



THE RESEARCH FOUNDATION

*The State University of New York*

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# Export Controls

A Practical Application for Faculty

November 12, 2008

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# Topics

- Introduction to Export Controls
  - Exports
  - Laws and Regulations
  - Deemed Exports
- Agency Responsibility/Oversight
  - Penalties and Sanctions
- Impacts on Sponsored Programs
  - Exclusions and Exceptions
  - Principal Investigator/Faculty Responsibility
  - Case Studies/Resources and Tools

# What is an Export?

Any oral, written, electronic or visual disclosure, shipment, transfer or transmission of commodities, technology, information, technical data, assistance or software codes to:



- ❑ To anyone outside the U.S., including a U.S. citizen
- ❑ To a non-U.S. entity or individual
- ❑ To a foreign embassy or affiliate

# What are Export Controls?

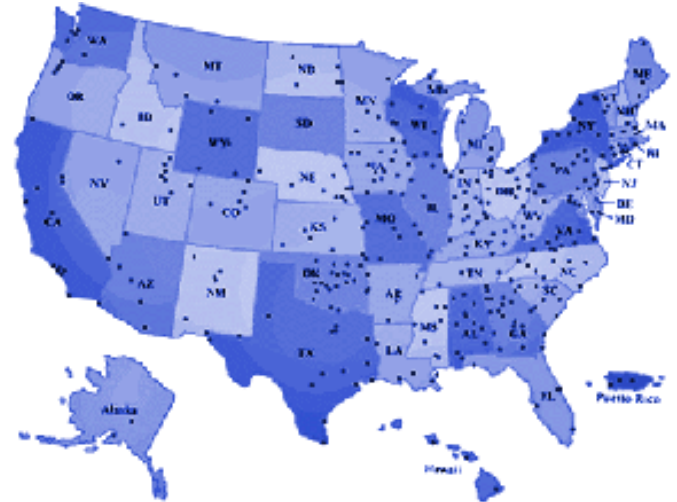
U.S. laws that govern the distribution of strategically important technology, services and information, including equipment and technology used in research, for reasons of foreign policy and national security.

## Remember

- Exporting is a *privilege* – not a right
- Activity cannot take place until an export license is obtained or an exemption determined
- Every situation is different;  
**Ignorance is not a defense**

# What is a Deemed Export?

- Disclosure or transfer of export controlled software, technologies or technical data to a foreign entity or individual within the U.S.
  - Visual inspection
  - Exchanged orally
  - Available by practice/application (e.g., training)



## Examples include

- Discussions with members of a laboratory
- Meetings of the research team
- Activities involving foreign graduate students

# The Federal Agencies

- Primary export control regulations
  - 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
  - Department of Treasury
    - Office of Foreign Assets Control (OFAC)
    - Prohibits transactions with countries subject to boycotts, trade sanctions, embargoes, and restricted persons



# Penalties

Imposes severe criminal and civil noncompliance penalties for individuals and institutions/corporations

Criminal penalties for institutions/corporations can be up to 1M

Criminal penalties for individuals range from 100K-1M

Civil penalties range from 12K – 500K depending on the number of individual violations

# Sanctions

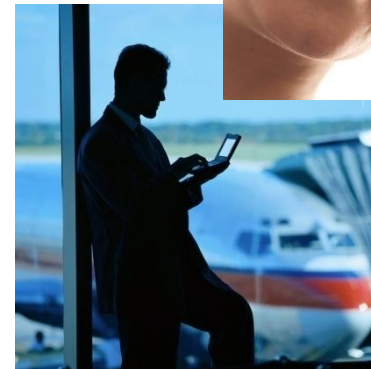
In addition to criminal and civil penalties, severe sanctions for individuals and institutions/corporations could also be imposed, such as:

- ❑ Termination of export privileges
- ❑ Suspension and/or debarment from federal government contracting
- ❑ Loss of federal funds
- ❑ Voluntary disclosure of violations may serve as a “mitigating factor” in deciding penalties

# Export Control Laws Impact on Sponsored Programs What, Where, & Who

## Potential Impact Areas:

- **WHAT** – Controlled items, technology, data, and information
- **WHERE** – Sanctioned or embargoed foreign countries
- **WHO** – Restricted foreign persons and entities



# Export Controls Laws

## Impact **WHAT?**

- Direct export and re-export of controlled items, technology, data and information
- Temporary transfer of equipment to conduct research
- Software development
- Publications/Presentations
- Foreign travel
- Training

