

# Export Control Regulations

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# What are Export Controls?

**US 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.**

# US Export Controls and Responsible Agencies

- ◆ **State Department: Inherently military technologies--International Traffic in Arms Regulations (ITAR)**
- ◆ **Commerce Department: “Dual-Use” technologies -- Export Administration Regulations (EAR)**
- ◆ **Treasury Department, Office of Foreign Assets Control (OFAC): Prohibits transactions with countries subject to boycotts, trade sanctions, embargoes**

# Implications of Export Laws

- ◆ No effect on 90% of CSM research
- ◆ But **potential** impact on
  - Ability of foreign students to participate in research involving a controlled technology (mostly under ITAR)
  - Ability to provide services (including training in the use of controlled equipment) to foreign nationals (ITAR, EAR, OFAC)
  - Ability to send controlled equipment to foreign countries (ITAR, EAR, and OFAC)

# Dissemination of Information

- ◆ Laws prohibit the disclosure without a license from Commerce or State of controlled technical information to a foreign national in the U.S. or abroad.
- ◆ 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 Requirement for Dissemination of Information Does Not Apply If

- ◆ One of 3 exclusions applies:
  - Education Exclusion (ITAR, EAR)
  - Fundamental Research Exclusion (ITAR, EAR)
  - Employment Exclusion (ITAR only)

# Education Exclusion

- No license is required to share with foreign nationals “information concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain”
- ◆ Students using controlled equipment to conduct research should be registered for a research credit class \* This strategy is being criticized by government.

# 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.*”



# The Fundamental Research Exclusion is Destroyed if

- **CSM accepts a 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

# Fundamental Research Exclusion Violation

“Side deals” between a PI and Sponsor may destroy the Fundamental Research Exclusion.

# CSM Strategy

- ◆ Protect fundamental research exclusion by eliminating contractual clauses that destroy our ability to claim the exclusion

# Employment Exclusion

- ◆ No license is required to share controlled technical data with a foreign national who
  - Is not a national of certain countries;
  - Is a full-time, bona fide CSM employee;
  - Has a permanent address in the US while employed;
  - Is advised in writing not to share controlled data with any foreign nationals.

# Providing Services to Foreign Nationals

- ◆ ITAR and EAR prohibit assisting & training foreign nationals in the US or abroad in the design, development, use, testing, etc. of controlled equipment without a license from Commerce or State

# No Exclusions

- ◆ There are no **clear** exclusions or safe harbors from the requirement to obtain a license for foreign nationals to use controlled equipment, however....
- ◆ The University maintains that the Education Exclusion applies if the student uses the equipment as part of a **program of instruction**\* Position not endorsed by government

# License requirement to ship controlled equipment out of US

- ◆ A license is required to ship equipment controlled by **ITAR** to **any** foreign country
- ◆ There are few exclusions or exceptions
- ◆ It can take months to obtain a license from State.
- ◆ Notify ORA as early as possible.

# Shipping Equipment Cont' d

- ◆ A license **may** be required to ship equipment out of the US under the **EAR** depending on whether the equipment is controlled, where it is being sent and whether an exception applies.
- ◆ **NOTE:** A license may be required to ship software out of the US!
- ◆ The process to classify equipment under the EAR is very tedious, detailed and time consuming. Contact ORA early!



# Shipping Equipment Cont' d

- ◆ State will generally not issue a license to authorize shipping controlled equipment or providing services to terrorist supporting countries: Cuba, Iran, Iraq, Libya, Syria, Sudan, North Korea
- ◆ There is a presumption under **OFAC** laws that shipments of equipment and provision of services to boycotted countries are **ILLEGAL**-Cuba, Iran, Iraq, Libya, Liberia, Sudan, North Korea.

# Laptop Exception

- ◆ *Excluding embargoed countries, faculty who wish to take their laptops out of the country to use in a university project that qualifies as fundamental research may be able to do so under the license exception for temporary export (TMP) if the laptop meets the requirement for "tools of trade" and is under control of the CSM faculty member (15 CFR Part 740.9).*

# Providing Services Under OFAC

- ◆ OFAC prohibits the provision of services to countries subject to US sanction programs, boycotts, etc. w/o a license
- ◆ Types of prohibited services:
  - Conducting surveys and interviews
  - Providing marketing and business services
  - Creating new information materials at the behest of persons in a boycotted country

# Providing Services Cont' d

- ◆ Types of prohibited services:
  - Engaging the services of persons in a boycotted country to develop new information materials. This includes “collaborative interactions” between US authors and authors in a boycotted country that result in co-authored materials or their equivalent.

# OFAC Boycott Targets

- ◆ Cuba, Iran, Iraq, Libya, Liberia, Sudan, North Korea
- ◆ Specific entities and persons in the Balkans, Burma, Ivory Coast & Zimbabwe involved in terrorism, diamond trade, drug trafficking, anti nonproliferation activities
- ◆ Boycotts change: Check OFAC website: <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml> for current information

# Peer Review and Editing Services

- ◆ In April 2004, OFAC reversed its earlier position on peer review and editing services to allow:  
Peer review by US persons of scholarly articles authored by persons in boycotted countries and style and copy editing *if these activities do not result in substantive alterations or enhancements to the manuscripts*

# Administrative Penalties

- ◆ Termination of export privileges (EAR and ITAR)
- ◆ Suspension and/or debarment from government contracting (EAR and ITAR)
- ◆ Voluntary disclosure of violations *may* serve as a “mitigating factor” in deciding penalties

# Penalties for EAR Violations

- **Criminal (willful violations):**
  - **Up to \$1 million for the University or company**
  - **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**



# Penalties for ITAR Violations

## ◆ Criminal (willful violations)

- Up to \$1 million for the University or company
- 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

# Penalties for OFAC violations

## ◆ Criminal (willful) violations:

- Fine of no more than \$1m for companies
- Fine of no more than \$100k for individuals (including corporate officers) and/or 10 years imprisonment

## ◆ Civil penalties:

- Fine up to \$55k for each violation by any person

# Proposal Stage Red Flag Items

- ✓ Is the RFP marked “Export Controlled”?
- ✓ Is the sponsor demanding pre-approval rights over publications or barring the participation of foreign national students ?
- ✓ Does the Project involve:
  - Shipping equipment to a foreign country?
  - Collaborating with foreign colleagues in foreign countries?
  - Training foreign nationals in using equipment?
  - Working with persons in a boycotted country?
  - Working with persons in a terrorist country?

# If you answer yes...

- ◆ A determination must be made regarding possible license requirements - Contact Ralph Brown in ORA

Note 1: If license is needed it takes *much time and effort of faculty* and can be months in process.

Note 2: These laws apply to all activities – not just sponsored projects

# Remember

## **PROTECT THE FUNDAMENTAL RESEARCH EXCLUSION!**

- No restricted clauses for publication
- No side deals

## **CONTACT ORA AS SOON AS AN EQUIPMENT ISSUE ARISES**

Questions? contact

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