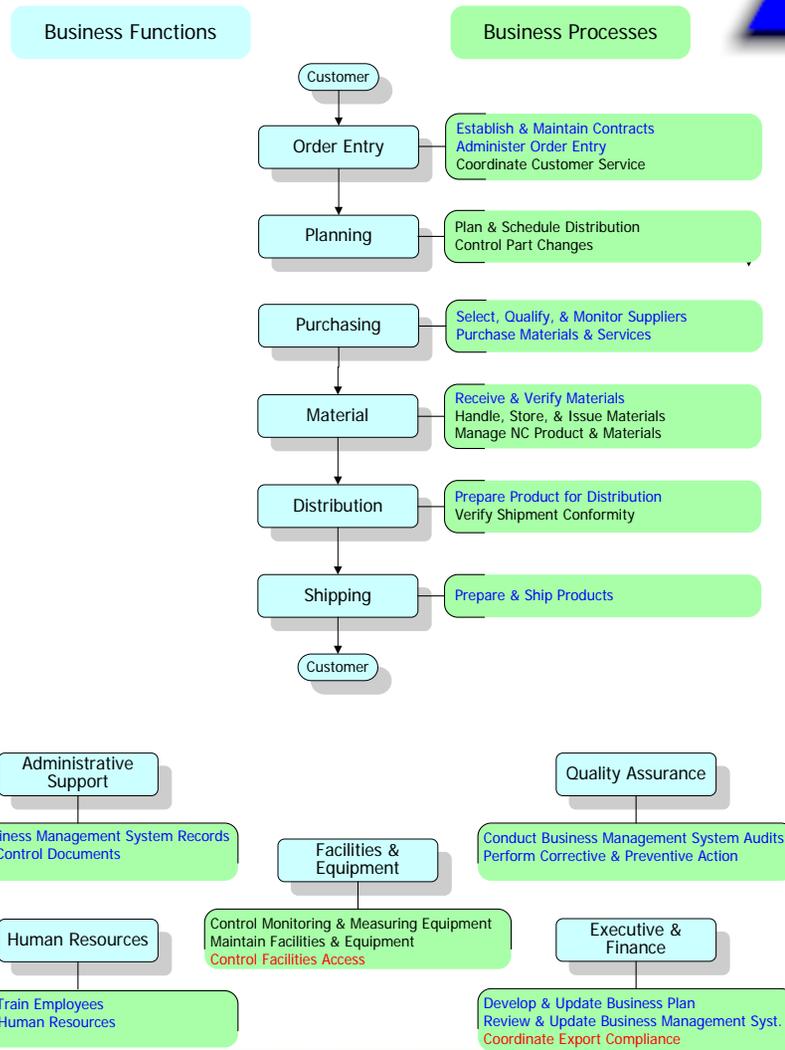# Process Development

Process: a set of interrelated or interacting activities which transforms inputs into outputs

Requirements

Fulfillment Tools

Business Process

ASA-100

ITAR/EAR

Finances

Customer

Documents
People
Processes
Material
Tools

Who
Does What?

Records

Product

Desired Results
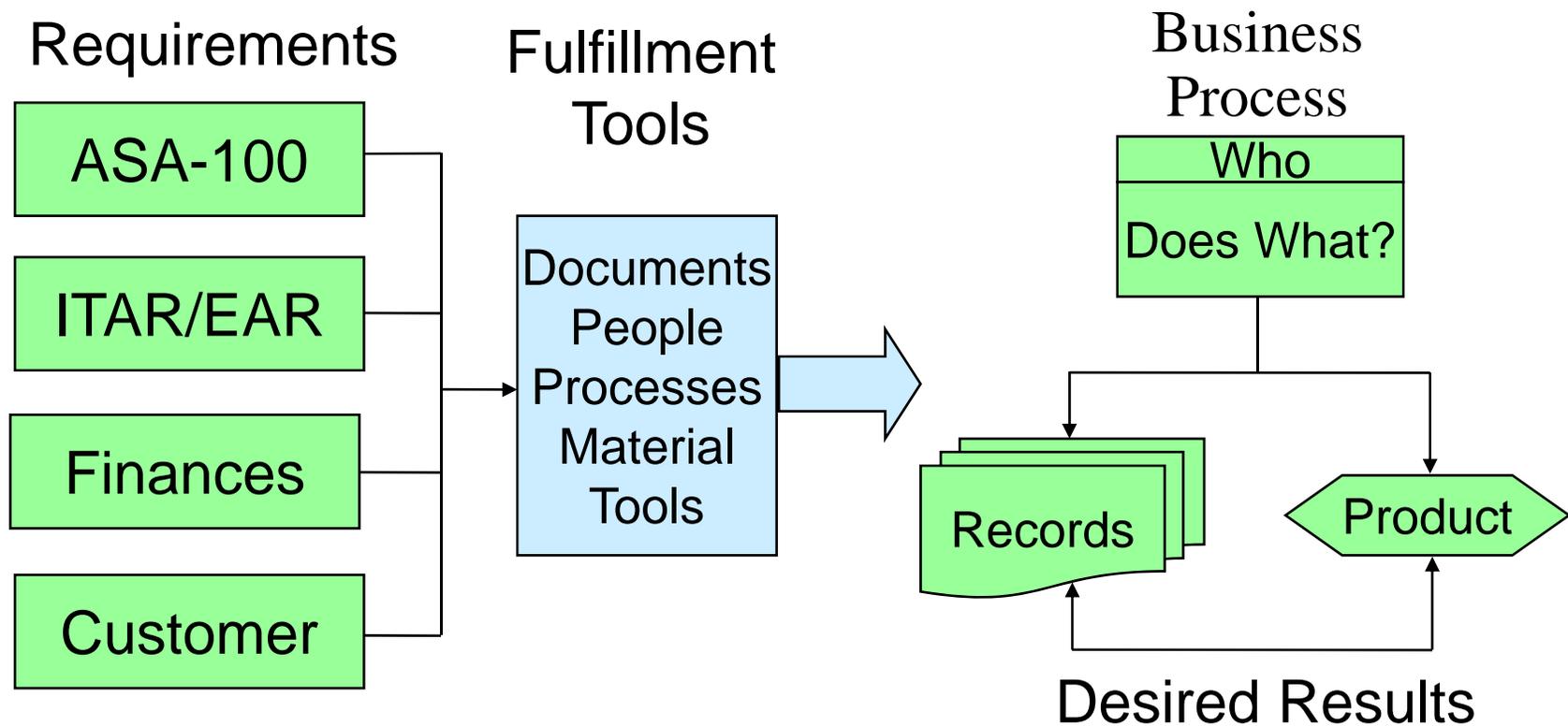
EC Business Management System

