

## BPE Global Hot Topic— February 2025

### EAR vs. OFAC: The Recordkeeping Rumble



Because we have not had enough trade compliance excitement in 2025, don't forget that OFAC's recordkeeping requirements will be increased to ten years, effective March 12<sup>th</sup>!

With the upcoming changes to the Office of Foreign Assets Control (OFAC) recordkeeping requirements taking effect March 12, 2025, it's crucial for both domestic and foreign companies to understand how these updates compare to the existing Export Administration Regulations (EAR) (which are not changing). Hopefully this comparison is a timely reminder, or an affirmation of your preexisting awareness, of what the differences are, and what your business can do to prepare. If you're in charge of recordkeeping, buckle up for three rounds of tips to comply in time for the change.

#### **ROUND 1: Hands Up**

Prepare, protect and understand the obstacles. Here is a comparison of OFAC's new requirements against the EAR's:

#### **OFAC Recordkeeping Updates (Effective March 12, 2025)**

- **Extended Retention Period:** OFAC (Office of Foreign Assets Control) is extending its recordkeeping requirements to align with the updated 10-year statute of limitations.
- **Impact on Businesses:** All organizations, both foreign and domestic, subject to OFAC regulations will need to adjust their trade compliance processes to maintain a complete and accurate record of every transaction subject to OFAC sanctions for a full ten years.
- **Accurate Record Keeping:** The extension of the recordkeeping period impacts current data management processes.
- **Increased Penalty Risks:** Businesses face greater risks of enforcement actions if records are incomplete or improperly maintained, due to the extended investigation window. Penalties for late filing have increased and will apply throughout the 10-year duration.
  - \$3,550 for late filings within the first 30 days
  - \$7,104 if filed more than 30 days late
  - If related to blocked assets, an additional \$1,422 may be added for every 30 days overdue, up to a 10-year statute of limitations.

- **Start Date:** The 10-year timeframe begins "from the date of [the] transaction". For blocked property, the retention period starts only after the property is unblocked, potentially making the recordkeeping requirement indefinite in some cases.

### **Current EAR Recordkeeping Requirements**

- **Retention Period:** All records required to be kept by the EAR (Export Administration Regulations) must be retained for five years from the latest of several possible dates:
  - The export from the United States of the item involved in the transaction.
  - Any known reexport, transfer (in-country), transshipment, or diversion of such item.
  - Any other termination of the transaction.
  - In the case of records pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person receives the boycott-related request or requirement.
- **Original Records:** The regulated person must maintain the original records in the form in which that person receives or creates them.
- **Enforcement:** BIS (Bureau of Industry and Security) actively enforces US export control laws, regardless of the offending party's location. Civil penalties for EAR violations can reach up to \$300,000 or twice the transaction value, while criminal penalties can include up to 20 years in prison and \$1 million in fines per violation.

### **Round 2: Answer the Bell**

Answer the demand placed upon you. No complaints, no blame, just manage the roll-out of complying with these updates.

1. **Update Data Management Processes:** Organizations should update their data management processes to accommodate the extended retention period under OFAC.
2. **Enhance Record Keeping Accuracy:** Accurate record-keeping is essential to mitigate the risk of penalties for non-compliance. Records that must be retained include all memoranda, notes correspondence (including email), financial records, and shipping documentation, as well as any other information related to the export activities.
3. **Update your Compliance Programs:** Update your compliance programs (obviously the "recordkeeping" section, but don't forget IT, Roles and Responsibilities, Fines and Penalties, etc...) to ensure adherence to both EAR and OFAC regulations.
4. **Stay Informed:** Stay informed about the latest regulatory requirements and updates from OFAC and BIS.

5. **Risk Assessments:** Perform regular risk assessments to identify and mitigate potential compliance risks.

### **Round 3: Ding Ding**

Start. As in, don't procrastinate. March 12<sup>th</sup> is around the corner. If you haven't already, establish a task force to ensure this very important regulatory requirement is put into play.

As always, BPE Global is in your corner and is happy to assist in any capacity. We've been running these types of plays for 20+ years. You can find us on LinkedIn where we publish topical opinions on the ever-changing rules and regulations governing the landscape of global trade. Gabrielle Griffith is a Director of BPE Global. You can reach Gabrielle by email at [ggriffith@bpeglobal.com](mailto:ggriffith@bpeglobal.com).