

EXPORT CONTROLS

BASIC ELEMENTS FOR FACULTY

EXPORT COMPLIANCE

Stony Brook University Export Controls Compliance Website:

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

Stony Brook Policy P212: Export Control Policy

<http://www.stonybrook.edu/policy/policies.shtml?ID=212>

FAQs with examples of university violations

<http://www.stonybrook.edu/research/osp/exportcontrols.shtml#faq-tab>

WHAT IS EXPORTING?

▶ EXPORTS 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

▶ WAYS TO EXPORT:

Physical Export: Actual shipment or transmission of controlled items out of the U.S.

Deemed Export: The release of controlled technology (technical data) or software to a foreign national in the U.S.

WHAT ARE THE REGULATIONS?

International Traffic in Arms Regulations (ITAR)

- ▶ Administered by the Department of State
- ▶ United States Munitions List (USML)
- ▶ Defense Articles, Defense Services, Technical Data, and Software
- ▶ Examples: Night Vision Goggles, Unmanned Air Vehicles, Training a foreign person using militant data even if the data is in the public domain.

Export Administration Regulations

- ▶ Administered by the Department of Commerce
- ▶ Commodity Control List (CCL)
- ▶ Items developed for a commercial application or developed for a commercial application but also have a military/defense application.
- ▶ Examples: biologics/viruses, lasers, cameras, amplifiers, telecommunication equipment, information security equipment and software.

REGULATIONS CONTINUED

Other Agencies that Regulate Exports

- ▶ Nuclear Regulatory Commission
- ▶ U.S. Department of Energy
- ▶ Center for Disease Control
- ▶ Food and Drug Administration
- ▶ Drug Enforcement Agency.

SANCTION AND EMBARGO PROGRAMS

- ▶ Administered by the Department of Treasury
- ▶ Trading with the Enemy Act
- ▶ International Emergency Economic Powers Act
- ▶ Specially Designated Nationals and Blocked Party List

Sanctions can be both list (person/entity) based or country based, usually financially based but can include include export/import of goods, technology and services.

EAR 99 and Denied Parties

EAR 99

Any commercial item that is not:

1. Under the control of another federal agency; or
2. Enumerated in the Commodity Control List in the Export Administration Regulations

Is defined as being EAR 99

EAR 99 items/technology require a license when exported to Cuba, Syria, Sudan, Iran, and North Korea and may require a license when exported to certain persons or entities (federal denied parties).

Denied Parties

- *Export-related Restricted, Denied, and Blocked Persons Lists*
- Department of Commerce Denied Persons [BIS]
- Department of Commerce Entity List [BIS]
- Department of Commerce "Unverified" List [BIS]
- Department of State Arms Export Control Act Debarred Parties [DDTC]
- Department of State Nonproliferation Orders
- Department of State Munitions Export Control Orders [DDTC]
- Weapons of Mass Destruction Trade Control Designations [OFAC]
- Department of State Designated Terrorist Organizations
- Department of State Terrorist Exclusion List
- U.S. Treasury Department Palestinian Legislative Council List [OFAC]
- U.S. Federal Register General Orders
- *Sanction Programs-related Blocked Persons Lists*
- U.S. Treasury Department Specially Designated Nationals and Blocked Persons, including Cuba and Merchant Vessels, Iran, Iraq and Merchant Vessels, Sudan Blocked Vessels [OFAC]
 - Department of Treasury Specially Designated Terrorist Organizations and Individuals
 - Department of Treasury Specially Designated Narcotic Traffickers and Narcotics Kingpins
 - Department of Treasury Foreign Narcotics Kingpins
 - List of Foreign Financial Institutions Subject to Part 561
- U.S. Treasury Department Foreign Sanctions Evaders List (FSE-IR, FSE-SY) [OFAC]
- U.S. Treasury Department Sectoral Sanctions Identifications List (UKRAINE-EO13662) [OFAC]
- United Nations Consolidated List

WHAT IS NOT SUBJECT TO THE REGULATIONS?

Under ITAR:

- ▶ Technical data does not include “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain”.

Public Domain:

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.

WHAT IS NOT SUBJECT TO THE REGULATIONS CONTINUED?

Under 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

Department of Treasury: depends on the sanctions and/or embargo program and are often very narrowly defined.

License Exemptions:

Information and Informational Materials: already in the public domain and does not authorize financial transactions or services of value

Humanitarian Activities: transactions need to be sponsored by a U.S. 501(c)(3) qualified non-governmental organization and are country specific.

General License:

Authorized transactions necessary and ordinary incident to publishing: allows for activities in support of publishing (peer academic review) and/or marketing of informational materials with Iran, Cuba, Sudan, and Burma.

Other licenses and license exemptions based on country.

WE EDUCATE AND DO RESEARCH, WHY WORRY ABOUT EXPORT CONTROLS?