Integrated Export Compliance Business Management System
(Option 2)

Business Functions	Business Processes

Customer

Order Entry	Establish & Maintain Contracts Administer Order Entry Coordinate Customer Service
Planning	Plan & Schedule Distribution Control Part Changes
Purchasing	Select, Qualify, & Monitor Suppliers Purchase Materials & Services
Material	Receive & Verify Materials Handle, Store, & Issue Materials Manage NC Product & Materials
Distribution	Prepare Product for Distribution Verify Shipment Conformity
Shipping	Prepare & Ship Products

Customer

Administrative Support	Control Business Management System Records Develop & Control Documents
Facilities & Equipment	Control Monitoring & Measuring Equipment Maintain Facilities & Equipment Control Facilities Access
Quality Assurance	Conduct Business Management System Audits Perform Corrective & Preventive Action
Human Resources	Develop & Train Employees Administer Human Resources
Executive & Finance	Develop & Update Business Plan Review & Update Business Management Syst. Coordinate Export Compliance

Business Management System Processes

Typical Business Processes

Administer Order Entry

Create & Revise Plans

Plan & Schedule Distribution

Select, Qualify, & Monitor Suppliers

Purchase Materials & Services

Receive & Verify Materials

Handle, Store & Issue Materials

Manage NC Product & Materials

Prepare and Distribute Products

Inspect Products

Prepare & Ship Products

Develop & Control Docs

Control Records

Define & Manage Communication System

Control Monitoring & Measuring Equip.

Maintain Facilities & Equipment

Control Tools & Software

Develop & Train Employees

Administer Human Resources

Conduct Audits

Perform Corrective & Preventive Action

Develop and Update Business Plan

Review & Update BMS

Establish Monitoring & Measuring Controls

Plan & Manage Projects

Coordinate Customer Service

Coordinate Export Compliance

Determine Needed EC Processes

- Which of these processes are needed to operate your company?

- Which of these processes would likely need Export Control additions?

Business Management System Processes

Processes Impacted by Export Compliance

Administer Order Entry

Create & Revise Plans

Plan & Schedule Distribution

Select, Qualify, & Monitor Suppliers

Purchase Materials & Services

Receive & Verify Materials

Handle, Store & Issue Materials

Manage NC Product & Materials

Prepare and Distribute Products

Inspect Products

Prepare & Ship Products

Develop & Control Docs

Control Records

Define & Manage Communication System

Control Monitoring & Measuring Equip.

Maintain Facilities & Equipment

Control Tools & Software

Develop & Train Employees

Administer Human Resources

Conduct Audits

Perform Corrective & Preventive Action

Develop and Update Business Plan

Review & Update BMS
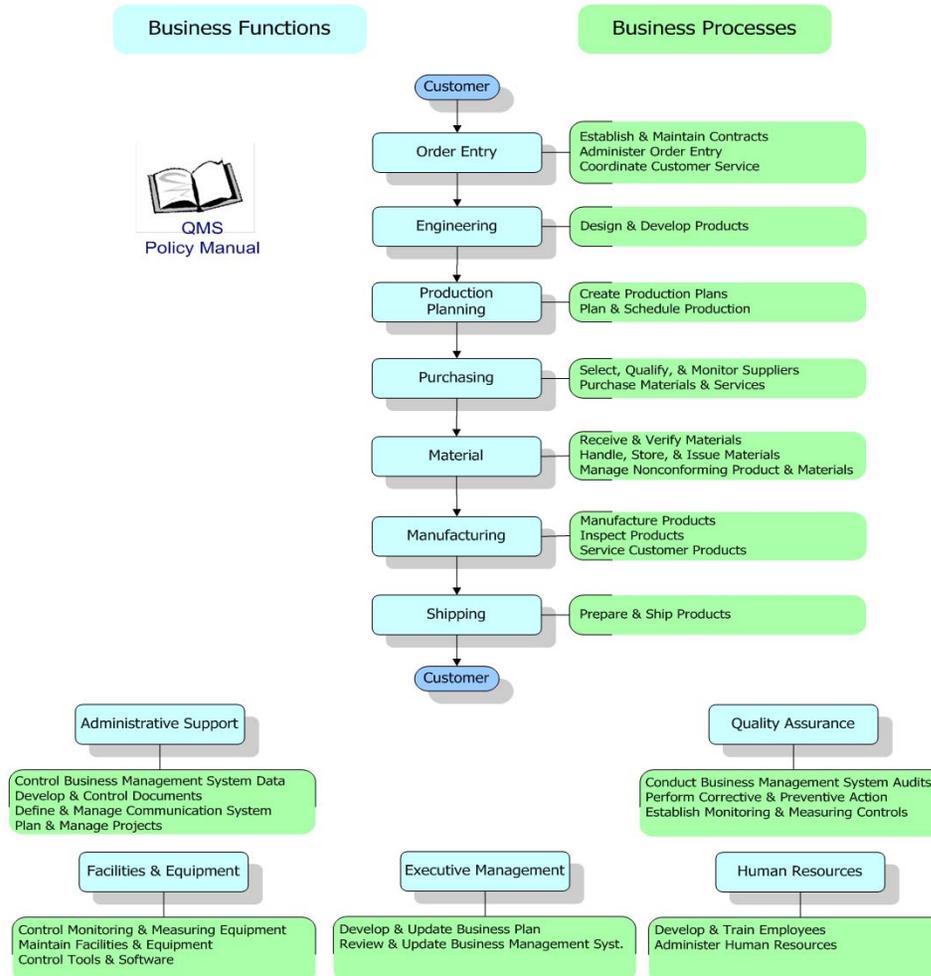
Establish Monitoring & Measuring Controls

