U. S. laws that regulate the distribution of items, technology, services, and information, including items and technology used in research, for reasons of foreign policy and national security.

- **Department of State**
  - International Traffic in Arms Regulations “ITAR”
    - US Munitions List “USML” - Defense Articles, Defense Services, and Technical Data
- **Department of Commerce**
  - Export Administration Regulations “EAR”
    - Commodity Control List “CCL” - Commercial and “dual use” (commercial and military/security applications) commodities, technology, and software.
- **Department of Treasury**
  - Sanction Programs, commonly referred to “OFAC”

Other federal agencies that have export control authorities: Nuclear Regulatory Commission, U.S. Department of Energy, Center for Disease Control, Food and Drug Administration, Drug Enforcement Agency.
International Traffic in Arms Regulations (ITAR)

Article based: NO article on the USML can be exported without a license or exemption.

- Article: defense articles, defense services, or technical data
  - If an USML article is incorporated into a larger article, then the larger article becomes controlled under ITAR.
  - Arms Embargo: NO article on the USML may be exported under a license or license exemption to countries proscribed in 22 CFR § 126.1.
  - Additional restrictions apply to other countries, whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States – as proscribed further in 22 CFR § 126.1.
United States Munitions List (USML)

- **Defense Articles**

- **Defense Services**
  Examples – teaching someone how to use software that is a defense article; training a foreign person using militant data even if the data is in the public domain.

- **Technical Data**
  Examples – data/deliverables from research subject to ITAR or for a restricted program; data provided to a university (seed data from the government or a company).

- **Software**

*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 § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.*
Export Administration Regulations (EAR)

Transactional Based - Need to determine the following information and then apply the information to the regulations to determine if a license is required/not required or if a license exception is available.

- WHAT - the item
- WHERE - the destination
- WHO - the end user
- WHY - the end use
Commodity Control List (CCL)

- Products that have a commercial or “dual use” application (DUAL USE – have both a commercial and a military/security application)

Examples: bayonets, biologics and viruses, stun guns, night vision goggles, submersible vehicles, global positioning systems, high speed computers, microprocessors, lasers, cameras, amplifiers, chemicals, underwater equipment, telecommunications equipment, information security equipment.
Commodity Control List (CCL)

- Technology: Specific information necessary for the “development”, “production”, or “use”* of a product. The information takes the form of “technical data” or “technical assistance”.

  Technical data. May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

  Technical assistance. May take forms such as instruction, skills training, working knowledge, consulting services. May involve transfer of technical data.
Commodity Control List (CCL)

- Software

Examples: Information security equipment software, information security software, information technology support software, recovery of source code software, security equipment information software, telecommunications equipment software, CAD software for semiconductors and integrated circuits, chemical production process control software, acoustic beam forming software
Commercial items not included on the CCL are designated “EAR99” and generally may be exported without a license.

**BUT REQUIRE A LICENSE** when exported to Cuba, Syria, Sudan, Iran, and North Korea or end users/end uses of national security/foreign policy concerns).
Where? Regulations are destination based:
- List of items controlled
- List of various reasons for control (anti-terrorism, non-proliferation, chemical and/or biological weapons)
- Country Chart indicating if controls are applicable to the country
Who? Regulations include restricted parties list: Certain individuals and entities are prohibited from receiving U.S. exports, even EAR99 designated items and deemed exports, without a license.

- Restricted parties are not limited to foreign entities and can include US persons.
- They change and are updated routinely.
- Designation is not based upon nationality but instead is based upon previous behavior or action.
Why? Even if no license is required for the destination and the end-user is not a restricted party, a license still may be required for the transaction:

Part 744 of the EAR – Control Policy: End-User and End-Use Based

- Prohibits exports, re-exports and transfers (in-country) of items subject to the EAR to defined nuclear, missile, and chemical and biological proliferation activities.
Transactional based – need to review the transaction in relation to the sanction program for a license determination.

Currently, Office of Foreign Asset Controls (OFAC) administers 23 sanction programs, the Specially Designated Nations, and Blocked Party List.

Sanction Programs are usually financially based, but can include import/export of goods, technology, or services.

Sanction Programs are both list-based and country-based.
Types of Exports

“Export” means an actual shipment or transmission of items out of the United States.

“Deemed Export” means release of an item (usually technology or software) to a foreign national within the United States. Can be through visual inspection, oral exchange, electronic/digital exchange or made available by practice/application (e.g. training)

“Re-export” means an actual shipment or transmission of items from one foreign country to another foreign country; or release of technology or software to a foreign national outside the United States.

