

Key Issues in University Research: Deemed Exports

University of Pittsburgh

Office of Export Controls Services – EChelp@pitt.edu



A. DEEMED EXPORTS

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled *technology*¹ or *software* to foreign nationals even when the transfer takes place within the territory of the United States. Though taking place inside the U.S., the transfer is “deemed” to be an export (as if exporting to the country of the foreign national). By extension, the transfer of *technology* or *software* to third country nationals outside the United States is considered to be a “deemed reexport”.

The concept of deemed export is common to the EAR and ITAR. However, the term “deemed export” only exists in the EAR. The ITAR refers to it simply as an export. While the ITAR distinguishes between the transfer of *technical data* and *defense services*, the EAR generally provides for the release of *technology*. Such transfers or releases may be made through oral, visual, or other means. A deemed export may occur through:

1. a demonstration;
2. oral briefing;
3. telephone call or message;
4. laboratory or plant visit;
5. presenting at conferences and meetings;
6. faxes or letters;
7. hand-carried documents, hardware or drawings in paper and electronic format;
8. design reviews;
9. the exchange of electronic communication;
10. posting non-public data on the Internet or the Intranet;
11. collaborating with other universities / research centers through research efforts.

The issue of deemed exports is particularly relevant to university research. While a university may be involved in the shipment of technology abroad, most often faculty and students are engaged in teaching and research in the U.S. Whenever teaching or research occurs in the U.S., but is related to controlled item, technology, or software, a foreign students' or researchers' involvement may trigger export controls compliance issues as a deemed export.

¹ *Technology* is specific information necessary for the “development”, “production”, or “use” of a product. *Technology* can take the form of “technical data” (includes blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media devices such as disk, tape, read-only memories) and/or “technical assistance” (includes instructions, skill training, working knowledge, consulting services or the transfer of technical data).

Key Issues in University Research: Deemed Exports

University of Pittsburgh

Office of Export Controls Services – EChelp@pitt.edu



B. U.S. AND FOREIGN PERSONS

For purposes of defense and dual-use exports, a *U.S. person* is defined as: a U.S. citizen; or a permanent resident (*i.e.*, green card holder) who does not work for a foreign company/government/governmental agency; or an individual who is granted status as a “protected person” (under 8 U.S.C. 1324b(a)(3)); or a part of the U.S. government; or a corporation/business/organization/group that is incorporated in the United States under U.S. law. A *U.S. person* may be engaged in activities that are export controlled, unless there are some additional restrictions that limit participation to U.S. citizens.

The regulations define a *foreign person* as anyone who is not a *U.S. person*. This includes any foreign corporation/business association/partnership/entity/group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign government and any agency or subdivision of foreign governments (e.g. diplomatic missions).

BIS looks at the person's most recent citizenship or permanent residence. DDTC looks at the person's country of origin (*i.e.*, country of birth) and all current citizenships.

DOCUMENT HISTORY AND VERSION CONTROLS		
Subject	DEEMED EXPORTS	
Last Amendment	March 2015	Version 2.0
Supersedes	May 2013 (original document)	Version 1.0