EXPORT CONTROLS

THE BASIC ELEMENTS FOR PRINCIPAL INVESTIGATORS
Overview

- Export Controls: Definitions
- Regulations:
  o Department of State
  o Department of Commerce
  o Department of Treasury
- Potential Export Areas in a University Setting
What are Export Controls?

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.

*Export controls cover all fields of science and engineering.*
Laws and Regulations

- Department of State
  - International Traffic in Arms Regulations “ITAR”
- Department of Commerce
  - Export Administration Regulations “EAR”
- Department of Treasury
  - Sanction Programs, commonly referred to “OFAC”

Other federal agencies also regulate export, re-export or re-transfer of certain items and technologies: Nuclear Regulatory Commission, U.S. Department of Energy, Center for Disease Control, Food and Drug Administration, Drug Enforcement Agency.
What is an Export?

**EAR**

Actual shipment or transmission of items subject to the EAR out of the U.S., or

The release of technology or software subject to the EAR to a foreign national in the U.S. ("Deemed Export")

Defined in 15 CFR 734.2

**ITAR**

Sending or taking a defense article out of the U.S.;

Disclosing (including visual or oral) or transferring in the U.S. any defense article to a foreign embassy or agency of a foreign government;

Disclosing (including visual or oral) or transferring technical data to a foreign person, whether in the U.S. or abroad;

Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S. or abroad.

Full definition available at §120.17:
How are Deemed Exports conveyed?

Release of technology or software subject to the EAR to a foreign national in the U.S

Through:
- Visual Inspection
- Oral Exchange
- Electronic/Digital Exchange
- Available by Practice/Application (e.g. training)
Re-exports

“Reexport” means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside the United States.
Who is a 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
International Traffic in Arms Regulations

**Department of State**

Administered by: Directorate of Defense Trade Controls “DDTC”

Regulations: International Traffic in Arms Regulations “ITAR”

Controlled Items: United States Munitions List “USML”

Applies to: Defense Articles, Defense Services, and Technical Data
How is ITAR applied?

- ITAR is 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.
What type of items are on the USML?

- Defense Articles
- Defense Services
- Technical Data
  - Software

*USML is divided into twenty-one broad categories*
U.S. Munitions List “USML” (22 CFR 121)

- **Category I** - Firearms, Close Assault Weapons, and Combat Shotguns
- **Category II** - Guns and Armament
- **Category III** - Ammunition/Ordnance
- **Category IV** - Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
- **Category V** - Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
- **Category VI** - Vessels of War and Special Naval Equipment
- **Category VII** - Tanks and Military Vehicles
- **Category VIII** - Aircraft and Associated Equipment
- **Category IX** - Military Training Equipment and Training
- **Category X** - Protective Personnel Equipment and Shelters
- **Category XI** - Military Electronics
USML Continued

Category XII-Fire Control, Range Finder, Optical and Guidance and Control Equipment
Category XIII-Auxiliary Military Equipment
Category XIV-Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
Category XV-Spacecraft Systems and Associated Equipment
Category XVI-Nuclear Weapons Design and Testing Related Items
Category XVII-Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
Category XVIII-Directed Energy Weapons
Category XIX-[Reserved]
Category XX-Submersible Vessels, Oceanographic and Associated Equipment
Category XXI-Miscellaneous Articles
Defense Articles (22CFR 120.6)

- Any item or technical data designated in the U.S. Munitions List (22 CRF 121). This term includes technical data recorded or stored in any physical form, models, mock ups or other items that reveal technical data. It does not include basic marketing information on function or purpose or general system descriptions.

Defense Services (22 CFR 120.9)

(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;

(2) The furnishing to foreign persons of any technical data, whether in the United States or abroad; or

(3) Military training

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 (22 CFR 120.10)

- Information 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 or documentation.
- Classified information relating to defense articles and defense services;
- Information covered by an invention secrecy order;
- Software as defined in § 121.8(f) of this subchapter directly related to defense articles.

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).
What is NOT Technical Data

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.
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.
Fundamental Research

subset of public domain

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.
When is it NOT Fundamental Research

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.
Commodity Jurisdiction (CJ) Request

Items should first be reviewed for ITAR designations, if the article does not appear on the USML then the article should be reviewed for EAR designations. If you are not sure of whether or not the item is subject to ITAR or EAR, you can submit a CJ request to the DDTC.

Benefits: Certainty of classification and free to request.

CJ requests should be submitted through the Office of Research Compliance utilizing a Form DS-4076.
Do you need a license?

NO article on the USML can be exported without a license or exemption*.

*All exemptions must be clearly documented and kept on file in accordance with federal record keeping regulations. Current regulations require records be kept for five (5) years from the date of the transaction.
Employment Exemption

Under ITAR (not EAR), full-time employees have a license exemption. This exemption applies to disclosures in the U.S. by U.S. universities of unclassified technical data to foreign nationals.