- ▶ Does the “Educational Information” that we are providing fall within the proscribed definitions of what is exempt from the regulations?
- ▶ Are we performing fundamental research or proprietary research?
- ▶ Are the results of the research “information” that will be published or a prototype, technical specs, materials, software, or other item (these items are EAR 99)?
- ▶ Are we creating software? Software with strong encryption?
- ▶ Are we performing research in an Emerging or Sensitive Research area?
- ▶ Are we receiving third party proprietary information/materials that are controlled under the regulations?
- ▶ Are we working with foreign nationals? Whether in our labs (students, employees, visiting scholars) or as collaborators or consultants?
- ▶ Are we traveling internationally to conduct research, partake in conferences, collaborate with peers, meet with potential sponsors, or go on sabbatical?
- ▶ Are we shipping items or technical information/data off campus?

EDUCATIONAL INFORMATION

Does the “Educational Information” that we are providing fall within the proscribed definitions of what is exempt from the regulations?

Educational Information ITAR

Technical data does NOT include “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain”.

Educational Information EAR

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

FUNDAMENTAL VS PROPRIETARY and/or EXPORT CONTROLLED RESEARCH

Fundamental Research

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

- ▶ 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.

Proprietary and/or Export Controlled Research

Basic and applied research in science and engineering, where the resulting information is not published or shared broadly.

- ▶ Prior sponsor approval for publication or other dissemination of results;
- ▶ Foreign national participation restrictions;
- ▶ Results are sponsor's proprietary information
- ▶ "Gentlemen's handshake" to not release results or publications on the funded project

PROTOTYPES, TECHNICAL SPECS, MATERIALS (OTHER THAN BASIC RESEARCH INFORMATION)

Are the results of the research “information” that will be published or a prototype, technical specs, materials, software or other item (these items are EAR 99)

The Fundamental Research Exemption applies to the information that is ordinarily published (that which appears in an academic journal) that can be widely distributed.

If we are creating a prototype, technical specs, materials, or some other commodity, we must check the regulations to ensure that the item is not captured under any of the regulations before sending the item out of the U.S.

CREATING SOFTWARE

Are we creating software? Software with strong encryption?

Software, other than software subject to the ITAR (developed for military purposes) can be under the EAR:

1. Publicly available
2. EAR 99
3. Other: captured under another classification category of the EAR

Distribution of software needs to be carefully considered and if software is not to be made publicly available without any log in and without any fee there are additional requirements that must be met prior to distribution.

EMERGING OR SENSITIVE TECHNOLOGIES

Are we performing research in an Emerging or Sensitive Research area?

- ▶ The project may start as Fundamental Research with no publication or other restrictions but then:
 - A. As the project advances the sponsor may restrict publication rights, or
 - B. At the time of the technology disclosure and patent filing, the U.S. Patent Office may issue a secrecy order on a patent application.

We should be aware of projects that may advance in this direction and put applicable controls around the projects to protect against possible export control violations.

Non-Disclosure and Material Transfer Agreements

Are we receiving third party proprietary information/materials that are controlled under the regulations?

Non-Disclosure Agreements protect both our and the company's proprietary information. They also provide for the company to identify any export controlled information that they may share with us, therefore allowing us to know if we can share the information freely with our foreign students, employees, collaborators.

Material Transfer Agreements for incoming materials allow us to know if the materials being sent to us have any special compliance regulations attached to them and if export controlled allow us to determine if we would require a license for a foreign national to work with the materials.

FOREIGN NATIONALS

Are we working with foreign nationals? Whether in our labs (students, employees, visiting scholars) or as collaborators or consultants?

Deemed Exports (sharing information within the US) - 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
- Network Access - controlled technical data on a network accessible to foreign nationals.

Restricted Access to ITAR regulated items/technology

LICENSES OR DOCUMENTED LICENSE EXCEPTIONS WOULD BE REQUIRED IN THESE CIRCUMSTANCES

FOREIGN TRAVEL

Are we traveling internationally to conduct research, partake in conferences, collaborate with peers, meet with potential sponsors, or go on sabbatical?

Taking items abroad: do you need a license to take the item(s) or certify that you are bringing “tools of the trade”?

Do you have proprietary or sensitive information on your electronic devices?

Are you presenting at a conference: is it an “open” conference per the federal regulations? Are you presenting information that is in the public domain?

Is the business, university, colleague that you are traveling to a denied entity or persons?

SHIPPING

Are we shipping items or technical information/data off campus?

Licensing requirements under ITAR

No item or technical data on the USML can be shipped out of the US without a license

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

- ▶ WHAT - the classification of the item or technical data
- ▶ 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.

ULTIMATELY

Need to know ultimate end-use

Even if no license is required for the destination and/or the end-user is not a prohibited party, a license still may be required for the transaction

Export Administration Regulations prohibits exports, re-exports and transfers (in-country) of items subject to the EAR to defined nuclear, missile, and chemical and biological proliferation activities.

I have activities that may fit the criteria for export control. What do I do?

- ▶ Contact the Office for Research Compliance
 - ▶ Susan Gasparo, Asst. Director for Export Control Compliance
 - ▶ Email: Susan.Gasparo@stonybrook.edu
 - ▶ Phone: 2-1954

PENALTIES

There are criminal and civil penalties, as well as sanctions and loss of export privileges, that can be imposed against the institution under the regulations.

There are criminal and civil penalties, imprisonment, as well as sanctions and loss of export privileges, that can be imposed against the individual under the regulations.

Specifics can be found at:

<http://www.stonybrook.edu/research/osp/exportcontrols.shtml#penalties-tab>