EXPORT CONTROL

What Researchers Need to Know

Overview

- The Basics: Exports, Deemed Exports, Definitions
- The Export Control Regulatory Framework—ITAR, EAR and OFAC
- Exclusions
- Penalties
- Application to University Research
- Export Control for Researchers

What Are Export Control Laws?

- U.S. laws and regulations that prohibit the unauthorized "export" of certain controlled ITEMS, INFORMATION or SOFTWARE to foreign persons or entities in the U.S. and abroad
- **Export control laws apply to all activities – not just sponsored research projects**

Why Do We Have Export Control Regulations?

Objective – To protect U.S. national security and foreign policy interests by:

- Denying our adversaries the means to advance their military potential
- Implementing foreign policy objectives
- Preventing terrorism
- Inhibiting the proliferation of Weapons of Mass Destruction (nuclear, biological, chemical)
- Fulfilling Multilateral Obligations (i.e. UN Sanctions, Trade Agreements)

What is an Export?

- **Export:** The transfer of controlled technology, information, equipment, software or services to a foreign national in the U.S. or abroad by any means.
- **Deemed Export:** Providing, transferring, or disclosing technical data or technology to a foreign national within the United States.
  - Applies to research assistants and students
  - Applies to visiting foreign researchers
  - Applies to U.S. citizens visiting a foreign country

Deemed Export

- Residency status – foreign nationals are subject to deemed export unless:
  - Granted U.S. Citizenship;
  - Granted permanent residence status (i.e., green card holder); or
  - Granted status as a “protected individual.” Protected individuals include political refugees and political asylum holders.

Deemed Export

- Takes place through oral or written disclosures
  - Email
  - Telephone
  - Websites
  - Laboratory tours
  - Foreign national research collaboration

Who is Responsible for Export Control Laws?

- **State Department:** Inherently military technologies—International Traffic in Arms Regulations (ITAR)
- **Commerce Department**: "Dual-Use" technologies (primary civil use) – Export Administration Regulations (EA)
- **Treasury Department, Office of Foreign Assets Control (OFAC):** Prohibits transactions with countries subject to boycotts, trade sanctions, embargoes

State Department – ITAR Munitions List: 22 CFR 1

- Firearms
- Artillery Projections
- Ammunition
- Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs & Mines
- Explosives, Propellants & Incendiary Agents
- Vessels of War & Special Naval Equipment
- Tanks & Military Vehicles
- Aircraft & Associated Equipment

ITAR Munitions List: 22 CFR 1 Cont.

- Military Training Equipment
- Protective Personnel Equipment
- Military Electronic
- Auxiliary Military Equipment
- Spacecraft Systems & Equipment
- Fire Control, Range Finder, Optical & Guidance & Control Equipment
- Toxicological Agents & Radiological Equipment
- Nuclear Weapons Design & Text Equipment
- Submersible Vessels, Oceanographic & Associated Equipment
- Misc. Articles

What is Subject to ITAR?

- Items on Munitions List
- Includes both research on “defense articles” and training or assistance in developing “Defense articles”
- Technical data related to the manufacture or production of defense articles
- Anything with a substantial military application

Examples of ITAR Controlled Technologies and Items

- Explosives
- Rocket Systems
- Military Training Equipment
- Spacecraft and Satellite Equipment (even if not for military use)
- Toxicological Agents and Equipment
- Biological Agents
- Radiological Equipment (including nuclear radiation detection and measurement devices)
- Defense Services

ITAR Prohibited Countries

- Belarus, Cuba, Iran, Libya, North Korea, Syria and Vietnam
- Arms Embargoes: Burma, China, Haiti, Liberia, Somalia, and Sudan
- Afghanistan, Rwanda, Republic of the Congo

Commerce Department Categories – EAR (dual use)

0 – Nuclear Materials, Facilities & Equipment (and miscellaneous items)
1 – Materials, Chemicals, Microorganisms, and Toxins
2 – Materials Processing
3 – Electronics Design, Development and Production
4 – Computers
5 – Telecommunications and Information Security
6 – Sensors and Lasers
7 – Navigation and Avionics
8 – Marine
9 – Propulsion Systems, Space Vehicles and Related Equipment

Examples of EAR Controlled Technology

- Examples:
  - Batteries and Fuel Cells
  - Cameras and Optics Equipment
  - Artificial Intelligence Software
  - Certain Computer Equipment
  - Items using Laser Technology
  - Certain Chemical, Microorganisms and Toxins

EAR Controlled Technology Cont.

