

XII. MISCELLANEOUS

**A. Anti-boycott**

The Export Administration Act and associated export regulations discourage and often prohibit US persons from complying with certain aspects of unsanctioned boycotts. See BIS Office of Anti-Boycott <https://www.bis.doc.gov/index.php/enforcement/oac>. The primary impact of this rule is the boycott on Israel by the Arab League and some other countries, however, this rule could apply to other boycotts as well. Mines employees may not provide any information or agree to any term(s)/condition that furthers the boycott on Israel. Conduct that may be penalized under the Ribicoff Amendment to the 1976 Tax Reform Act (TRA) (under Department of Treasury) and/or prohibited under the EAR includes the following:

- Agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies;
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality;
- Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies; and
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.

Any such request should be reported to ORA or the Office of Compliance so that we may determine if reporting to BIS is required. This effort must be coordinated through Mines. Contact the Office of Compliance for more information.

**B. Political Contributions/Foreign Corrupt Practices Act (FCPA)**

Any political contribution to any foreign government actor, or any fee or commission in connection with obtaining a sponsored contract or business must be reported to the ORA or Office of Compliance and approved by Mines. The FCPA is an anti-bribery act to prevent corrupt payments involving foreign government officials or instrumentalities of a foreign government.

1. **Two main components of the FCPA** for Mines to focus on, include:

- a. **Anti-bribery provisions.** This prohibits a payment, offer, authorization or promise to pay money or anything of value to a foreign government (including a family member) or to any other person knowing that the payment or promise will be passed on to a foreign official/instrumentality; with a corrupt motive; for the purpose of influencing any act/decision of that person, inducing such person to do/omit any action in violation of lawful duty; secure an improper advantage, or induce a person to use their influence to affect an official act/decision to assist in obtaining/retaining business for or with or directing any business to any person (including the university);
- b. **Internal Controls.** Maintaining accurate books, records, and internal controls so bribes are not hidden and information resources to our community to avoid these issues and areas.

2. **Where to watch for these:**

- a. There is no monetary threshold so even purchasing meals or entertainment/gifts for a foreign official could come under attack of the FCPA or the local government prohibitions in that region.

- b. Even charitable donations in a foreign country may constitute a violation.

**C. Brokering**

Under ITAR, **Brokering** includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service. (U.S. regulations define a broker as "any person who acts as an agent for others in negotiation or arranging contracts, purchases, sales, or transfers of defense article or defense services in return for a fee, commission, or other consideration.") See <http://www.state.gov/strategictrade/practices/c43181.htm>. Further, the Department of State, provides that "arms brokering" in the U.S. "includes but is not limited to, activities by U.S. persons located inside or outside the United States or Foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin located inside or outside of the United States. The term "[Defense Article](#)" or "[Defense Service](#)" includes any hardware, technical data, or services covered by the U.S. munitions list, regardless of whether it is of U.S. origin or contains U.S. components in the U.S., every person who engages in the business of arms brokering activities, other than employees of U.S. or foreign governments acting in an official capacity, must register with the U.S. State Department's Office of Defense Trade Controls."

Mines employees should not enter into contracts with third parties to obtain defense contracts or to provide any defense services without review and approval of Mines ORA and/or Office of Legal Services.

**D. Red Flags**

The U.S. Government has various resources to prevent the illegal export of sensitive munitions/strategic technology, both through US Department of Homeland Security and US Department of Commerce. BIS provides "Things to Look for in Export Transactions" that is a checklist to discover possible violations of the Export Administration Regulations. These include:

- Screen parties (End-Users): The customer or its address is similar to one of the parties found on the Commerce Department's [BIS'] list of denied persons.
- Get all information: The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- Consider Request (End Use): The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery; or the item requested is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- Consider payment (if relevant): The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- Consider collaborator/requestor (End-User): The customer has little or no business background; or the customer is unfamiliar with the product's performance characteristics but still wants the product; Person denies routine installation, training, or maintenance services information; when questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.
- Where to send/share (Countries/Embargo): Delivery dates are vague, or deliveries are planned for out of the way destinations; or a freight forwarding firm is listed as the product's final destination; the shipping route is abnormal for the product and destination.

<http://www.bis.doc.gov/index.php/enforcement/oe/compliance/23-compliance-a-training/51-red-flag-indicators>

### E. Drones/UAS

**Unmanned Aerial Systems (UAS) or Drones** are subject to Export Controls if you are planning to use them outside of the country. The UAS may be a commercial product that you can purchase in the U.S, however, there may be payload (E.g., additional batteries, sensors, or certain types of cameras that are added to the system) that make the UAS subject to Export Controls. Further, the Federal Aviation Administration (FAA) is the U.S. federal agency responsible for the laws and regulations over UAS, though only in the borders of the U.S. (Note: At Mines' community requires registration with the Compliance office, FAA, and Pilot training.) Once you leave the country there may be foreign airspace requirements requiring compliance. Please check in with ORA, Office of Compliance or Office of Legal Services prior to shipping or hand-carrying a UAS out of the U.S.

### F. Consulting

Consulting in an individual (Non-Mines) capacity is allowed and encouraged in order to increase your scholarly efforts and provide service back to the community. Consulting is reviewed and approved by the Department Head and Dean regarding the time, effort and Institutional Responsibility being covered during any absence. Please remember that in your personal capacity as a Consultant you are not reviewed for Export Control compliance nor does Mines review for Export Compliance. Please seek appropriate external advice or counsel regarding your Consulting Activities and Export Control concerns. (E.g., [Technical Assistance](#) may include consulting and may be subject to EAR or ITAR).

### G. Other Exclusions from being an Export.

1. In 2016, the Export Control Reform (ECR) provided two exclusions from the EAR:
  - 1) Items that are non-proprietary system descriptions or
  - 2) Items that are telemetry data.
2. The ECR provided that “technology” or “software” is “published” and is thus not “technology” or “software” subject to the EAR when it is not classified national security information and has been made available to the public without restrictions upon its further dissemination. The phrase “classified national security information” refers to information that has been classified in accordance with [Executive Order 13526, 75 FR 707](#); [3 CFR 2010](#) Comp., p. 298. The relevant restrictions do not include copyright protections or generic property rights in the underlying physical medium. Certain published encryption software, however, remains subject to EAR under the 2016 ECR by BIS.

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