Plan & Manage Projects

Coordinate Customer Service

Coordinate Export Compliance

Integrated BMS Approach
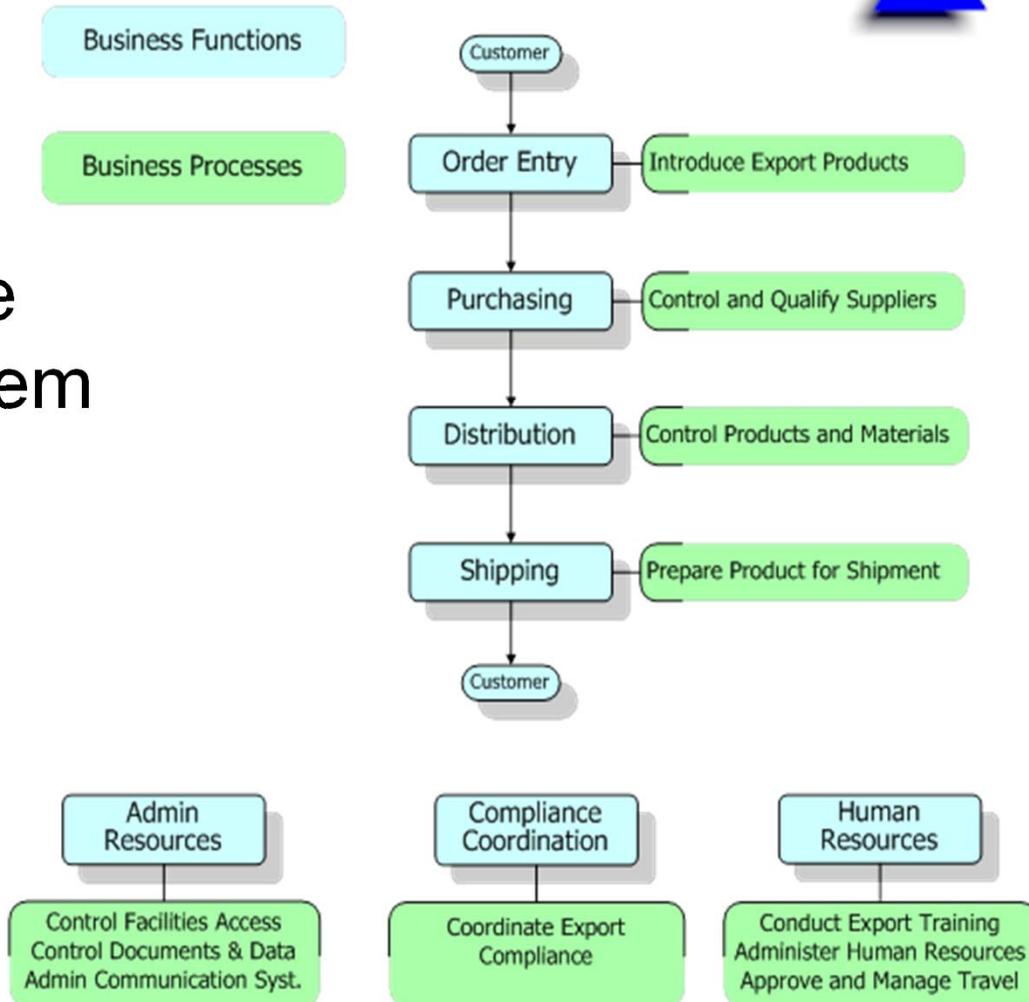
Business Management System
QMS

Business Functions

Business Processes

QMS
Policy Manual

Customer

Order Entry — Establish & Maintain Contracts / Administer Order Entry / Coordinate Customer Service

Engineering — Design & Develop Products

Production Planning — Create Production Plans / Plan & Schedule Production

Purchasing — Select, Qualify, & Monitor Suppliers / Purchase Materials & Services

Material — Receive & Verify Materials / Handle, Store, & Issue Materials / Manage Nonconforming Product & Materials

Manufacturing — Manufacture Products / Inspect Products / Service Customer Products

Shipping — Prepare & Ship Products

Customer

Administrative Support
Control Business Management System Data
Develop & Control Documents
Define & Manage Communication System
Plan & Manage Projects

Quality Assurance
Conduct Business Management System Audits
Perform Corrective & Preventive Action
Establish Monitoring & Measuring Controls

Facilities & Equipment
Control Monitoring & Measuring Equipment
Maintain Facilities & Equipment
Control Tools & Software

Executive Management
Develop & Update Business Plan
Review & Update Business Management Syst.