“Deemed Re-export” means the release of an item (usually technology or software) to a foreign national of one country while that foreign national is in another country. (an Italian citizen while in Spain)
Foreign Person/National

The federal definition of a foreign national is a person who is **NOT**:

- Granted permanent U.S. residence, as demonstrated by the issuance of a permanent residence card, i.e., a "Green Card"
- Granted U.S. citizenship
- Granted status as a "protected person" under 8 U.S.C. 1324b(a)(3), e.g., political refugees, political asylum holders, etc.

**The term for export regulations also includes:**

- Foreign corporations, businesses, associations, or other entity or group that is not incorporated or organized to do business in the U.S.
- International organizations, foreign governments, and agency/subdivision of foreign governments
Items NOT Subject to the International Traffic in Arms Regulations (ITAR)

Public Domain (22 CFR 120.11)

- Information which is published and which is generally accessible or available to the public:
  - Through sales at newsstands and bookstores;
  - Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
  - Through second class mailing privileges granted by the U.S. Government;
  - At libraries open to the public or from which the public can obtain documents;
  - Through patents available at any patent office;
  - Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;
  - Through public release (unlimited distribution) after approval by the cognizant U.S. government department or agency;
  - Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.
Items NOT Subject to the Export Administration Regulations (EAR)

- Information Resulting from Fundamental Research (15 CFR 734.8)
- Published Information and Software (15 CFR 734.7)
- Educational Information (15 CFR 734.9)
- Information included in certain patent applications (15 CFR 734.10)

*Excludes certain encryption software – see ECCN 5D002*
Compliance

From the Bureau of Industry and Security, Department of Commerce, a comprehensive compliance program should include the following elements as applicable:

- Management Commitment: Senior management must establish written export compliance standards for the organization, commit sufficient resources for the export compliance program, and ensure appropriate senior organizational official(s) are designated with the overall responsibility for the export compliance program to ensure adherence to export control laws and regulations.
- Continuous Risk Assessment of the Export Program
- Formal Written Export Management and Compliance Program: Effective implementation and adherence to written policies and operational procedures.
- Ongoing Compliance Training and Awareness
- Pre/Post Export Compliance Security and Screening: Screening of employees, contractors, customers, products, and transactions and implementation of compliance safeguards throughout the export life cycle including product development, jurisdiction, classification, sales, license decisions, supply chain, servicing channels, and post-shipment activity.
- Adherence to Recordkeeping Regulatory Requirements
- Internal and External Compliance Monitoring and Periodic Audits
- Maintaining a Program for Handling Compliance Problems, including Reporting Export Violations
- Completing Appropriate Corrective Actions in Response to Export Violations
Business Areas

Maintaining the Fundamental Research Exemption

Fundamental Research: Basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls.

University research will **NOT** be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

**Pertains to research done at the university in the U.S., licenses may be required for research at international locations**

**Third party proprietary data is subject to export controls**
International Travel

- Employees/students traveling with University owned hardware, software, and/or technical data to conduct off-site research, is a license required for that commodity and country?
- Employees/students traveling with University owned laptops, cell phones, data devices, there is a license exception
  - Has the exception been documented? Is the device clean of any proprietary information and/or export controlled technical data?
- Presenting at conferences:
  - Is the conference open? Is what you are presenting in the public domain?
Business Areas

**Receiving Third Party Proprietary Data**

- Is there a non-disclosure agreement mandating that the disclosing party identify any export controlled information?
- Does the sponsored research agreement mandate that the disclosing party identify any export controlled information?
- If export controlled information is accepted, is there a security plan?
  - Is the network secure?
  - Is the data storage device or laptop secure?

*Risk to accepting information without the appropriate agreement.* Since the Export Administration Regulations are destination based for release and the International Traffic in Arms Regulations prohibit release to foreign nationals, you might be engaging in deemed exports without realizing it!
Business Areas

On Campus What is NOT Fundamental Research

- IFRs and Service and Facility Centers
  - Are they receiving export controlled information/materials?
  - Do they have controlled equipment/technology in the facility?
- Unfunded “Research” Projects
  - Are they proprietary?
  - Are they receiving proprietary information?
  - Are the results being published?
- Conferences, Workshops, Lecture Series
  - Are they “open” as per the federal regulations?
- Business Services
  - Information Technology Services
    - There is a Bona-Fide Employee license exception under the International Traffic in Arms Regulations but it needs to be clearly documented and the employee needs to sign a document.
    - No such license exception for employees exists under the Export Administration Regulations.
Denied Persons/Entities

- Doing business with, exchanging information, sending items, hosting on campus, sending payments to sanctioned countries.
- If person is an agent of a denied entity, then the activities towards the person need to be evaluated in the same light as that of the denied entity.

