Voluntary Disclosures: Root Cause Analysis Techniques

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Getting to Root Cause

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ROOT CAUSE

The cause of a problem that, if eliminated, would prevent its recurrence.
TWO PRIMARY CHALLENGES

1. Getting the facts
2. “Calibrating” root cause
“IF YOUR MOTHER TELLS YOU SHE LOVES YOU, CHECK IT OUT.”
THE HEARSAY PROBLEM
THE BIAS PROBLEM
THE “DATA YOU DID NOT KNOW EXISTED” PROBLEM
TWO PRIMARY CHALLENGES

1. Getting the facts
2. “Calibrating” root cause
BLAMING PEOPLE NOT PROCESS
SCOPE: HOW BROADLY DOES ROOT CAUSE APPLY?
ADDITIONAL RESOURCES


• Root Cause Analysis For Beginners, by James J. Rooney and Lee N. Vanden Heuvel.

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Voluntary Disclosure: Root Cause Analysis

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THE TEAM

• Make up of team
  • Regulatory “experts”
  • Process “experts”
  • Systems “experts”
  • Human Resources

• Considerations in assigning the team
  • Internal vs External / Attorney Client Privilege
  • Conflict of Interest
  • Data Privacy
  • Government Classified
DATA AND INFORMATION COLLECTION TOOLS

• Standard tools
  • Six Sigma / LEAN tools - 5 Whys, Fishbone

• “Home-Grown” tools
  • Built to ensure adequate analysis is done
  • Can be built checklists / guidelines for specific scenarios
    • Technology Release – Export / Deemed Exports
    • Classification
    • Are there other regulations that need to be reviewed
DATA AND INFORMATION COLLECTION TOOLS

• Train teams to utilize the tools developed by your company
RESOURCES

• DDTC
  • ITAR § 127.12 Voluntary disclosures
  • Temporary Import Violation Guidance
  • Compliance Program Guidelines
    • http://pmddtc.state.gov/compliance/documents/compliance_programs.pdf

• SIA Voluntary Disclosure Handbook (under revision)
  • Provides samples of checklists, disclosure templates
RESOURCES

• Customs
  • https://www.cbp.gov/trade/programs-administration/audits
  • https://www.cbp.gov/document/publications/abcs-prior-disclosure

• BIS:
  • https://www.bis.doc.gov/index.php/enforcement/oee/voluntary-self-disclosure
  • https://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance
RESOURCES

• Census (Foreign Trade Regulations) – includes sample VSD
  • https://www.census.gov/foreign-trade/regulations/vsd.html
  • https://www.census.gov/foreign-trade/regulations/index.html
WHERE DO WE GO FROM HERE?

KEEP CALM AND IMPROVE ON
Voluntary Disclosures & Root Cause Analysis

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The “Ideal” Voluntary Disclosure

• ITAR § 127.12 is your roadmap – follow it!
• Provide a clearly articulated summary
  – Who is involved?
  – What happened, when and why?
  – How was the violation discovered?
  – Remedial measures - do they resolve the violation and prevent future violations?
  – Indicia of the strength and maturity of your compliance program
What DTCC Looks For

• Summary with a timeline of events
• Precise description of the nature and extent of the violation(s)
• Exact circumstances of the violation(s)
• Root cause
• Description of defense article, tech data, or defense service involved
• Relevant authorizations
• Identities and addresses of individuals involved
• Related disclosures
• Appropriate remedial and corrective actions
• Conclusion, certification, and point of contact
Mitigating Circumstances

- Voluntary
- Demonstrates cooperation
- Lack of willfulness
- Transaction would likely have been authorized
- Improved Compliance Program
Aggravating Circumstances

- Harm to U.S. Foreign Policy or National Security
- Management promotes or ignores wrongdoing
- Extended period of violations
- Delay in reporting violation
- Repeated violations
- Number of locations, programs, and business units involved (systematic problem)
- Untrue statements
Root Cause Analysis

• Identify, correct, and audit
• Is your root cause analysis sufficient?
• Is it a symptom of a bigger problem?
• What else don’t you know?
• If you don’t understand how or why the violation occurred, how can you prevent it from happening again?
“Doubt is not a pleasant condition, but certainty is absurd.”

Voltaire
Compliance is the Goal

- Protect National Security
- Safeguard technology
- Operate more efficiently (avoid supply chain delays)
- Protect exporter’s/recipient’s reputation and opportunities
- Avoid unnecessary costs
- Compliance provides a competitive advantage
Corrective Actions / Sustainment Activities

• Corrective actions and sustainment activities are important to the government, industry, and your company

• Describe corrective actions taken; explain how corrective actions resolve the violation and prevent future violations

• Sustainment Activities
  – People (roles & responsibilities, training, company culture)
  – Process (monitor, analyze, act)
  – Technology (develop and leverage analytical tools)
Next Steps

You have disclosed violations, determined the root cause, implemented remedial measures, and received a closeout letter from DTCC…now what?

*Maintain an effective and sustainable compliance program to identify, prevent, detect, correct, and report violations.*