Human Resources
Develop & Train Employees
Administer Human Resources

Developing a Stand Alone ECMS

The Stand Alone ECMS

Developing a
Stand Alone
Export Compliance
Management System

Business Functions

Business Processes

Customer

| Order Entry | — | Introduce Export Products |

| Purchasing | — | Control and Qualify Suppliers |

| Distribution | — | Control Products and Materials |

| Shipping | — | Prepare Product for Shipment |

Customer

Admin Resources	Compliance Coordination	Human Resources
Control Facilities Access Control Documents & Data Admin Communication Syst.	Coordinate Export Compliance	Conduct Export Training Administer Human Resources Approve and Manage Travel

Define Requirements

Start by defining requirements

U.S. Export Administration Regulations (EAR), Title 15
Code of Federal Regulations, Parts 730-774

U.S. International Traffic in Arms Regulations (ITAR),
Title 22 Code of Federal Regulations, Parts 120-130

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Determine Applicable Requirements

Determine applicable requirements based on business activities

1. Repair defense items but don't export?

2. Distribute defense items but don't export?

3. Repair and re-export defense items?

4. Export defense items?

5. Export only commercial products?

6. Repair and re-export commercial products?

Determining Applicable Regulations

Core Export Control Elements

➤ Management Commitment

➤ Continuous Risk Assessment

➤ Formal Compliance Management Program

➤ Ongoing Compliance Training

➤ Pre/Post Compliance Security & Screening

➤ Comprehensive Record Keeping

➤ Internal & External Compliance Audits

➤ Compliance Problem Process

➤ Corrective Action Response to Violations

Determining Applicable Regulations

Core Export Control Elements

Business Activity	>
	1. Repair defense items but don't export?
	2. Distribute defense items but don't export?
	3. Repair and re-export defense items?
	4. Export defense items?
	5. Export only commercial products?
	6. Repair and re-export commercial products?

	Export Control Requirement	Business activity applicability					
		1	2	3	4	5	6
1.	**Management Commitment -** Senior management must**:**						
a	establish written export compliance standards for the organization,			X	X	X	X
b	commit sufficient resources for the export compliance program,			X	X	X	X
c	ensure appropriate senior organizational official(s) are designated with the overall responsibility for the export compliance program to ensure adherence to export control laws and regulations.			X	X	X	X
2.	Continuous Risk Assessment of the Export Program			X	X	X	X
3.	**Formal Written Export Management and Compliance Program**:						
--	Effective implementation and adherence to written policies and operational procedures.	X	X	X	X	X	X

Establishing a Plan

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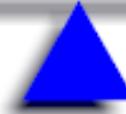
Establishing a Plan

Develop a plan

➢ Locate available resources

➢ Attend training programs

➢ Document requirements

➢ Identify needed resources (physical and human)

➢ Document ECMS processes

➢ Implement processes

➢ Determine compliance

Establishing a Plan

ITAR/EAR Implementation Plan

➢ Determine applicable requirements related to company operation

➢ Develop time line plan for project

➢ Attend Export Compliance training courses

➢ Identify and locate required resources

➢ Secure assistance from applicable resources

➢ Establish approach to satisfy adequate compliance with requirements

➢ Identify needed processes for ITAR/EAR compliance

➢ Identify resource for process development and documentation

➢ Develop and document required processes

➢ Verify compliance with applicable ITAR/EAR requirements

➢ Adjust as needed to assure continued compliance

ECMS Planning Tools

Technology Control Plan

Mark the "R" box if this is required for this project. Mark the "C" box when the action is completed or known.

R	C	Action Required
☐	☐	The following have been determined to be subject to Export Controls ☐ Technical Data ☐ Product
☐	☐	Customer has identified the work package as having specific export regulations/requirements
☐	☐	Customer is unsure of product export status ☐ Yes ☐ No
☐	☐	Restricted party screening required ☐ Yes ☐ No
☐	☐	Related transaction revealed no risk of diversion and no "Red Flags" exist
☐	☐	Legal assistance is required to determine licensing requirements
☐	☐	Export Compliance Officer has prepared proper licensing for work package
☐	☐	The following parties have been notified of ITAR Controlled documents within the work package ☐ Suppliers ☐ Purchasing ☐ Engineering ☐ Contracts ☐ Other _____
☐	☐	Export license was received for this product on _____
☐	☐	Visual Compliance™ or equivalent method was used to determine that none of the parties involved in the transaction are on the Denial Lists
☐	☐	Visual Compliance™ or equivalent method was used to determine that the destination is not subject to an arms embargo or a full embargo

ECMS Planning Tools

Export Compliance Management Project Plan

Project Manager	ECO		Team Members	Impacted Management Team	Date	06-20-12
Project Name/Topic		Export Compliance Management System Program Development				

Objective statement (What is the purpose or reason for the project?)