WHO CAN BE A DENIED PERSON/ENTITY? ANYONE!

- Employees
- Vendors
- Customers
- Visitors
- Students
- Volunteers
- Collaborators/Consultants
Business Areas

Foreign Visitors

Need to determine that they are not denied persons and not agents of denied entities but also purpose of visit and if a deemed export license or technology control plan is required.

Know your end-use: Does the background of the visitor “fit” the purpose of their visit?

University Sponsored:
- H1B1 visa and O visa
- Visiting Scholars J1 visas

Non-University Sponsored:
- Collaborators/Consultants
- Dignitaries
- Company Reps/Sponsors
- Visiting Scholars on B visas
Business Areas

International Collaborations

- Memorandums of Understanding signed by the appropriate University official?
- Memorandums of Understanding reviewed by all affected areas?
  - Does it contain research?
  - Does it contain a student exchange program?
  - Does it contain a scholar exchange?
- Do we need a license?
  - Are we exchanging proprietary information, sending samples, technical data, or other tangible items?
  - Are we purchasing items and having them delivered overseas?
  - Are they a denied entity?
  - Will we be hosting scholars?
  - Will we be holding laboratory tours?
Business Areas

Shipping and Receiving

- Shipping items off campus
  - Whether within or outside the U.S., denied parties?
  - If shipping internationally, is the item or technical information controlled? Does it require a license or a license exception?

- Receiving items on campus
  - Are they controlled?
  - If so:
    - Who will have access?
    - How will it be used? Will it be used only for fundamental research?
    - What is the security plan?
International Traffic in Arms Regulations (ITAR) Penalties

- **Criminal Penalties (for willful violation):** entity of up to $1,000,000 for each violation; individuals may be subject to a fine of up to $1,000,000 or imprisonment of up to ten years, or both, for each violation.

- **Civil Penalties:** entity up to $500,000 for each violation; individuals may be subject to fines of up to $500,000 for each violation. In addition, suspension or debarment from government contracts; seizure or forfeiture of the item; and/or revocation of export privileges.
Export Administration Regulations (EAR) Penalties

Criminal Penalties (for willful violation): may result in the institution paying a fine of up to $1,000,000 or five times the value of the exports (whichever is greater) for each violation; and the individual may be fined up to $250,000 or be imprisoned for up to ten years, or both, for each violation.

Criminal Penalties (for knowing violation): may result in the institution paying a fine of up to the greater of $50,000 or five times the value of the exports for each violation; and the individual may be fined up to the greater of $50,000 or five times the value of the exports or be imprisoned for up to five years, or both, for each violation.

Civil Penalties: include $12,000 for each violation, except that the fine for violations involving items controlled for national security reasons is up to $120,000 for each violation; suspension or debarment from government contracts; seizure or forfeiture of the item; and/or revocation of export privileges.

Additionally, for each violation, any or all of the following sanctions may be imposed:
- The denial of export privileges; and/or
- The exclusion from exporting practice; and/or
- Loss of federal funds
- Seizure/Forfeiture of goods.
Office of Foreign Asset Control (OFAC) Penalties


- Civil penalty: may result in the institution paying a fine of up to $250,000 per violation or twice the transactional value whichever is greater; and the individual may be fined up to $250,000 per violation or twice the transactional value whichever is greater.

- Criminal penalty: may result in the institution paying a fine of up to $1,000,000 per violation; and the individual may be fined up to $1,000,000 or twenty years incarceration, or both per violation.

Additionally, for each violation, any or all of the following sanctions may be imposed:

- The denial of export privileges; and/or
- The exclusion from exporting practice; and/or
- Seizure/Forfeiture of goods.

Trading with the Enemy Act (TWEA) Penalties (Cuba and North Korea)

- Civil penalty: $65,000 per violation
- Criminal penalty: $1,000,000 per violation and up to 10 years incarceration
Resources

International Traffic in Arms Regulations
http://pmdtctc.state.gov/regulations_laws/itarm_official.html

Export Administration Regulations
http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear

Office of Foreign Assets – Sanctions Programs
http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx

International Travel Information