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Summer Series

Export Controls at Universities

Introductory Overview



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What are Export Controls?

- Laws, regulations and sanctions governing who can have access to U.S. technology
 - Designed to prevent adversaries from using our technology against us
 - Designed to protect our economy
 - Limit weapons of mass destruction



Who can be impacted by them?

- Administrators
- Faculty
- Staff
- Students



What happens if they are violated?

- Individuals and institutions can be fined or criminally prosecuted.
 - Administrative penalty – the greater of:
 - up to \$300,00/violation or
 - 2x the value of the transaction
 - Criminal penalties up to 30 years in prison and up to \$1 million/violation in fines
 - Loss of Export privileges



How do you avoid violation?

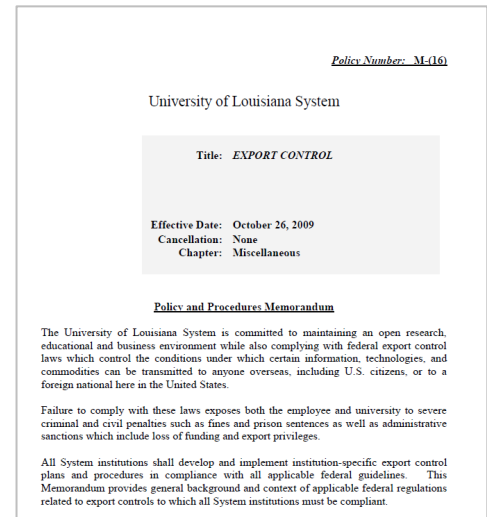
Consult with someone knowledgeable in Export Controls **before**:

- Sharing technology or technical data
- Offering services to non-US persons
- Traveling to foreign countries
- Shipping items outside the U.S
- Hiring a foreign person
- Enrolling students from countries of concern
- Procuring items from new vendors



The UL System Policy M-(16) Export Control

- [Policy](#) Adopted in 2009
- Contains list of important definitions
- States the purpose of the regulations:
 - 1) Restrict goods and technology from US international adversaries
 - 2) Prevent proliferation of weapons of mass destruction
 - 3) Advance US Foreign policy and protect our economy
- Requires **ALL** institutions to
 - assess their risks – the Fundamental Research Exclusion does **NOT** apply to all activities
 - develop appropriate policies and procedures, including ensuring appropriate offices, staffing and training



Three primary departments involved in Export Controls

- [US Department of Commerce](#) - Bureau of Industry and Security (BIS)
 - Oversees commercial and “dual- use” items
- [US Department of State](#) – Directorate of Defense Trade Controls (DDTC)
 - Oversees defense items and services
- [US Department of Treasury](#) – Office of Foreign Assets Control (OFAC)
 - Oversees economic and trade sanctions based on US foreign policy



NOTE – These departments constantly monitor world interactions and update the regulations and sanctions. There is no permanent list of countries of concern

Export Controls Regulations and Sanctions

- **Bureau of Industry and Security (BIS)**
 - Export Administration Regulations (EAR) – 15 C.F.R. Subchapter C
- **Directorate of Defense Trade Controls (DDTC)**
 - International Traffic in Arms Regulations (ITAR) – 22 CFR Subchapter M
 - ITAR stems from Arms Export Control Act (AECA)
- **Office of Foreign Assets Controls Sanctions Regulations (OFAC) – 31 CFR Chapter V**
- **Nuclear Regulatory Commission (NRC) – 10 CFR Part 110**
- **Department of Energy (DOE) – 10 CFR 810**

What is an export?

- Shipping a physical item outside the U.S.
- Hand carrying technology to a foreign country
- **Sending an email** outside the U.S.
- Accessing your U.S. technology files while in a foreign country
- Storing technical data in a foreign cloud
- Sharing technical data, technology or source code with a foreign person, even in the US (**Deemed Export**)
- Providing a tour of your lab to a foreign person
- Payments, funding or sponsorship to foreign entities



Who is a Foreign Person?

- Depends on which set of regulations apply to the activity or technology.
 - The **EAR** looks at the **most recent country** of citizenship.
 - The **ITAR** looks at **all countries where citizenship** has been held.
- In general, a foreign person:
 - Does **NOT** have US citizenship,
 - Is **NOT** a lawful permanent resident or
 - Has **NOT** been granted asylum.
- In the regulations the term “Foreign Person” includes entities:
 - Foreign corporation, business, partnership, etc not incorporated in the US
 - International organizations,
 - Any division of a foreign government



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Two key terms are used when discussing Export Controls:

Technology (EAR - 15 CFR 772.1)

Information necessary for the

- “development,”
- “production,”
- operation,
- maintenance,
- repair,
- “Use,”
- installation,
- overhaul, **OR**
- refurbishing

“Use” is operation, installation (including on-site installation), maintenance (checking), repair, overhaul **and** refurbishing

Technical data (ITAR 22 CFR 120.33(a))

Information about defense articles which is required for their:

- **design,**
- development,
- production,
- manufacture,
- assembly,
- operation,
- repair,
- maintenance,
- **testing, OR**
- **modification**
- classified information relating to defense articles and defense services
- information covered by an invention secrecy order
- Software (see [§ 120.40\(g\)](#)) directly related to defense articles