To establish an export compliance management system that fulfills all applicable ITAR and EAR regulations in the most effective and efficient manner and help assure ongoing compliance

Desired outcome (What will indicate successful implementation of the plan?)

(these should be quantifiable measurements)

1. All applicable ITAR/EAR regulations will be clearly understood and documented enabling process owners to determine the most practical means of ensuring ongoing compliance.

2. The processes needed to address all applicable ITAR/EAR requirements will be identified and documented in a manner that will enable the company to carry out the processes routinely.

3. A comprehensive export Compliance Management System will be fully documented and implemented.

Identify Available Resources

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Locate Resources

Internet

U.S. Department of Commerce, Bureau of Industry and Security
http://www.bis.doc.gov/policiesandregulations/index.htm
U.S. Department of State, Directorate of Defense Trade Controls
http://www.pmddtc.state.gov/

Seminars/Workshops

On-line
On-site
Public

Individualized Support

Fulcrum Associates   John Graham

Ater Wynne LLP   Akana Ma

Locate Resources

Product and training available from Ater Wynne

- ➢ Conducting Export Control Audits of new/revised programs (commercial, dual use, and military products)
- ➢ Product or technology classification & licensing
- ➢ Drafting corporate policies and procedures
- ➢ Drafting export controls compliance manuals & programs
- ➢ Advising HR departments on new employee export controls
- ➢ Providing government contract advice
- ➢ Development of international shipping procedures
- ➢ Negotiating & drafting commercial deals/contracts

Locate Resources

Product and training available from Fulcrum Associates

- ➢ Process mapping and documentation training
- ➢ Process specific gap analysis
- ➢ Export compliance process integration
- ➢ Export compliance software
- ➢ Export compliance system development
- ➢ Auditor training

Implementing the Plan

Mapping Business Processes

Map Export Compliance Processes

- ➢ Determine Approach
  - Integrated ECMS
  - Stand Alone ECMS
- ➢ Identify all ECMS processes
- ➢ Determine sequence and interaction of processes
- ➢ Determine purpose and scope of each process
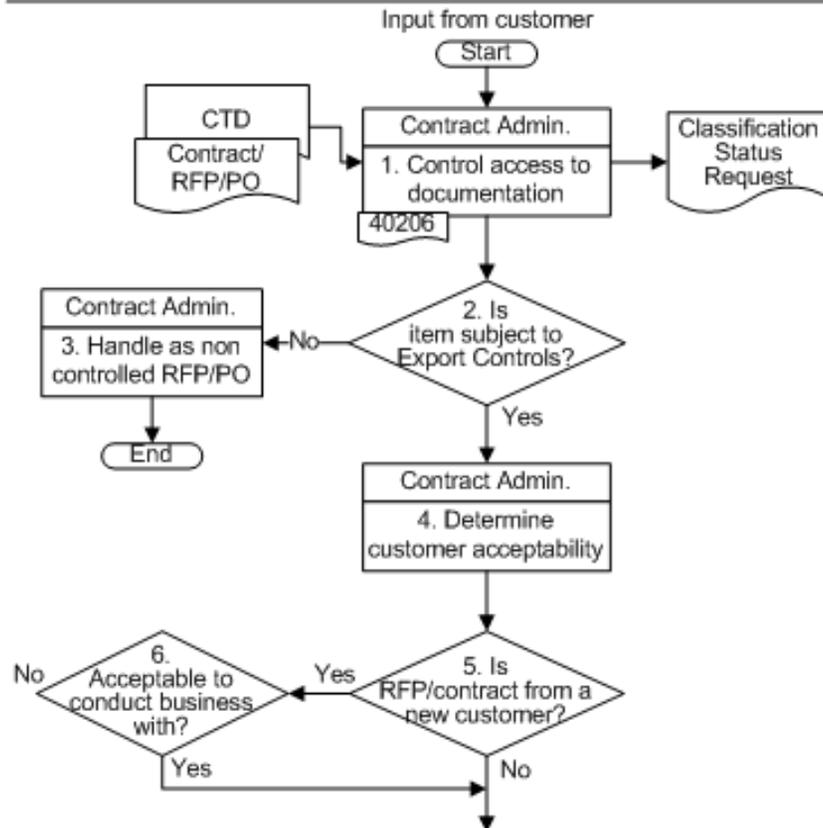- ➢ Map processes using flowcharts