However, this exclusion may be void unless these conditions are met:

- the person must be a full-time, regular employee - post-docs, students and visiting researchers usually do not qualify
- the employee must have a permanent U.S. residence during his or her period of employment
- the employee is not a foreign national of an embargoed country
- the university must notify the employee in writing that technical data cannot be transferred or re-exported to other foreign nationals without prior government approval.
Licenses and Agreements

License Types: Department of State Protocol (“DSP”)

- **DSP 5** Application for Permanent Export of hardware and/or technical data; sales and marketing to foreign parties; or employment of a foreign national. A DSP 5 is typically used when a defined data package is exported for a specific end use.
- **DSP 73** Application for Temporary Export of hardware and/or technical data.
- **DSP 61** Application for Temporary Import of hardware
- **DSP 85** Classified Defense Articles/Technical Data

Agreement Types:
Technical Assistance Agreement “TAA” Authorizes ongoing transfers of defense services and technical data.
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

- **Department of Commerce**

  Administered by: The Bureau of Industry and Security “**BIS**”

  Regulations: Export Administration Regulations “**EAR**”

  Controlled Items: Commodity Control List “**CCL**”

  Applies to: Commercial and “dual use” (commercial and military/security applications) commodities, technology, and software.
How is EAR applied?

- The CCL is a positive list divided into categories and product groups “WHAT”

- The CCL is destination based “WHERE”

- The EAR requires that the export is to a valid user and for a valid end-use “WHO and WHY”

The CCL applies to all items physically present in the U.S. or of U.S. origin wherever located, and certain foreign-manufactured items
What type of items are on the CCL?

- Products that have a commercial application
- Products that have a “dual use” (commercial and military/security) application
- 600 Series (military in design but have been de-regulated from USML to 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”.
- Software

*The CCL is divided into 10 broad categories and then five groups

“Export Control Classification Number” (ECCN) is the alpha-numeric designation proscribed to a particular item on the CCL according to category and group.
Commodity Control List “CCL”
(15 CFR 774 Supplement 1)

Ten Broad Categories
0-Nuclear Materials, Facilities and Equipment and Miscellaneous Items
1-Materials, Chemicals, "Microorganisms," and Toxins
2-Materials Processing
3-Electronics Design, Development, and Production
4-Computers
5 Part 1-Telecommunications
5 Part 2-Information Security
6-Sensors and Lasers
7-Navigation and Avionics
8-Marine
9-Propulsion Systems, Space Vehicles and Related Equipment
Commodity Control List “CCL”
(15 CFR 774 Supplement 1)

Five Groups

A-Equipment, Assemblies, and Components
B-Test, Inspection, and Production Equipment
C-Materials
D-Software
E-Technology
600 Series

- Items that were developed for a military application but also have a commercial application AND have been moved from the USML to the CCL effective October 15, 2013 under the new 600 series.

- The level of control is dependent upon the specifications of the particular item.

Examples: F-16 Fighter Jet components have been moved from the USML to the CCL, components have been designated to the 600 series. 9A610.g contains aircrew safety equipment and 9A610.x contains aircraft seat specially designed for F-16.
Commercial and “Dual Use” Applications

- Items that are/were developed for a commercial application
- Items that are/were developed for a commercial application but have both a commercial and military/security application.
- Whether or not a particular item is controlled is dependent upon the specifications of the particular item.

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.
Technology

- 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.

*“Use” criteria: Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.
Software

- A collection of one or more “programs” or “microprograms” fixed in any tangible medium of expression.

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.

SPECIAL RULES:

Category 5 Part 2 Products with Encryption functions and some items with Information Security functions.

Http://www.bis.doc.gov/index.php/policy-guidance/encryption/identifying-encryption-items
Commercial items not included on the CCL are designated and generally may be exported without a license “EAR99”

**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).
Most items can generally be self-classified. If unsure about the classification, a request can be submitted to BIS for a commodity classification.

**Benefits:** Certainty of classification and free to request.

Requests should be submitted through the Office of Research Compliance and are submitted to BIS electronically via SNAP-R.
Items NOT Subject to the EAR

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

Excludes certain encryption software – see ECCN 5D002
Information is “published” when it becomes generally accessible to the interested public in any form, including:

- Publication in periodicals, books, print, electronic, or any other media for general distribution to the public or persons interested either for free or at a price that does not exceed the cost of reproduction and distribution;
- Readily available at libraries open to the public or at university libraries;
- Patents and open (published) patent applications available at any patent office;
- Release at an open conference, meeting, seminar, trade show, or other open gathering.
Information Resulting from Fundamental Research

Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community.

- Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research;
- Prepublication review by a sponsor to insure that proprietary information is not divulged does not change the status of the research;
- Prepublication review by a sponsor to ensure that the publication would not compromise patent rights does not change the status of the research.
When is it NOT Fundamental Research

- Release of information from a sponsor to the university where the research results are subject to prepublication review AND/OR initial transfer of information from a sponsor to the university where they have agreed that the sponsor may withhold information from publication ARE SUBJECT TO THE EAR.

- **NOT FUNDAMENTAL RESEARCH if university accepts restrictions on publication or accepts specific security controls as part of a research project or activity sponsored by the U.S. government.**

- Proprietary research, industrial design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.
Educational Information:

Released by instruction in catalog courses and associated teaching laboratories of academic institutions.

Patent Applications:

(a) Information contained in a patent application prepared wholly from foreign origin technical data where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office;

(b) Information contained in a patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5.1 or

(c) Information contained in a patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.
Do you need a license?

Licensing requirements under the EAR depend on the answers to the following questions:

- WHAT - the ECCN classification
- WHERE - the destination
- WHO - the end user
- WHY - the end use

All exceptions must be clearly documented and kept on file in accordance with federal record keeping regulations. Current regulations require records be kept for five (5) years from the date of the transaction.
What are you exporting?

Does the item have a specific ECCN?

- **Electromagnetic radiation sensors, optical fiber** ECCN: 6A002.d.3.a
  
  Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.
  
  - Sensors and Lasers - Equipment, Assemblies, and Components – Controlled for National Security Reasons

- **Electromagnetic underwater communications systems** ECCN: 5A001.b.1.b
  
  Telecommunication systems and equipment, and specially designed components and accessories therefore, having any of the following characteristics, functions or features: Using an electromagnetic carrier frequency below 30 kHz.
  
  - Telecommunications - Equipment, Assemblies, and Components – Controlled for National Security Reasons
Where are you exporting to?

Different restrictions apply to different countries.

Each ECCN entry provides reasons why the item is controlled and needs to be cross-referenced against the Commerce Country Chart (Supplement 1 to 15 CFR 738)

ECCN: 6A002.d.3.a and ECCN: 5A001.b.1.b are both controlled for National Security Reasons – Country Chart NS Column 2
<table>
<thead>
<tr>
<th>Countries</th>
<th>Chemical &amp; Biological Weapons</th>
<th>Nuclear Nonproliferation</th>
<th>National Security</th>
<th>Missile Tech</th>
<th>Regional Stability</th>
<th>Firearms Convention</th>
<th>Crime Control</th>
<th>Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Albania²</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Algeria</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Andorra</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Angola</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Antigua &amp; Barbuda</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Argentina</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Armenia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Aruba</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Australia³</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Austria³,⁴</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Bahamas, The</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

- Export Administration Regulations
- Bureau of Industry and Security
- July 23, 2012
Who are you exporting to?

**Restricted Parties:** 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.
- Restricted parties are subject to change and are updated routinely.
- Restricted party designation is not based upon nationality but instead is based upon previous behavior or action.
- Must screen recipients against various U.S. government lists.
- There are over fifty lists issued by governmental agencies that restrict transactions with specific individuals, groups and entities.
List of businesses, research institutions, government and private organizations, individuals, and other types of legal persons that are subject to specific license requirements for the export, re-export, and/or transfer (in country) of specified items because they have engaged in activities contrary to U.S. national security and/or foreign policy interests.

- Collaborative Research Projects: If sharing not “publically available” information.
- Employees of universities on the Entity list: employees are subject to the same licensing requirements.
- Students enrolled at universities on the Entity list: no fiduciary duty to university, but still a potential red flag that requires additional due diligence.
Why? What will the item be used for?

Even if no license is required for the destination and the end-user is not a prohibited 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.
- Need to know ultimate end-use.
Tools of the Trade. Usual and reasonable kinds and quantities of tools of trade (commodities, software, and technology) for use in a lawful enterprise or undertaking of the exporter. A laptop, PDA, cell phone, data storage devices are generally an exception to the EAR. However, this exception is NOT automatically allowed:

A license is required when the device with controlled research data or encrypted/proprietary software is hand-carried or shipped abroad to a restricted country and/or to a denied person/entity.

Example: A laptop being hand-carried to any country with research data on a genetically modified organism will currently require a license as genetically modified organisms are controlled items for chemical, biological and anti-terrorism reasons and there are no applicable license exceptions.

