



Export Controls Workshop

An Introduction to Research and
International Engagement

Workshop Goals

- Introduction to Compliance with Export Controls laws and regulations
- How to disclose
 - Export Control
 - Travel
 - Foreign Employment

What are export controls?

Export controls are United States laws and regulations that regulate and restrict the release of critical technologies, software, equipment, chemical and biological materials, and services to foreign nationals and foreign countries.

Why do we have export control laws?

- National security and foreign policy
- Prevent terrorism
- Restrict access of certain goods and services for military purposes
- Prevent proliferation of weapons of mass destruction
- Comply with trade agreements and trade sanctions

Why should I be concerned?

- Violations can result in criminal and civil penalties for the individual researchers and the university
- Penalties include:
 - Fines – possibly millions of dollars
 - Jail and prison sentences can be imposed

Real Life Examples

- **John Reece Roth** – University of Tennessee professor found guilty of 18 charges involving the Arms Export Control Act. On July 1, 2009 he was ordered to serve four years behind bars.
- **Mohamad Nazemzadeh** – Research Fellow at the University of Michigan being prosecuted for sending a medical device to Iran. Item was shipped from U.S. to the Netherlands and then to Iran.

Where do I start?

- Highlights
 - Export control laws and regulations exist – and are complex
 - PS-119 - LSU's policy is to comply with these laws and regulations
 - Office of Research and Development has resources available

What activities do export controls apply to?

- Export controls may apply to:
 - Shipment (or hand carrying) of items to locations outside of the U.S.
 - Travel to sanctioned or embargoed countries
 - Transfer of export controlled technical data to persons located outside of the U.S.
 - Sharing of export controlled scientific or technical information with foreign nationals within the U.S.
 - Foreign person access to most defense articles

Export Control Regulations

1. **ITAR** – International Traffic in Arms Regulations – State Department – military items
2. **EAR** – Export Administration Regulations – Commerce Department – Dual use items (items with both military and commercial application) or strictly commercial applications
3. **OFAC** – Office of Foreign Assets Control – Treasury Department – embargoes and sanctions of specific countries.
4. **DOE** – Department of Energy – Nuclear Regulatory Commission

ITAR

- 21 categories of technologies controlled by the USML under ITAR
- Includes most firearms and ammunition
- Generally need a license to export items on USML

ITAR: U.S. Munitions List (USML)

- I Firearms, Close Assault Weapons, and Combat Shotguns
- II Guns and Armament
- III Ammunition/Ordnance
- IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
- V Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- VI Vessels of War and Special naval Equipment
- VII Tanks and Military Vehicles
- VIII Aircraft and Associated Equipment
- IX Military Training Equipment and Training
- X Protective Personnel Equipment and Shelters

ITAR: U.S. Munitions List (USML)

- XI Military Electronics
- XII Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII Auxiliary Military Equipment
- XIV Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- XV Spacecraft Systems and Associated Equipment
- XVI Nuclear Weapons, Design and Testing Related Items
- XVII Classified Articles, Technical Data and Defense Services not Otherwise Enumerated
- XVIII Directed Energy Weapons
- XIX Gas Turbine Engines and Associated Equipment
- XX Submersible Vessels, Oceanographic and Associated Equipment
- XXI Miscellaneous Articles

EAR

- 10 categories on the Commerce Control List (CCL)
- Items assigned an Export Control Classification Number (ECCN)
- Licensing requirements depend on the country involved

EAR: Commerce Control List (CCL)

- 0 Nuclear Materials, Facilities & Equipment & Miscellaneous
- 1 Materials, Chemicals, Microorganisms and Toxins
- 2 Materials Processing
- 3 Electronics Design, Development and Production
- 4 Computers
- 5 Telecommunications & Information Security
- 6 Sensors and Lasers
- 7 Navigation and Avionics
- 8 Marine (ships & vessels)
- 9 Propulsion Systems, Space Vehicles and Related Equipment

OFAC

- Comprehensive sanctions – Cuba, Iran, North Korea, Sudan, Syria
- Limited sanctions – Balkans, Iraq, Ivory Coast, Liberia, Myanmar (Burma), Zimbabwe
- Subject to change

DOE Regulations

- Assistance to Foreign Atomic Energy Activities
 - Applies to all persons subject to U.S. jurisdiction conducting certain nuclear related activities in the U.S. and abroad.
 - Controlled activities include: work with nuclear reactors, fuel cycle, isotope separation , isotope enrichment, or production of nuclear material.
- There are a number of activities that are allowed under a General Authorization and Specific Authorizations.

Important Definitions

- **Foreign National** – person who is not a U. S. citizen, not a permanent resident of the U.S. (green card holder), not in the U.S. as a refugee or with asylum status. ITAR uses the term foreign person.
- **Foreign Entity** – businesses, organizations and governments that are not incorporated or organized to do business in the U. S.
- **U.S. Person** – person who is a U. S. citizen, permanent resident of the U.S. (green card holder), in the U.S. as a refugee or with asylum status.

Important Definitions

Deemed export – release or transmission of controlled technology or information to foreign nationals within the U.S. Deemed exports are considered an export to that country. ITAR doesn't use this term but the concept still applies.

Good news – Exclusions

The majority of research conducted at LSU is exempt from export controls under three exclusions:

1. Fundamental Research Exclusion
2. Educational Information Exclusion
3. Public Information Exclusion

Fundamental Research Exclusion (FRE)

Applies to any basic or applied research in science or engineering where the resulting information is ordinarily published and broadly shared in the scientific community. All of the following must be true:

- No restrictions on publications
- No access or dissemination restrictions
- Research must take place at an accredited institution in the U.S.

