
The Devil is in the Details: An Overview of Export Controls

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6th Conference for Effective Compliance Systems
in Higher Education
Austin, TX
June 2, 2008



Introduction

- What Laws are we addressing?
 - ❑ EAR: Export Administration Regulations; US Department of Commerce – Bureau of Industry and Security
 - ❑ ITAR: International Traffic in Arms Regulations; US Department of State – Office of Defense Trade Controls
 - ❑ OFAC: US Department of Treasury - Office of Foreign Assets Control
 - ❑ There are others
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Risk for Universities

- Taking or shipping items or transferring technology/software that is controlled to a foreign country or foreign national
 - Collaborations/discussions with foreign national collaborators and students when involving controlled information
 - Performing *defense services*
 - Visiting scientists
 - Technology and material transfers
 - Faculty “start up” companies
 - Travel to foreign countries including fieldwork
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Deemed Exports

- Access to controlled information/ "technology" restricted by EAR/ITAR by a foreign person is deemed to be an export.
 - Applies to a foreign faculty, research assistants and students
 - Applies to visiting foreign researchers
 - Can apply to U.S. citizens visiting or working in a foreign country
 - Does not apply to U.S. Citizens, permanent residents and those with US asylum protection in the US
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Bona fide Employee Exception (ITAR)

- Foreign persons who are full-time regular employees of US institutions of higher education with permanent abodes in US throughout employment
 - Does not apply to foreign nationals from prohibited countries
 - Does not apply to foreign graduate students
 - Must be informed in writing and agree not to transfer technology to another foreign national without a license
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What is Controlled?

- ITAR

- Items on the Munitions List
- Includes both research on *defense articles* and training or assistance in developing *defense articles*
- Technical data related to the manufacture or production of *defense articles*
- Anything with a substantial military application or related to satellites

- EAR

- *Dual-use* commercial items and associated software and technology
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Exclusions

- ❑ Information in the Public Domain (ITAR)
 - Patents available at any patent office
 - Conferences generally accessible to the public
 - Libraries
 - *Fundamental research* in science and engineering
 - ❑ Educational Exclusion
 - Catalog courses and associated instructional labs (EAR)
 - General math, engineering and science classes (ITAR)
 - ❑ Foreign patent applications filed after US patent has been filed
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Fundamental Research Exclusion

- National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical and Engineering Information issued 9/21/85 established national policy for controlling the flow of this information produced in federally funded fundamental research at colleges, universities and laboratories.
 - Reaffirmed in letter from Condoleezza Rice, Asst. to the President for Security Affairs on 11/1/01.
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Fundamental Research Definition (NSDD 189)

- *Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.*
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Preserving the FRE

- No restrictions on publications beyond review, not approval, to protect proprietary information furnished by sponsor or to allow for protection of intellectual property*
- No restrictions on the use of foreign nationals
- No side deals

*Special procedures needed when a patent or invention disclosure is filed.

Exceptions

■ EAR

- Temporary (TMP) – *Tools of the Trade*
- Replacement Parts (RPL)
- Technology and Software Unrestricted (TSU)
- Encryption (ENC)

■ ITAR

- If ordered under federal contract with provisos
 - Foreign Military Sales
 - Canadian Exceptions
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Verifying the Fundamental Research Exclusion Applies

- Rationale for FRE determination
 - Stanford Export Controls Decision Tree
www.stanford.edu/dept/DoR/exp_controls/tree/
 - Screening questions
 - Funding source
 - Access to proprietary and controlled information
 - Foreign collaboration/travel
 - Solicitation requirements
 - Contractual terms and conditions
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Office of Foreign Asset Controls Regulations (OFAC)

- Transfer of Assets including Cash
 - Office of Foreign Assets Control (OFAC)
 - Payments, services or travel to sanctioned countries
 - Exceptions for peer review for professional journals only – enhancements such as editorial assistance outside of such peer review is prohibited
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Essential Elements of an Export Controls Compliance Program

- Centralize administration and oversight
 - Application of uniform policies and procedures
 - Perform controlled research in separate, secure areas
 - Promote compliance through awareness
 - Focus on compliance
 - Good recordkeeping and documentation of decision-making process
 - Encourage prompt disclosure
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