Export Compliance Processes

- ➢ Introduce Export Programs
- ➢ Coordinate Export Compliance
- ➢ Control and Qualify Suppliers
- ➢ Prepare Product for Shipment
- ➢ Control Documents and Data
- ➢ Approve and Manage Travel
- ➢ Control Facilities Access
- ➢ Conduct Export Training
- ➢ Administer Human Resources
- ➢ Control Products and Materials
- ➢ Administer Communication System
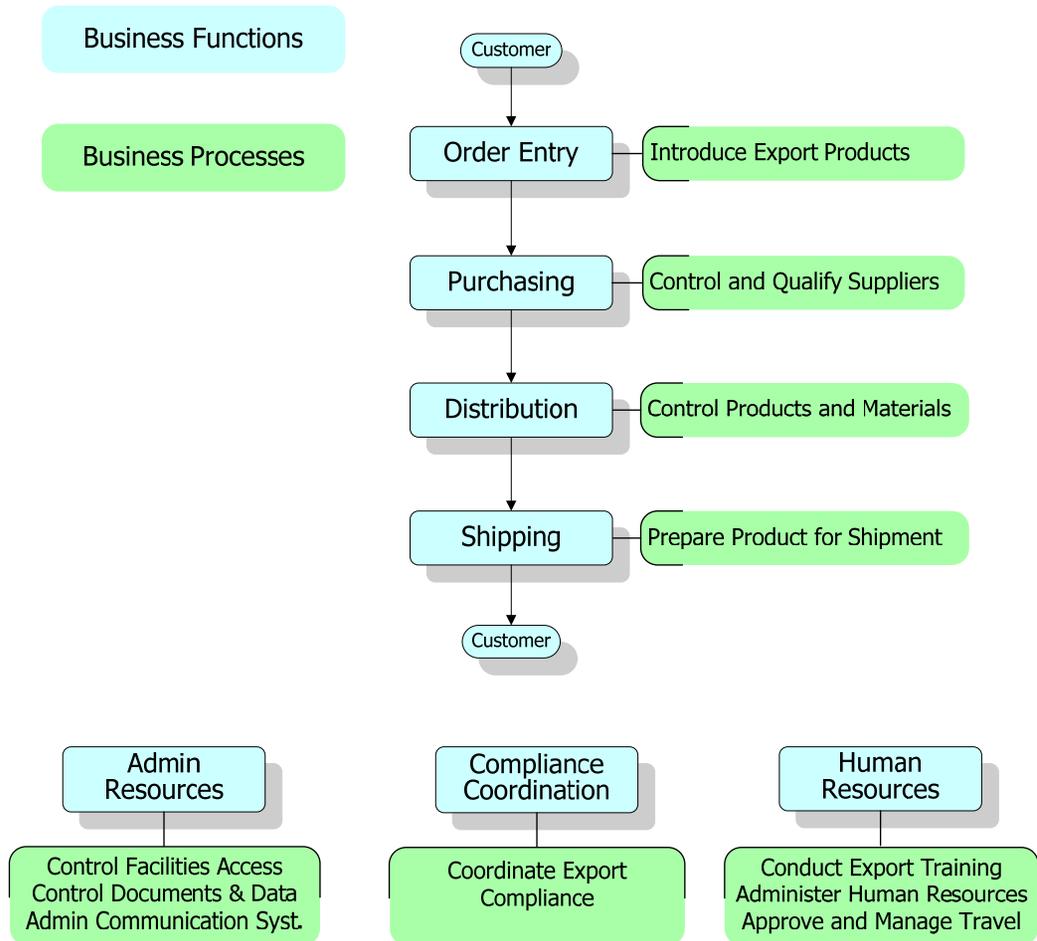
Mapping EC Business Processes

Introduce Export Programs

Input from customer
Start

CTD
Contract/RFP/PO

Contract Admin.
1. Control access to documentation
40206

Classification Status Request

2. Is item subject to Export Controls? — No →

Contract Admin.
3. Handle as non controlled RFP/PO
End

Yes

Contract Admin.
4. Determine customer acceptability

6. Acceptable to conduct business with? — No
Yes ← 5. Is RFP/contract from a new customer?
Yes
No

1. Locate all technical documentation sent with the PO/RFPI/contract and place it in a secure location. Determine if technical data received is likely subject to Export Controls and store this data in a secure location designated by the Export Compliance Officer (ECO). If technical data is received that is not identified as Export Controlled but appears that it is, send an Export Classification Status Request, 40206 to the customer.

3. Handle RFP/PO/Contract as a non Export Controlled customer request.

4. Determine status of customer (new or existing) and collect all available information. Submit new customer information to the ECO and request a determination of acceptability to conduct business with the potential customer. Review results of ECO's investigation and reach conclusion on acceptability to do business.

The ECMS

Export Compliance Management System

Business Functions

Business Processes

Customer

Order Entry — Introduce Export Products

Purchasing — Control and Qualify Suppliers

Distribution — Control Products and Materials

Shipping — Prepare Product for Shipment

Customer

Admin Resources
Control Facilities Access
Control Documents & Data
Admin Communication Syst.

Compliance Coordination
Coordinate Export Compliance

Human Resources
Conduct Export Training
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Approve and Manage Travel

EC Management System Implementation

Say what you do and do what you say
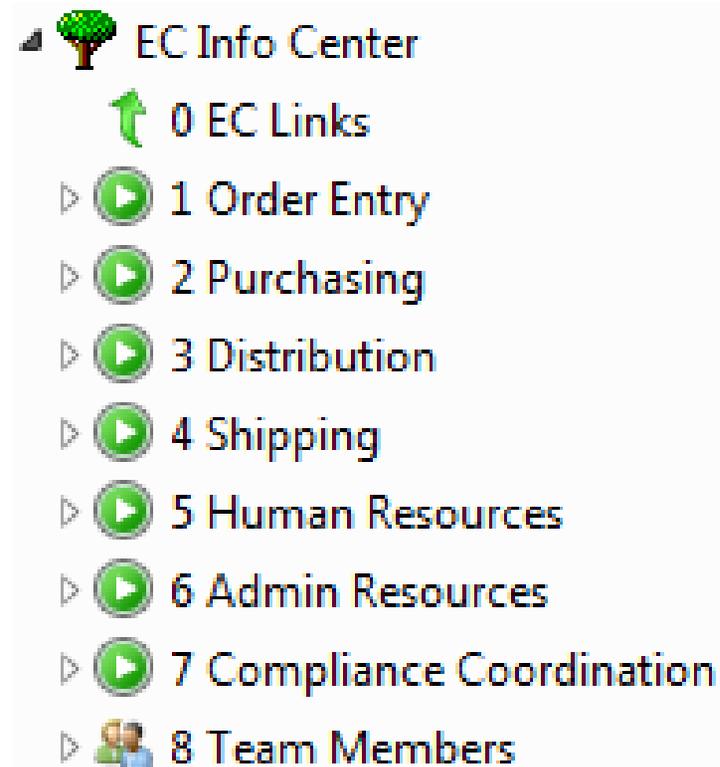
Say what you do - the easy part