Fundamental Research Exclusion

- Research in science and engineering **intended to be published** and is not restricted for proprietary or U.S. Government access reasons.
- Applies to technical data and information
- **Does not apply** to equipment or tangible items
- Is **NOT** a permanent designation



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Licenses

- Issued by
 - Bureau of Industry and Security (BIS)
 - Directorate of Defense Trade Controls
 - Office of Foreign Asset Controls
- Allows foreign persons to have access to items that are normally restricted
- Requires submission of a detailed application
 - Except for general licenses
- Requires documentation of access
- Generally limited to a specific person, project and time period
- Can take months to receive
- No guarantee that one will be granted



Technology Control Plans (TCP)

Documents that describe

- What is export controlled on the project
- Who can have access
- How access is controlled
- What are the methods of documenting access
- Training of project personnel on the TCP
- When reports will be filed
- Who has ultimate control of the project

Signed by all project personnel



Examples of University Activities affected by Export Controls

Hiring

- Background checks and restricted party screening must be done on the individual
- Type of work/research planned needs to be assessed for export controlled activities and items, dependent on the country of citizenship and position the person will hold.
- Fulltime employees resident in the US have different Export Control regulations governing them than temporary graduate students and post-docs.

Tours

- Allows for visual inspection of technology and provides information about it's "use" or performance



Examples of University Activities affected by Export Controls

Online education

- **Delivery platform may restrict service** to certain countries due to export controls or sanctions.
 - e.g. Distance learning cannot be provided to the Crimea region in Ukraine.
- **Topics delivered may be restricted** depending on the country and the type of student: undergraduate or graduate.
 - e.g. Students in Iran can take online undergraduate courses in humanities, social sciences, law or business, including introductory math and science
- **Talking about an unpublished research** projects can be controlled by the EAR or ITAR.



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Examples of University Activities affected by Export Controls

Procurement

- Some items used in research, like night vision goggles and highspeed cameras, may be ITAR controlled.
 - Try to ensure you are obtaining items that are EAR controlled instead of ITAR controlled.
- An End-user statement, ensuring no foreign entity use or shipment to a third party, may be required.
- Ensure that the supplier is not a restricted party



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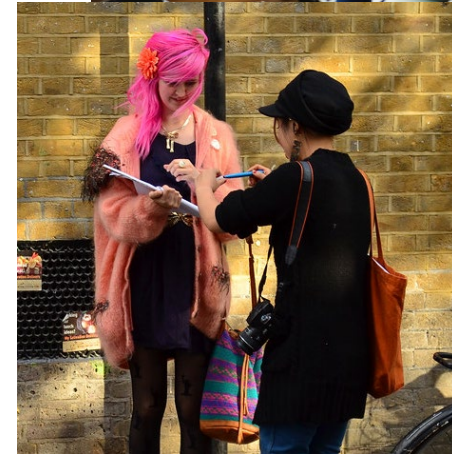
Examples of University Activities affected by Export Controls

Providing Professional Services

- In some countries, these are prohibited by US export controls
 - e.g. Consulting on a research project
 - Distributing surveys or questionnaires to gather information for your own research

Contracts, MOUs, Data Use Agreements

- Frequently have export control clauses that can affect who is allowed to work without a license or have access to technological information for the project



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Examples of University Activities affected by Export Controls

Collaborations/Visiting Scientist should be carefully evaluated

- Offering to work for free
 - Are there sanctions that prevent payment
 - Is their government paying them to relay information to the government
- What is their country of origin – is it sanctioned?
- Are they a restricted party?
- Do they work at an institution that is a restricted party?
- What technology will they have access to?
- Are there any software or equipment end-user restrictions?



Examples of University Activities affected by Export Controls

Attending Conferences or Receiving honorariums from foreign parties

- May require a license or be prohibited

International Travel

- May require a license prior to travel
- May need a carnet for items traveling with you (passport for equipment)
- Primary data may be confiscated
- Downloading or viewing your cloud stored data is an export
- Some countries require use their sim card in your cell phone, which can lead to a malware download to your device



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Documentation

Document everything regarding exports (hold for 5 years after):

- Which regulations apply
 - Export control classification from the manufacturer
- Thought processes
- General and specific licenses used
- Persons involved
- Dates
- Activities
 - Technology “used”
 - Tours
 - Technical data, technology, or software shared
 - Training provided
- Signed technology control plans



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Resources

- BIS – [Export Administration Regulations Training](#)
- DDTC - [ITAR & Export Controls](#)
- OFAC – [Sanctions Programs and Country Information](#)
- Council on Governmental Relations (COGR) – [Export Controls](#)
- [Export Compliance Training Institute \(ECTI\)](#) – training and certification for a fee
- [Collaborative Institutional Training Initiative \(CITI\)](#) – institutional training subscriptions or individual for fee
- [Association of University Export Control Officers](#) (AUECO)
- [Visual Compliance](#) – software as a service for performing restricted party screenings, also has links to regs
- [UL Export Controls](#)

Questions?

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Thank You for Attending Today's Presentation

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