Contrasting ITAR and EAR Regulations: Summary for NOAA Employees

Export control laws and regulations serve a critical function in promoting national security and foreign policy interests. U.S. citizens must comply with all applicable export laws and regulations. Both the Department of Commerce and the Department of State, *in addition to other federal agencies*, administer export control laws. The Bureau of Industry and Security (BIS) in the Department of Commerce administers the Export Administration Regulations (EAR) 15 C.F.R. §§ 730-774, which control dual use technologies. The Department of State Directorate of Defense Trade Controls administers the International Traffic in Arms Regulations (ITAR) 22 C.F.R. §§ 120-130, which control items considered defense articles and services. Each Line and Staff Office is responsible for managing its personnel and resources to ensure compliance with all export laws.

A "deemed export" is defined as the release of technology or source code that is subject to the EAR to a foreign national in the United States (EAR § 734.2(b)(2)(ii)). The Office of the Chief Administrative Officer (OCAO) is responsible for establishing and administering NOAA's deemed export compliance program. NOAA was required by the Department of Commerce Inspector General to establish a program to ensure compliance with deemed export regulations because most items (commodities and technologies) are "subject to the EAR," and because NOAA hosts many foreign nationals in its U.S. facilities. OCAO organizes a BIS-led training session each year to assist NOAA employees in complying with deemed export laws and regulations. More information on NOAA's Deemed Export Compliance Program for EAR controlled technology can be found at http://deemedexports.noaa.gov/ and in NOAA Administrative Order 207-12.

NOAA employees also must comply with the State Department's ITAR regulations. The State Department does not prescribe administrative requirements for demonstrating assurances against the unauthorized release of ITAR technology, so there is no central NOAA compliance program for ITAR. The State Department provides limited in-house training on ITAR regulations. See, http://www.pmddtc.state.gov/outreach/index.html. External vendors also provide training. While NOAA does not have an overall ITAR compliance program, some NOAA Line Offices that work with ITAR technology have internal policy requirements to reference ITAR technology on the controlled technology inventory. OCAO encourages Line and Staff Offices to implement these internal policies as needed. All NOAA offices should feel free to reference any ITAR items on their controlled technology inventories and specify appropriate safeguards in their access control plans as this will serve to increase awareness for the points of contact in each office.

While other federal agencies do administer export control regulations, NOAA employees should be particularly aware of the key differences between the EAR (Commerce) and ITAR (State) regulations. The following table was developed by the OCAO to contrast some basic differences and is intended to assist individuals who already have a basic understanding of the EAR.

Disclaimer: OCAO created this guidance for NOAA employees to provide basic information on the key differences between the EAR and ITAR laws and regulations. There is, however, no substitute for reading the actual statutes, regulations, and supporting agency documents. Consult with the Bureau of Industry and Security or the State Department for specific regulatory questions. NOAA offices should direct questions regarding ITAR to their servicing NOAA Office of General Counsel division.

	EAR Regulations (Bureau of Industry and Security, Department of Commerce)	ITAR Regulations (Directorate of Defense Trade Controls, Department of State)
Focus of Regulations	Dual-use items have **predominantly commercial uses**, but also have military applications.	**Defense articles and defense services** covered by the United States Munitions List (USML)
NOAA Examples of Controlled Technology/ Technical Data	"Development", "Production" and "Use" technology related to High Performance Computer, GPS, weather radars	Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of items such as POS-IMU and GPS with Y-code decryption
Terminology used to describe the sharing of controlled technology/ technical data with foreign nationals in the US	**"Deemed Export"** - Release of technology or source code that is subject to the EAR to a foreign national in the United States (EAR § 734.2(b)(2)(ii)). The release is "deemed" to be an export to foreign national's home country	**"Export" -** The ITAR regulates the following activities as an export: -The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; - Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.
List of Controlled Items/ Defense Articles	Controlled Commodities, Materials, Software and Technology are listed on the Commerce Control List (CCL) http://www.access.gpo.gov/bis/ear/ear_data.html#ccl Many items are identified on CCL.	Defense articles including any item or technical data designated in 22 CFR §121.1, are listed on the US Munitions List (USML) http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/2008/Part_121.doc The USML is a much shorter list of items that may require a license.

	EAR Regulations (Bureau of Industry and Security, Department of Commerce)	ITAR Regulations (Directorate of Defense Trade Controls, Department of State)
Key Definitions	**"Use"** - The EAR defines "use" technology as specific information necessary for the "operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing" of a product. See Part 772, definitions of "technology" and "use." If the technology available to the foreign national does not meet all of these attributes, then it is not "use" technology for deemed export licensing purposes.	"**Technical data**." - Technical data means, for purposes of the ITAR (1) Information, other than software as defined in [22 CFR] § 120.10(d), which is required for the design development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation. (2) Classified information relating to defense articles and defense services; (3) Information covered by an invention secrecy order; (4) Software as defined in [22 CFR] § 121.8(f) of this subchapter directly related to defense articles; (5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in [22 CFR] § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles. "**Defense service"** means: (1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or (2) The furnishing to foreign persons of any technical data controlled under this subchapter (see [22 CFR] § 120.10), whether in the United States or abroad.

	EAR Regulations (Bureau of Industry and Security, Department of Commerce)	ITAR Regulations (Directorate of Defense Trade Controls, Department of State)
For items that have been identified on the CCL or USML, is a license required to share a user manual? (Assume that the manual is not freely available on the web)	An individual needs to review whether there is "development", "production" or all five aspects of "use" (operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing") technology in the user manual. Some manuals may have one aspect, but not all five aspects of "use" technology. If one does not have all five aspects, one does not have controlled "use" technology.	Companies must seek permission from the State Department to publish ITAR technical data. If the manual is not freely downloadable from the web, contact the vendor to determine if the manual has been authorized to be shared with the public.
Training Resources	http://www.bis.doc.gov/seminarsandtraining/index.htm	http://www.pmddtc.state.gov/outreach/index.html