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Research Compliance Professional's Handbook, Third Edition
14 What are Export Controls?

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Introduction

International research activities often involve the exchange of information or technology. It is vital to understand that export controls do not always apply to a physical shipment of a "thing," but can also be the exposure of technological knowledge to foreign persons, entities, or countries, both on foreign or domestic soil. This is called a "deemed export." While this may seem a little overwhelming, certain exclusions apply to research activity.

The intent of this section is to provide an overview of the structure and content of regulations commonly called export controls, to describe their relevance to research, and suggest some potential approaches to an export control compliance program.

Export Controls: A Brief Description

Export controls refer to federal regulations that apply to the export of oral, written, electronic, or visual disclosure; or shipment, transfer, or transmission of goods, technology, services, or information to anyone outside of the United States, a non-U.S. entity, or a non-U.S. individual (regardless of location). Export controls have existed for decades, but renewed focus on them increased dramatically after September 2001 and has been stimulated by the risk and speed with which technological advances occur.

In the export control context, the term "export" applies not only to the shipping or personal delivery of technology, information, or funds outside of the United States, but also to the deemed export or disclosure of technology or information to a foreign entity or foreign national on U.S.-soil. Examples of a deemed export could include a tour of laboratory spaces, research involvement, hosting observers or other types of visitors in laboratory or research space, or through discussions or lectures of sensitive research.

The three primary sources of export control regulations are the U.S. Department of Commerce Export Administration Regulations (EAR), the U.S. Department of State International Traffic in Arms Regulations (ITAR), and the U.S. Department of the Treasury Office of Foreign Asset Control (OFAC). There are other regulations (such as those of the U.S. Department of Transportation, International Air Transport Association (IATA), Center for Disease Control, U.S. Fish and Wildlife Services, U.S. Drug Enforcement Administration, etc.) that may also apply to shipping materials outside of the United States, but EAR, ITAR, and OFAC are the key components of federal export controls. The purpose of these regulations is to control proliferation of certain military technologies, and some non-military technologies that have the potential for military applications (called dual use because they have both commercial and military applications), protect certain U.S. commercial technology advantages, and enforce U.S. Department of State opposition to financial flows from the United States to embargoed countries, entities, and persons.

EAR is a set of U.S. government regulations on the export and import of most commercial items.[2] Many of these items are dual-use items. To determine if EAR is applicable, an item can be verified on the Commerce Control

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List (CCL), also known as the dual-use list.[3]

ITAR regulations apply to the export or import of defense-related articles or services listed in the U.S. Munitions List (USML) for military applications, including deemed exports.[4] Manufacturers and distributors are required to register with the Directorate of Defense Trade Controls (DDTC).

OFAC regulations govern economic and trade sanctions to support foreign policy objectives and national security.[5] Organizations should continually check the the Specially Designated Nationals and Blocked Persons List (SDN), which is published by OFAC, to ensure that they are not doing business with anyone listed. In addition, transactions with boycotted or embargoed countries or countries where trade sanctions exist are also subject to OFAC regulations.

The United States adopted two laws that seek to counteract U.S. citizens from participating in other nations' economic boycotts or embargoes. These anti-boycott laws are the Export Administration Act (EAA) and the Tax Reform Act (TRA). They were adopted to keep U.S. firms from being used to implement foreign policy that runs contrary to U.S. policy. The TRA is designed to penalize through tax benefits for certain types of boycott-related agreements.

Export control violations are serious concerns for both individuals and organizations. Depending on the circumstances, these violations can result in fines, jail time, or both. Violations can be criminal or administrative. Criminal penalties range from 10-20 years in prison and up to one million dollars in fines for individuals or one million dollars or five times the value of the exports involved for organizations. Administrative penalties can include fines to $250,000 per violation, denial of export privileges, revocation of export licenses, and/or exclusion from practice.

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