When hand-carrying a laptop, PDA, cell phone, data storage devices outside the U.S under the TMP Exception:
- you MUST retain exclusive control of the equipment at all times
- you MUST not let the equipment be used by anyone in the foreign country
- you MUST not intend to keep these items in these countries for longer than one year
- you MUST verify that no government licenses are required
License Exceptions Continued

**BAG - Baggage**

This license exception authorizes U.S. persons to export or re-export certain personal effects, household effects, vehicles, and tools of the trade when travelling or moving with certain stipulations as proscribed in 740.14.

**TSU - Technology and Software Unrestricted**

This license exception authorizes exports and re-exports of operation technology and software; sales technology and software; software updates (bug fixes); “mass market” software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under §734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

**ENC – Encryption Commodities, Software, and Technology**

License Exception authorizes export and re-export of systems, equipment, commodities and components therefor that are classified under ECCNs 5A002.a.1, a.2, a.5, a.6 or a.9, systems, equipment and components therefor classified under ECCN 5B002, and equivalent or related software and technology classified under ECCNs 5D002 or 5E002. NARROW in scope, does not authorize export/re-export to all destinations and classification and/or registrations may be required.
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.
Department of Treasury

Administered by: Office of Foreign Asset Controls “OFAC”

Regulations: Foreign Assets Control Regulations (FARC).
  - The Trading with the Enemy Act
  - International Emergency Economic Powers Act
  - Specially Designated Nationals and Blocked Party List

Currently, 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.
Exempt Transactions

Exemptions depend on the program and are often narrowly defined.

- **Information and Informational Materials (License Exemption):** Allows for importation and exportation of information or informational materials to those already in the public domain, and does not authorize financial transactions or services of value.

- **Humanitarian Activities (License Exemption):** Allows for transactions sponsored by any United States 501(c)(3) qualified non-governmental organization and are country-specific and narrowly tailored. The exemption is not available for all sanctioned countries.

- **Authorized transactions necessary and ordinarily incident to publishing (General License):** Allows for activities in support of publishing (academic peer review) and/or marketing of informational materials with: Iran, Cuba, Sudan, and Burma.

- There may be other license exemptions available on a country-by-country basis.
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
Areas for Export Review

- Deemed Exports – may occur during meetings, telephone calls, conversations, facility inspections, email, fax, etc.
- Foreign Visitors, H1B1, J-1 visiting scholars, and B visas – Deemed Export Attestation on I129 Application
- Foreign Travel – employees/students traveling with hardware, software, and/or technical data.
- International Collaborations – exchange of proprietary information, sending samples, technical data, or other tangible items on certain projects.
- ITAR – access to regulated items/technology by a foreign national/person.
- Foreign National access to research labs under certain conditions and/or access to certain items.
- Network Access – controlled technical data on a network accessible to foreign nationals.
- Shipping items off campus – whether within or outside the U.S., denied parties?
- Military Proposals, STTR/SBIR Flow Thru Clauses, Non-Disclosure Agreements, Material Transfer Agreements.
- Non-Sponsored Activities
- Conferences – is the conference “open” as per the federal regulations?
Resources

International Traffic in Arms Regulations
http://pmdtct.state.gov/regulations_laws/itar_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

Decision Trees –
**ITAR DECISION TREE**

According to the USML, is the proposed export:
- "Defense Article" 22 CFR 120.6
- "Defense Service" 22 CFR 120.9
- "Technical Data" 22 CFR 120.10

**NO**

Verify whether or not the proposed export is controlled under the CCL.

**YES**

Export is controlled under ITAR.

Is the foreign recipient or end user a 'detected or prohibited party'?

**NO**

Is the proposed export to a country listed in 22 CFR 126.17?

**NO**

Is the proposed export to Canada?

**NO**

Does a technical data exemption of general applicability apply, 22 CFR 125.47?

**NO**

License Required

**YES**

Is the export eligible for the "Canadian exemption", 22 CFR 126.57?

**NO**

Is the export classified?

**NO**

Export Prohibited

**YES**

No License Required

Must keep internal record keeping documents showing how exemption was determined
SUPPLEMENT NO. 1 TO PART 732 – DECISION TREE

Export Control Decision Tree

(Supp. No. 1 to Part 732)

Subject to the EAR? (See 734.2 - 3)

Exit the EAR

Is your item classified under an EAC on the CCL? (General Prohibitions 1, 2, 8, 9) (See Supp. No. 1 to Part 774)

ECCN

Do General Prohibitions 4 - 10 apply? (See 734.20 and 734.30)

EAS99

Do General Prohibitions 4 - 10 apply? (See 734.20 and 734.30)

Is there an "S" in the host? (Special Commercial Security) (See SD Part 739.8 and Supp. No. 1 to Part 774)

"No License Required" (NLR) (See 730.3 and 730.40)

Is a License Exception Available? (See Part 740, including 740.2 "licenses that apply to all license exceptions")

Use License Exception (See 740.1)

Submit an application for License (See Part 748)