

The background of the slide is a grayscale, slightly blurred image of the United States flag, showing the stars and stripes. The text is centered over this background.

Export Controls

Spring 2011

What are Export Controls?

U.S. federal laws that regulate the distribution to foreign nationals and foreign countries of strategically important products, services and information for reasons of foreign policy and national security.



What is an Export?

- Transfer of controlled technology, information, equipment, software or services to a foreign person in the U.S. or abroad by any means; e.g.,
 - actual shipment outside the U.S.
 - visual inspection in or outside the U.S.
 - written or oral disclosure

U.S. Export Controls and Responsible Agencies

- State Department
 - Inherently military technologies
 - International Traffic in Arms Regulations (ITAR)
- Commerce Department
 - “Dual-Use” technologies (primary civil use)
 - Export Administration Regulations (EAR)
- Treasury Department, Office of Foreign Assets Control (OFAC)
 - Administers trade sanctions program

Implications of Export Laws

- Applies to **ALL** activities, not just sponsored research!
- Legislative exceptions and exclusions alleviate impact on the majority of university research, however...
- **Potential** impact exists on:
 - Ability of foreign students to participate in research involving an export-controlled technology/items
 - Ability to provide services (including training on export-controlled equipment) to foreign nationals
 - Ability to send export-controlled equipment/items to foreign countries

Examples of Impacts on Research

- Publication or dissemination restrictions on new techniques or processes
- Restrictions on access to and research involving select biological agents, pathogens and toxins; or novel engineering technologies
- Inability to share controlled technology required for the development, production or disposal of export-controlled materials, including training on the use of equipment necessary to dispose of such items
- License requirements for travel to conduct research or provide technical assistance in sanctioned countries, such as the Sudan.

“Deemed Exports”

- The transfer of **controlled technical information** (e.g. technical data or services) by any method to a foreign national in the U.S. or abroad is deemed to be an export to that individual’s country of citizenship.
- Such transfer may require a license depending on the technology and the country involved.
- Methods of disclosure include:
 - Fax
 - Telephone discussions
 - E-mail communications
 - Computer data disclosure
 - Face-to-face discussions
 - Training sessions
 - Tours which involve visual inspections



License Requirements Exemptions & Exclusions: *Deemed Exports*

- One of the following must apply:
 - “Public Domain” Exemption
 - ITAR, EAR
 - Education/Teaching Exclusion
 - ITAR, EAR
 - Employment Exemption
 - ITAR only
 - **Fundamental Research Exclusion**
 - **ITAR, EAR**

Fundamental Research Exclusion

- No license is required to disclose to foreign nationals information which is “published and which is generally accessible or available to the public [through, for example] fundamental research in science and engineering at universities where the resulting information is *ordinarily published and shared broadly in the scientific community.*”
- However, “things” (e.g. tangible items) and “services” (e.g. training) **cannot** be excluded under this exemption.

Fundamental Research Exclusion: How do we lose it?

- **The institution accepts any contract clause that:**
 - Forbids the participation of foreign nationals;
 - Gives the sponsor a right to approve publications resulting from the research; or
 - Otherwise operates to restrict participation in research and/or access to and disclosure of research results.
- **“Side deals” between an investigator and sponsor to accept restrictions not articulated in contracts**

Providing Services to Foreign Nationals

- ITAR and EAR **prohibit assisting and training** foreign nationals anywhere in the design, development, use, testing, etc., of export-controlled equipment without a license from State or Commerce
- There are no clear exclusions or safe harbors from the requirement to obtain a license for foreign nationals to **use** controlled equipment, however MU maintains that the Education Exclusion applies if the student uses the equipment as part of a program of instruction.

Shipment of controlled materials outside of the U.S.

- A license is required to ship materials controlled by **ITAR** to **any** foreign country.
 - There are few exclusions or exceptions!
- A license **may** be required to ship materials out of the U.S. under the **EAR** depending on whether the materials are controlled, where it is being sent and whether an exception applies.
- There is a presumption under **OFAC** laws that any and all shipments of materials and provision of services to countries subject to U.S. sanctions/boycotts or persons in those countries are **ILLEGAL**.

PENALTIES:

Administrative

- Under any set of regulations:
 - Termination of export privileges
 - Suspension and/or debarment from government contracting
- Voluntary disclosure of violations serves as a “mitigating factor” in determining penalties

PENALTIES:

Monetary

- **EAR Violations**
 - **Criminal (willful):** Up to **\$1 million** for the University or company and up to **\$250K** per violation for *individuals* and/or up to 10 years in prison
 - **Civil:** Up to **\$12k** per violation for individuals and the University/corporations
- **ITAR Violations**
 - **Criminal violations:** Up to **\$1 million** for the University or company and up to **\$1 million** per violation for *individuals* and/or up to 10 years in prison
 - **Civil violations:** Up to **\$500k** per violation for *individuals* and the University or company
- **OFAC Violations**
 - **Criminal violations:** Fine up to **\$1 million** for companies and a fine up to **\$100,000** for individuals
 - **Civil violations:** Fine up to **\$55K** for each violation by any person

How do I know if I need a license? (a.k.a. **Red Flags**)



- Does the project involve:
 - Shipping materials to a foreign country?
 - Collaborating with foreign colleagues in foreign countries?
 - Training foreign nationals in using research materials?
 - Working with a country subject to a U.S. boycott?*
- Is the RFP marked “Export Controlled”?
- Is the sponsor demanding pre-approval rights over publications or the participation of foreign national persons?

How do I know if I need a license? (a.k.a. **Red Flags**)



- Working with a country subject to a U.S. boycott?*
- Afghanistan
- China (State Dept)
- Cote d'Ivoire
- Congo
- Cuba
- Iraq
- Iran
- Liberia
- Libya
- North Korea
- Somalia
- Sudan
- Syria
- Venezuela
- Yemen
- Zimbabwe

**not a complete list*

If you answer yes...



- A determination must be made as to possible license requirements
 - **Contact the Office of Export Compliance!**
 - Please note!
 - If license is needed it takes considerable time and effort and may take months to process.
 - Remember! These laws apply to **all** activities – *not just sponsored projects!*

THANK YOU!

*Please feel free to contact us
if you have any questions!*

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