- The list of EAR controlled items is large and a bit cumbersome to manage but there is an index that helps you navigate to the right place within the CCL by identifying the export control classification number

EAR Embargoes

- U.S. Embargoes
  - Cuba – most stringent embargo
  - Iran – comprehensive trade and investments
  - Sudan – comprehensive
  - Syria – general order

EAR Embargoes

- U.N. Embargoes (arms embargoes)
  - Iraq
  - Rwanda

What does the Office of Foreign Assets Control (OFAC) enforce?

- Economic sanctions against hostile targets, including countries
- OFAC may prohibit travel, payment or providing anything of value to the sanctioned country, **regardless of the fundamental research qualification**

- Sanctioned Countries:
  Balkans
  Burma (Myanmar)
  Cuba
  Iran
  Iraq
  Liberia
  Libya
  North Korea
  Sudan
  Syria
  Zimbabwe

The Importance of Export Control Compliance

Due Diligence

- Export Control Regulations have far-reaching implications on everyday University activities
- Many unites (administrative, academic, research) of the University are affected
- Compliance with regulations requires a university-wide oversight program
- Non-compliance with regulations places the University and its personnel at risk of fines and/or imprisonment

Consequences of Non-Compliance

- Failure to comply with U.S. export control laws can result in **severe penalties:**
  - **Civil penalties up to $500,000 each violation**
  - **Criminal penalties up to $1,000,000 each violation**
  - **Imprisonment up to 10 years**

Export Control Exclusions

- Fundamental Research
- Educational Exemption
- Employment Exemption
- Public Domain

Exclusions

- A license is not required to disseminate information if one of three exclusions applies:
  - **Fundamental Research Exclusion (ITAR, EAR)**
  - **Employment Exclusion (ITAR only)**
  - **Education Exclusion (ITAR, EAR)**

Anything in the Public Domain is also excluded

Fundamental Research Exclusion

No license is required for fundamental research defined as basic and applied research in science or engineering when:

- There can be no restrictions on access by students or others
- No restriction on publication
- Research carried out openly
- Results are intended to be shared broadly in the scientific community

The Fundamental Research Exclusion is Destroyed If:

- The university accepts any contract clause that:
  - Forbids the participation of foreign persons;
  - Gives the sponsor a right to approve publications resulting from the research; or
  - Otherwise operates to restrict participation in research and/or access to and disclosure of research results.

Employment Exclusion

- No license is required to share controlled technical information with a foreign person who:
  - is a full-time bona fide university employee
  - has a permanent address in the U.S. while employed
  - is not a national of certain countries
  - has been advised in writing not to share controlled information with other foreign persons

Education Exclusion

- No license is required to transfer information to students, including students who are foreign nationals, concerning general scientific, mathematical or engineering principles commonly taught in school, colleges or universities.

Public Domain Exclusion

- Public Domain Exclusion applies to information and research results only---not physical, equipment, substances, etc.
- No license is required to export or transfer information and research results that are generally available to the interested public domain through:
  - Libraries, bookstores, or newsstands
  - Trade shows, meetings, seminars in the U.S. open to public,
  - Published in certain patent applications, or
  - Websites accessible to the public

Export Control for Researchers

Why do researchers need to know about Export Control?

- Researchers are at the “front line” of export control issues because:
  - They have control over the scope of the research project
  - They are the ones who make the decision regarding equipment or technology which will be implemented and to whom it may need to be transferred
  - Because researchers have ultimate control of the research project, their input is critical to help contract administrators evaluate technical aspects of export control issues

Questions to Ask Yourself

- Does the research involve any of the EAR categories?
- Does the research involve any item on the ITAR Munitions List?
- Does the research involve technology or devices designed for use in military, security and intelligence applications?
- Does the research involve anything else with a substantial or dual-use military application?

Questions to Ask Yourself

- Will you collaborate in any way with a foreign national?
- Will you use a research assistant who is a foreign national?
- Will you send your research results to a foreign country or foreign citizen?
- Do you anticipate any foreign travel associated with the project?

Key Questions to Ask Yourself before Accepting the Research Award.

- Does the award contain any terms or conditions that would restrict the disclosure or dissemination of the research results?
- Are there restrictions on access to or dissemination of information the sponsor or others (e.g. sub-contractors) will furnish for its use of this project?
- If the answer is yet to either question, the project should be evaluated for potential export controls.

Closing Comment

- The majority of the research conducted at UTC will be exempt from requiring an export control license
- The key issue regarding fundamental research is that there are no restrictions placed on the publication of the research results, or other forms of public access.

Contact Information

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