# Export Control Laws

## Impact **WHERE?**

**Departments of Commerce, State, and Treasury have different country lists**

- ❑ controlled/restricted
- ❑ terrorist
- ❑ sanctioned/embargoed

**DOS State Sponsors of Terrorism listing present the most risk. As of April 1, 2007 the five countries are:**

- ❑ Cuba
- ❑ Iran
- ❑ North Korea
- ❑ Sudan
- ❑ Syria

<http://www.state.gov\sct/list/>

# Export Control Laws

## Impact **WHO?**

- ❑ Collaborators
- ❑ Foreign students
- ❑ Foreign nationals
- ❑ End-users



# Sponsored Programs: Exclusions and Exceptions

Sponsored programs exclusions and exceptions to the export control requirements include:

- ❑ Public domain/publicly available
- ❑ Fundamental research exclusion
- ❑ Laptop computer exception

# Publicly Available or Public Domain

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

- ❑ Libraries, bookstores or newsstands
- ❑ Trade shows, meetings or seminars that are open to the public
- ❑ Published patent information
- ❑ Web sites accessible to the public

# Fundamental Research

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

- ❑ Resulting information is ordinarily published and shared broadly in the scientific community

The Fundamental research exclusion (FRE) is voided if the university:

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

# Laptop Computers

Generally an exception to the lists of controlled items, but not automatically allowed.

Ask the following questions:

- **WHAT** – Is the technology, data/information on the laptop controlled, is there any encrypted or proprietary software, is there a global positioning system (GPS)
- **WHERE** – Is the destination a controlled, restricted, sanctioned, embargoed, or terrorist country
- **WHO** – Is the end-user a restricted person or entity



If the answer is ‘**Yes**’ to any of the above, a license request may be necessary.

**Contact the Office of Sponsored Programs**

# Principal Investigator/Faculty Responsibility



*The Office of Sponsored Programs relies on your scientific expertise to assist us in identifying export control issues -*

Start by asking yourself the following questions:

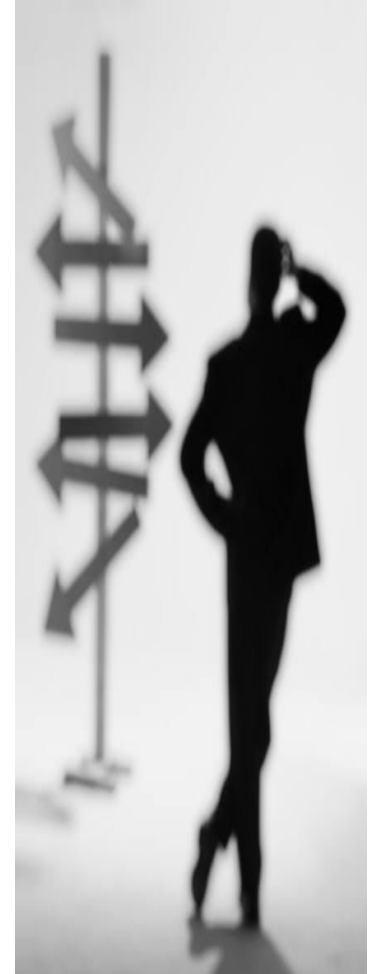
- 1) Does the research involve technology or devices for use in military, security and intelligence?
- 2) Does the research involve anything else with a substantial or dual-use military application?
- 3) Do you anticipate collaborating in any way with a foreign national?
- 4) Will you use a research assistant who is a foreign national?
- 5) Do you anticipate sending your unpublished research results to a foreign country or foreign citizen?
- 6) Do you anticipate any foreign travel associated with this project?

# Determining if an Export Control Issue Exists

- If you answered “yes” or “not sure” to any of the prior questions at the proposal stage and throughout the life cycle of your project:

## Contact the Office of Sponsored Programs

- Sponsored programs staff will utilize the analysis tool, Visual Compliance to:
  - Assess your export control situation
  - Determine if a license request is needed
  - Provide documentation to support the analysis



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# Sponsored Programs

## Case Studies

# Medical Research in Cuba

- You have obtained a grant to conduct clinical trials in Cuba
- Members of your faculty will be traveling to Cuba to conduct the trials
- They will be bringing various pieces of medical equipment and medicines to be used in conjunction with the trials
- This is NOT a humanitarian aid trip

# Do you need a license?

- Most likely – despite relaxed restrictions on Cuba for humanitarian efforts, the export of medical equipment and medicines to Cuba still requires a request for an export license.

# Deemed Export

- You have obtained a grant from the DoD to develop medical equipment that not only can be used in civilian hospitals but will also be specialized for use on the battlefield
- The research would be of the type that is publishable in medical journals of general distribution
- The DoD has included in the grant a restriction upon publication

# What's the effect on the Fundamental Research Exception?

- If the prohibition on publication is accepted, the FRE is destroyed

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# Contacts:

## Sponsored Programs:

Ivar Strand, Assistant Vice President

[istrand@notes.cc.sunysb.edu](mailto:istrand@notes.cc.sunysb.edu)

632-4402

<http://www.stonybrook.edu/research/osp/exportcontrols.shtml>