

## Export Controls Q&A – 3/1/21 Training Session

Posted 3/9/21

### Responsibility for fines

**Question:** Is the MGB hospital responsible for all fines and penalties if a researcher or employee exports something without approval that violates the regulation?

**Answer:** The institution would generally be liable for fines and penalties resulting from a violation of export control laws if the individual researcher or employee was acting on behalf of MGB and within the scope of their employment. The agencies have discretion to impose penalties against individuals, but this is typically reserved for instances in which an individual was willfully and knowingly violating U.S. law.

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### Export control requirements and employment screening

**Question:** Are export control requirements considered discriminatory when employees from other countries are considered for working on a project?

**Answer:** To confirm compliance with deemed export controls, institutions must obtain certain information regarding the nationality of its employees. In doing so, institutions should put processes in place to avoid discrimination issues under U.S. employment law. As a best practice, institutions should establish separate processes for gathering nationality information for the express purpose of export control compliance, distinct from other hiring/HR pre-employment information-gathering processes.

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### Demonstrating medical procedures

**Question:** Could you please comment on sharing know-how related to certain activities, for example, when an MGB expert demonstrates surgical techniques on a video or via a text. Or, in another example, shares decision pathways on how to determine the treatment plan for a cancer patient.

**Answer:** These clinical situations generally would not be subject to export control regulations, as the information being shared is not considered “technology” controlled under the export regulations. However, these activities could not be conducted in relation to countries/ territories subject to comprehensive sanctions (i.e., Cuba, Iran, North Korea, Syria and Crimea).

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### High-risk countries

**Question:** How do you determine what are high-risk countries?

**Answer:** A jurisdiction may present higher risks under export controls and sanctions for a number of reasons. Sanctioned countries are always considered “high-risk.” In addition, some countries

are considered “high-risk” for export controls due to their proximity to territorially sanctioned countries and the ease of diversion of exports from such countries (e.g., UAE as a high-risk country for diversion to Iran). Others may be considered “high-risk” due to a relatively higher likelihood of sanctioned counterparties or the application of more stringent export controls under the EAR. For example, one reference to “high-risk” countries during the training session was in the context of the MGB policy requiring investigators to travel with clean laptops when visiting China and Russia which, for MGB information security purposes, have been designated “high-risk” countries.

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### QA testing of devices

**Question:** Could you please comment on advisory services that support a client’s QA testing of a machine? For example, a CT machine’s configurations and QA testing.

**Answer:** The export control issues in this situation would depend on the export classification of the machine and the nature of the information being provided. If the machine has an export classification that is subject to higher levels of export controls, there may be export restrictions on providing certain technical information relating to that machine to a client outside the U.S. However, in your example, CT machines are generally classified as EAR99 and are subject to the lowest level of control under the Export Administration Regulations (EAR). As such, the provision of “technology” related to a CT machine would not require a license other than for sanctioned countries (i.e., Cuba, Iran, North Korea, Syria and Crimea).

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### Huawei

**Question #1:** In China, many companies have relationships with Huawei for telecommunications. What is our obligation in understanding the nature of this relationship? Should this be a specific question posed during due diligence?

**Question #2:** Can you clarify for Huawei, what are the regulations applicable to doing business with companies that work closely with Huawei? Essentially over 50% of companies in China have relationships with Huawei.

**Answer:** Let’s hold these questions until the session on 889 Compliance and the session on international advisory services. We will post a response at that time.

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### Huawei Phones

**Question:** What if an MGB employee owns a Huawei phone for their personal use? Would it matter if they were working in a lab that receives federal funding? What if they use the phone to access their MGB email?

**Answer:** Excellent questions. We are developing the MGB 889 compliance plan and have not yet made a decision concerning the use of personal Huawei phones to access MGB email or data. We will notify the community once a decision has been made.

## Training a Postdoctoral Fellow

**Question #1:** Do export control regulations come into play in training/instruction situations?

**Answer:** Anything printed in a publicly available curriculum, course catalogue, or syllabus is not subject to export control requirements.

**Question #2:** What if the postdoctoral fellow is a foreign national and will be trained on new technology developed within the PI's laboratory? Are there export control requirements that should be addressed?

**Answer:** This situation presents potential deemed export issues, as the release of technology to a foreign national in the U.S. is considered a "deemed" export to that foreign national's country of nationality. Depending on the export classification of the technology in question and the country of nationality of the fellow, an export license may be required for the fellow to receive access to the technology developed in the lab.

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## Deemed export/collaborator's sponsored support

**Question:** If the research sponsor of a MGB collaborator is on the excluded parties list, could the MGB collaborator's exposure to technology via collaboration, whether it is at MGB or via email, be considered deemed export? Do PIs need to find out who is sponsoring their collaborator's work?

**Answer:** Yes, we recommend that PIs understand who is sponsoring their and their collaborator's work and consult their hospital's Export Control Officer to determine if a collaborator or sponsor might be on a restricted parties list or from a sanctioned country. The fact that a collaborator or a sponsor is on a restricted party list can raise issues separate from "deemed" export issues. For example, U.S. persons are prohibited from engaging directly or indirectly in virtually all activities with certain restricted parties. Such prohibitions include receiving funding from such a restricted party and can apply regardless of whether any technology is transferred to the collaborator or sponsor.

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