



THE RESEARCH FOUNDATION

*The State University of New York*

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# An Introduction to Export Controls: What Principal Investigators Need to Know

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# Topics

- Definitions
- Federal agencies
- Impacts
- Areas subject to export controls
- Exclusions and exceptions
- Investigator responsibility
- Who to contact



# What is an Export?

- Any item that is sent from the U.S. to a foreign destination
  - To **anyone** outside the U.S., including U.S. citizens
  - To foreign entities, individuals, embassies or affiliates at **any** location, including the U.S.

In a university situation, these items may include:

- Unpublished research findings
- Funds that are transferred to restricted countries, entities or persons
- Biological specimens
- Chemicals
- Electronics
- Computers
- Sensors



# Who is a Foreign National/Person?

- 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.
- This includes all persons in the U.S. as students, businesspeople, scholars, researchers, technical experts, etc.

**Foreign National** is the term used by the Department of Commerce  
**Foreign Person** is the term used by the Department of State



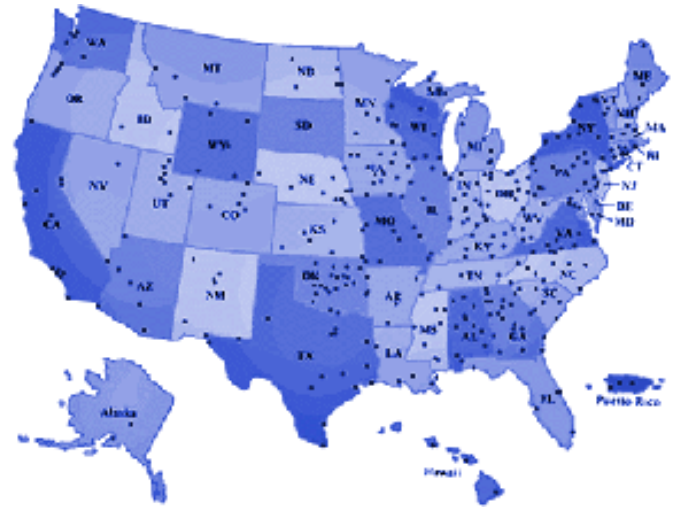
# What is a Re-Export?

- The shipment or transmission of an item subject to regulation from one foreign country (i.e., a country other than the U.S.) to another foreign country
  - A re-export also occurs when there is a “release” of technology or software (source code) subject to regulation in one foreign country to a national or entity of another foreign country
- Shipment/transmission may occur via phone, e-mail, lab tours, meetings, computer data, etc.

In a university situation, a re-export might occur when an investigator is approved via an award to deliver a paper at conferences in two different countries. The investigator will carry a laptop with his or her presentation materials. A determination must be made to identify whether an export license is necessary before the travel takes place.

# What is a Deemed Export?

- An export of technology or source code (except encryption source code) that is “deemed” to take place when it is released to a foreign national within the U.S.
- A “deemed” export situation can occur by access/use in research or training, visual inspection, or an oral exchange of information



In a university situation, a deemed export might occur when an investigator requires a foreign national to have access to or use of a controlled laser. A determination must be made to identify if an export license is necessary prior to the foreign national accessing or using the laser.

# What are Export Controls?

U.S. federal government laws and regulations that require federal agency approval before the export of controlled items, commodities, technology, software or information to restricted foreign countries, persons, and entities (including universities)

## Remember:

- ❑ Exporting is a **privilege**—not a right
- ❑ Activity cannot take place until an export license is obtained or it is determined that a license is not necessary
- ❑ Every situation is unique
- ❑ Ignorance is **not** a defense



# The Federal Agencies

- The U.S. federal government agencies responsible for implementing export control regulations are:
  - **Department of Commerce**
    - **Export Administration Regulations (EAR)**
    - Applies to “dual-use” technologies; technical data and commodities that have both commercial and military/security applications
  - **Department of State**
    - **International Traffic in Arms Regulations (ITAR)**
    - Applies to inherently military/satellite technologies or items that can be used in a defense/military application
  - **Department of Treasury**
    - **Office of Foreign Assets Control (OFAC)**
    - Prohibits transactions with countries subject to boycotts, trade sanctions, embargoes, and/or restricted persons





# Why Should You be Concerned?

- Increasing government scrutiny post 9/11
  - Growing intersection of science, technology and engineering research with national security, foreign policy and homeland security
  - Roles of universities and shifting research projects
- Severe criminal and civil noncompliance penalties and sanctions for **individuals** as well as institutions/corporations
  - Up to \$1M for institutions/corporations and up to \$250,000 for individuals
  - Up to 10 years in prison
  - Termination of export privileges
  - Suspension and/or debarment from federal government contracting
  - Loss of federal funds



# Export Controls Impact: Who

- **Investigators** with sponsored programs that cross national boundaries and involve international collaboration/cooperation
- **Foreign students** participating in sponsored programs involving controlled technology (EAR, ITAR)
- **Foreign nationals** receiving services (EAR, ITAR, OFAC)
- **Persons** receiving an item and how they will use that item



# Export Controls Impact: What

- Ability to **send** controlled items, commodities, technology, software or information to foreign countries (EAR, ITAR, OFAC)
- Ability to **travel** to restricted countries
- Ability to **provide assets** to sanctioned countries, entities and persons
- Ability to **present** research results
- Ability to **train** using controlled items



# Export Controls Impact: Where

- The "State Sponsors of Terrorism" listing identifies those countries with the highest risk
  - Any activity involving one of these countries must be thoroughly reviewed before the activity takes place
- The Departments of Commerce (EAR), State (ITAR) and Treasury (OFAC) have additional requirements and different country lists to check
  - Is the destination a controlled, restricted, sanctioned, embargoed or terrorist country?