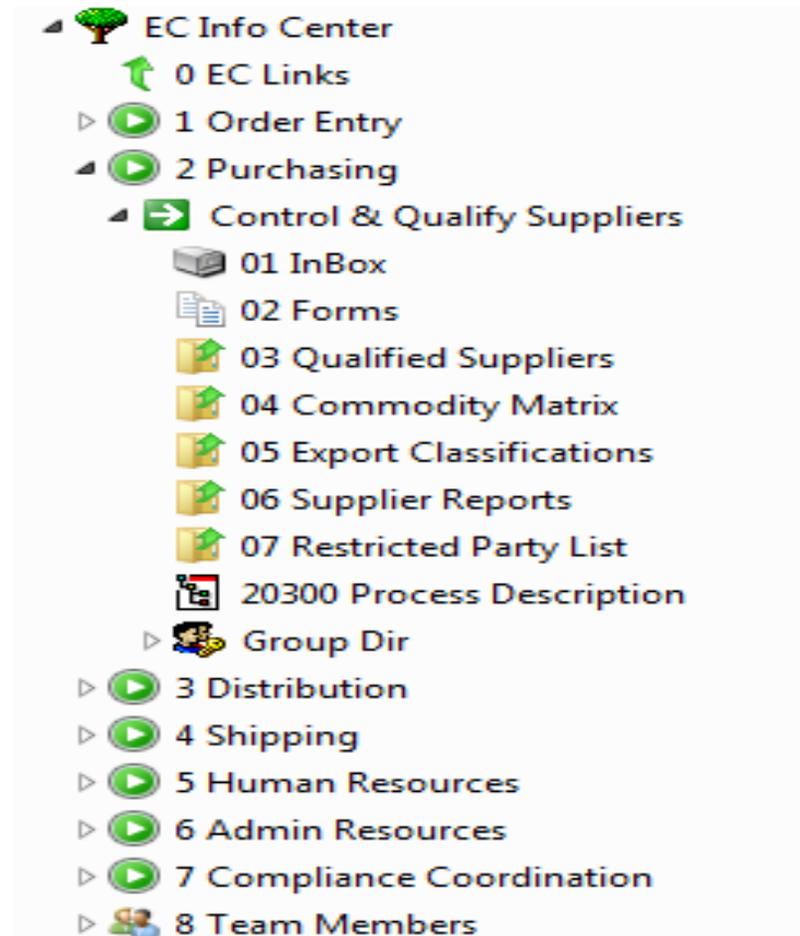Do what you say - the tough part

Document
and
Record Management

Managing Information

The
Export Compliance
Info Center

EC Info Center
- 0 EC Links
- ▷ 1 Order Entry
- ▷ 2 Purchasing
- ▷ 3 Distribution
- ▷ 4 Shipping
- ▷ 5 Human Resources
- ▷ 6 Admin Resources
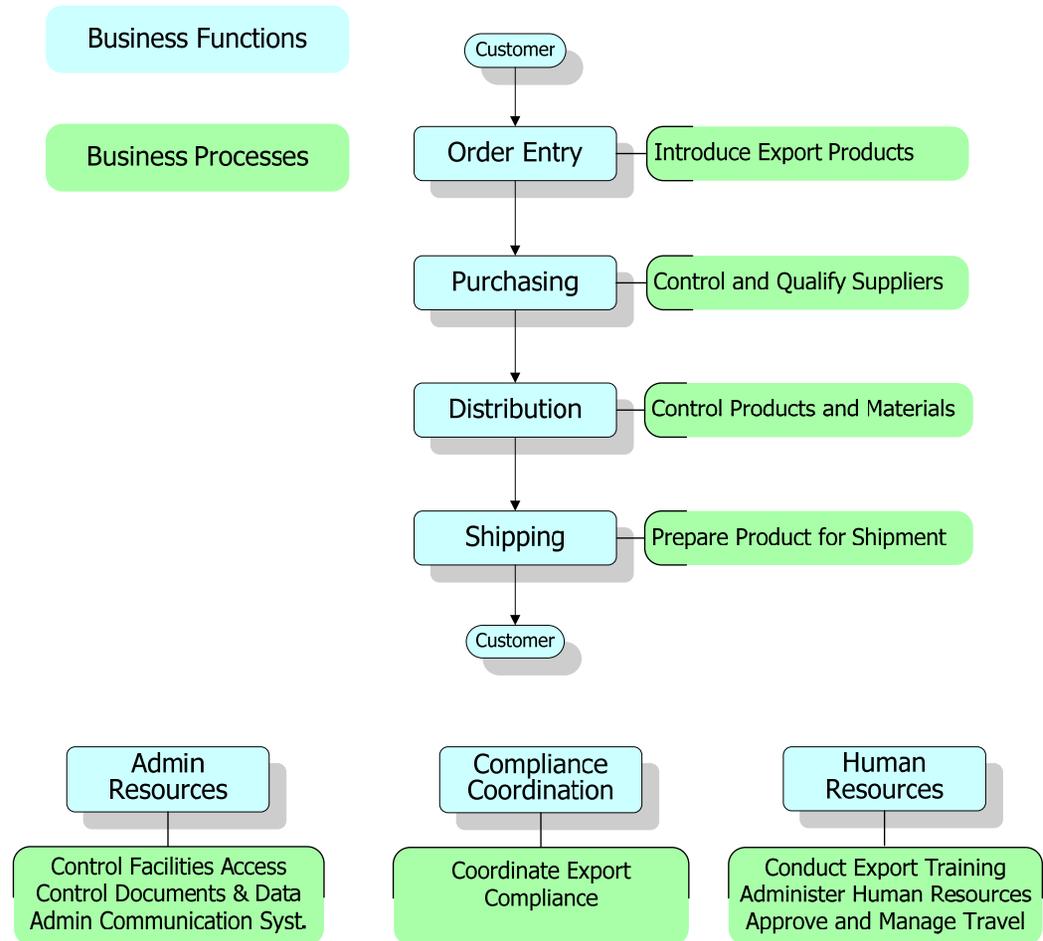- ▷ 7 Compliance Coordination
- ▷ 8 Team Members
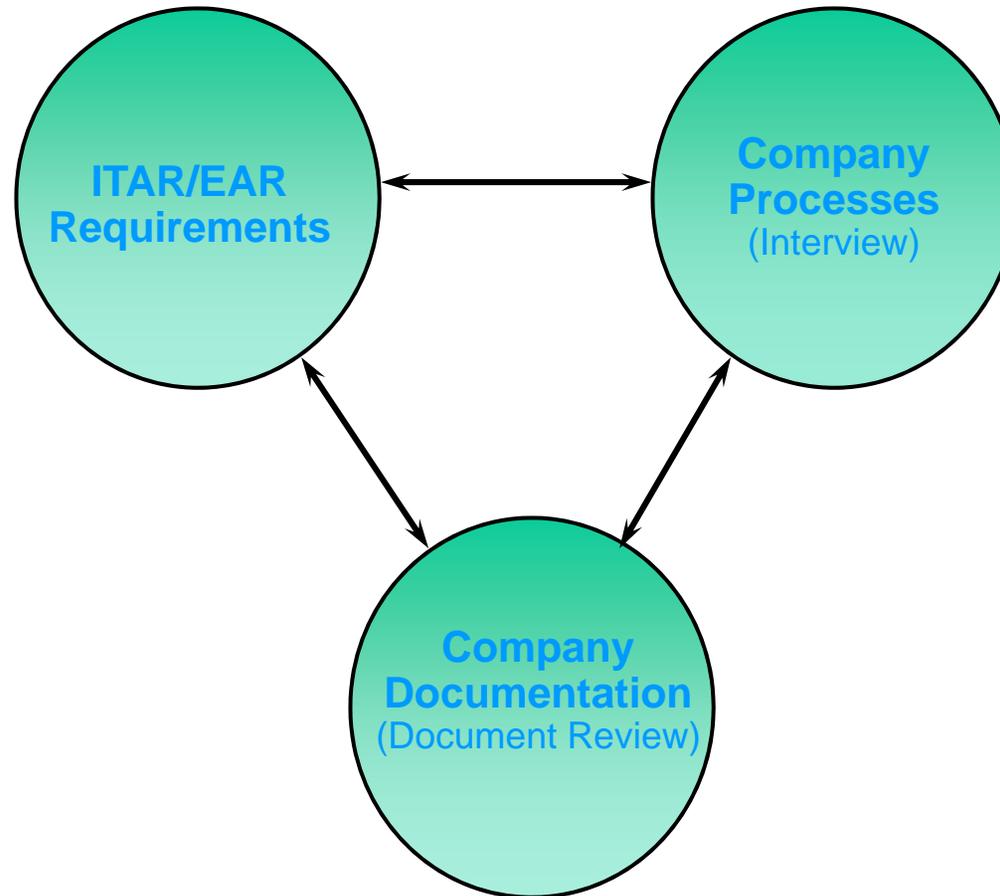
Managing Information

The
Export Compliance
Info Center

The ECMS

Export Compliance Management System

Business Functions

Business Processes

Customer

↓

Order Entry —— Introduce Export Products

↓

Purchasing —— Control and Qualify Suppliers

↓

Distribution —— Control Products and Materials

↓

Shipping —— Prepare Product for Shipment

↓

Customer

Admin Resources
- Control Facilities Access
- Control Documents & Data
- Admin Communication Syst.

Compliance Coordination
- Coordinate Export Compliance

Human Resources
- Conduct Export Training
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- Approve and Manage Travel

Verifying and Maintaining Compliance

ITAR/EAR Requirements

Company Processes (Interview)

Company Documentation (Document Review)

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Verifying Compliance

A Three Step Process

ITAR/EAR Requirements

Company Processes (Interview)

Company Documentation (Document Review)

1. Conduct Document Requirement Assessment

2. Conduct Process Conformity Assessment

3. Correct Deficiencies

Maintaining Compliance

A Five Step Process

ITAR/EAR Requirements

Company Processes
(Interview)

Company Documentation
(Document Review)

1. Monitor Changes to Regulations

2. Adjust Processes to Address Changes

3. Re-verify Compliance to Requirements

4. Schedule and Conduct Regular Audits

5. Correct any Deficiencies

Thank You
and
Closing Remarks

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