Public Domain Exclusion

- Covers any information that is already published or out in the public domain. Examples include:
 - Books, papers, newspapers
 - Publicly available technology and software
 - Information presented at conferences, meetings or seminars open to the public
 - Information included in published U.S. Patents
 - Websites freely accessible to the public

Educational Information Exclusion

Information that is commonly taught in universities via instruction in catalog courses and/or through the associated laboratories.

Examples of Violations of Export Control Laws

- Transfer of export controlled equipment, materials, technology, software, information, or providing defense services to an unauthorized non US Person without a license.
- Allow a foreign national to “use” export controlled equipment, materials, items or have access to defense articles and technical data about a defense article.
- Transactions involving designated foreign countries or their nationals.
- Transactions with specific entities or individuals found in the Specially Designated National List (“SDNL”).

How to approach contracts

- Attempt to negotiate the elimination of contractual clauses that restrict publications, participation, or access to research
- Modify publication restrictions to give sponsor a 30-60 day period to review the results
- Modify to give sponsor rights specific to protecting preexisting sponsor proprietary information

Government Contracts

- **FAR** - Federal Acquisition Regulation
- **DFARS** - Defense Federal Acquisition Regulation Supplement. Department of Defense implementation and supplementation of the Federal Acquisition Regulation (FAR).
- **DFAR 252.204-7000**
- **DFAR 252-204-7012** - requires compliance with National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,”

How to handle contracts for export controlled projects

- Notify the Office of Sponsored Programs and the Director of Research Compliance
- Be aware that it will take additional time to put the necessary controls in place, especially if it is necessary to obtain a license
- Require sponsor to identify any export controlled information being transferred
- Require sponsor to obtain licenses
- Require sponsor to be responsible for additional security costs
- Draft your Technology Control Plan (TCP)

Technology Control Plan

- List of individuals that will be involved in the project including their citizenship.
- These individuals will be screened against denied parties listings
- Technical description of the of item/technology/equipment/software
- Physical security plan
- Identify export controlled data and technology
- Information Technology Security Plan

Certification Required

PI will be asked to sign the following statement:

I hereby certify that I have read and understand this certification. I understand that I could be held *personally liable* if I *unlawfully disclose*, regardless of form or format, *export-controlled information* to unauthorized persons. Finally, I agree to address any questions I have regarding the designation, protection or use of Export-Controlled Information to LSU's Director of Research Compliance.

International Travel and Export Controls

- Questions to ask – and answer.
- Where are you going?
- What equipment will be you taking with you?
- What will you be doing and who will you be working with?

Location is important

- What you take with you may be restricted depending on your destination
- Sanctioned or embargoed countries
 - Cuba, Iran, North Korea, Sudan or Syria
 - This list is currently changing
- You may need a license to take equipment with you and it is likely to be denied

What are you taking with you?

- Laptop, phone or digital storage device – that does not contain export controlled information or any export restricted software or technology. May contain information resulting from fundamental research.
- Items that may be export controlled include some GPS devices.
- License exception – TMP – temporary exports, may apply.
 - Retain physical possession or secure in an environment such as a hotel safe, bonded warehouse, or locked facility
 - Must be brought back within year.
- ITAR – always controlled. EAR – may be controlled.

What will you be doing?

Who will you be working with?

- Department of State, Department of Commerce and Department of Treasury all maintain lists of persons and entities that may be prohibited from export transactions. Complete Visual Compliance check.
- Presentations – limit your information to data that is published, publicly available, or that qualifies as Fundamental Research.
- Be aware – what is the actual end use of your knowledge? Are there ulterior motives? Do they offer to have you leave your equipment or materials with them? Military uniforms?

The I-129 Attestation

U.S. Citizenship and Immigration Services (USCIS) requires an export control determination as part of the I-129 application process for foreign national workers applying for certain categories of visas including H-1B. The attestation requires universities to have a compliance system in place to determine if a “deemed export” under EAR or ITAR is anticipated for the foreign national.

LSU Export Control Questionnaire

- Will the beneficiary be provided access to any third party-owned items, technical data or technology that is consider proprietary or confidential to the third party owner?
- Is the beneficiary's research project sponsored in whole or in part by either LSU or an external sponsor, including the federal government?
- Will the beneficiary be provided access to equipment specifically designed or developed for military or space applications?
- Will an item, information, or software to be shared, transmitted or transferred to the visa beneficiary be subject to publication restrictions beyond a brief review or identified as export controlled?
- Will the research results be taught, published or otherwise shared with the interested public?

Disclosing Foreign Engagements

- What is Foreign Engagement?
 - Employment with a foreign entity or government
 - Financial Support from a foreign entity or government (travel, lab access)
 - Research Support from foreign entity or government (talent program)

Disclosing Foreign Engagements

- Why should I disclose?
 - Export Control could be involved
 - Certain federal agencies are concerned about theft of intellectual property
 - LSU policies on outside employment and financial disclosures

Disclosing Foreign Engagements

- How to disclose?
 - PM-11 for outside employment
 - Significant Financial Interest disclosures
 - Externally funded travel disclosures
 - Current & Pending forms for NSF/NIH
- Disclose, Disclose, Disclose!