# Impacts: Non-Sponsored Programs

Impacts are not isolated to the RF and sponsored programs

There are potential impacts to the entire University in areas such as the following:



- ❑ Transactions with nationals of restricted, embargoed and sanctioned countries
- ❑ Relationships with China and other sensitive countries
- ❑ Faculty shipping controlled items abroad
- ❑ Student research in foreign countries
- ❑ Use of encrypted software in research/academic course work
- ❑ Faculty collaborations
- ❑ Foreign delegations visiting campuses

# Areas Subject to Export Controls

- Direct export of a controlled item
- Foreign national access/use of controlled item
- Foreign travel to a restricted country
- International and domestic collaborations
- Publications (that are not generally accessible to public)
- International and domestic presentations at conferences
- Conversations involving controlled technology
- Taking or shipping a controlled item out of the U.S.



# Areas Subject to Export Controls

Interacting with a foreign person/entity in the U.S. or abroad by:

- Transferring ownership of a controlled item
  - For example: Selling or licensing controlled equipment to a foreign person or U.S. citizen in a controlled country
- Transferring a controlled technology
  - For example: Sharing export controlled technology with a foreign visiting scholar
- Disclosing technical data
  - For example: Sharing export controlled data with a foreign collaborator or sponsor
- Performing a defense service for the benefit of a foreign entity
  - For example: A research/training program sponsored by a foreign entity or performed for the benefit of foreign entities or persons



# Publicly Available (EAR) or Public Domain (ITAR)

Export controls do not apply to information that is already published and widely available from:

- Libraries, book stores or newsstands
- Trade shows, meetings or seminars that are open to the public
- Published patent information
- Web sites that are accessible to the public
- Courses listed in university catalogs





# Fundamental Research

Basic or applied research in science and engineering at an accredited institution of higher learning in the U.S.

- The resulting information is ordinarily published and shared broadly in the scientific community

The Fundamental Research Exclusion (FRE) is void if the University:

- Accepts any restrictions on the publication of information
- Gives a sponsor the right to approve publications
- Limits access of foreign nationals
- Applies these limitations to any sponsor



# Fundamental Research Exclusion

- The **FRE** includes:
  - Basic and applied research in science and engineering
  - Conducted at an accredited university in the U.S.
  - Technology in the public domain—information that is ordinarily published and shared broadly (excluding encryption software)
- The **FRE** generally applies **provided there are no**:
  - Restrictions to access or dissemination of the research or information
  - Restrictions to access by foreign nationals
  - Restrictions on proprietary/confidential information
- **However**, the **FRE** may not apply if the situation involves:
  - Shipping controlled items to a sanctioned country and/or restricted person
  - An export control license may be necessary



# Educational Information Exclusion (EIE)

Allows teaching commonly taught information at universities to continue

- For the Department of Commerce (EAR), the EIE:
  - Focuses on **venue**
  - Export controls do **not** apply to educational information conveyed in courses listed in course catalogs and associated teaching laboratories
  - Does not cover encrypted software
- For the Department of State (ITAR), the EIE:
  - Focuses on **subject matter**
  - Export controls do **not** apply to general science, math and engineering information commonly taught at universities



# Employment Exclusion

- The full-time employee license exemption applies to disclosures in the U.S. by U.S. universities of unclassified technical data to foreign nationals
- There are conditions:
  - 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 must **not** be 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

This exemption applies under ITAR – **not EAR!**



# Equipment/Laptop Computer Exception

- A laptop computer is generally an exception to the EAR and ITAR lists of controlled items/equipment
- Use good practice when hand-carrying a laptop computer to a foreign country
- The laptop:
  - **MUST** remain in exclusive control of the person(s) responsible for it at all times
  - **MUST** not be used by anyone in the foreign country



# Equipment/Laptop Computer Exception

- The laptop computer exception is **NOT** automatically allowed
  - A license is required when a laptop 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
  - For example: A laptop being hand-carried to **any country** with research data on a “genetically modified organism” will currently require a license
  - “Genetically modified organisms” are **controlled items** for chemical, biological and anti-terrorism reasons and there are no applicable license exceptions



# Investigator Responsibility

The **responsibility** for identifying whether export control issues may arise in a project **lies with you** —the Principal Investigator (PI) — your campus sponsored programs/research office relies on your scientific expertise to assist in identifying issues

- Review your research project for potential export control issues
- Carefully complete the export control questions on your proposal checklist
- Do not wait until the contract/award arrives
  - It can be time consuming to research the potential issue, classify an item, document the situation, and develop an export control license request



# Does an Export Control Issue Exist?

- Start by asking these questions
  - Do you anticipate collaborating in any way with a foreign national?
  - Will you use a research assistant who is a foreign national?
  - Do you anticipate sending your unpublished research results to a foreign country or citizen?
  - Do you anticipate any foreign travel?
  - Does the research involve technology or devices for use in military, security and intelligence?
  - Does the research involve anything else with a substantial or dual-use military application?
- If your answer is “Yes” or “Not Sure” you might have an issue





# Export Controls Contact

- If you have any questions about export controls
- If you think or know your project might include an export controls situation
- The most important action for you to take is:

**CONTACT** your  
sponsored programs/research office  
as soon as possible

