



**TEXAS A&M ENGINEERING
EXPERIMENT STATION**

Export Controls

**A brief introduction to
Export Control Laws and Regulations**

TEES Ethics and Compliance

Who regulates Export Controls?



Department of State
Directorate of Defense Trade Controls (DDTC)
International Traffic in Arms Regulations (ITAR)



Department of Commerce
Bureau of Industry and Security (BIS)
Export Administration Regulations (EAR)



Department of Treasury
Office of Foreign Assets Control (OFAC)
Embargoes and Sanctions on Restricted Entities

Department of State

International Traffic in Arms Regulations (ITAR)

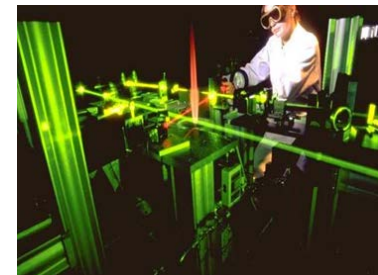


- Covers military items or defense articles on the USML
- Regulates goods and technology designed to kill or defend against death in a military setting, as well as defense services
- Includes space related technology because of application to missile technology
- Includes technical data related to defense articles and services



Department of Commerce Export Administration Regulations (EAR)

- Regulates items designed for commercial purpose but which could have military applications (computers, civilian aircraft, pathogens)
- Covers both the goods and the technology



Department of the Treasury Office of Foreign Assets Control (OFAC)

- Regulates the transfer of items/services of value to embargoed nations
- Imposes trade sanctions, and trade and travel embargoes aimed at controlling terrorism, drug trafficking and other illicit activities
- Economic sanctions focus on end-user or country
- Prohibits payments or providing “value” to nationals of sanctioned countries and certain entities



So...What is Being Controlled?

- Let's start with a definition of "Export"
 - Any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside the United States to anyone, including a U.S. citizen, of any commodity, technology (information, technical data, or assistance) or software/codes
 - "Export" also includes the concept of "**Deemed Export**"

Deemed Export

- **#1 Export Control Risk to Colleges and Universities**
 - The transfer of controlled technology or technical data to a foreign national on campus or anywhere else.
 - Can involve release of information by:
 - Tours of laboratories & visual inspection
 - Published research
 - Emails
 - Oral conversations



Foreign Influence

Agencies remind applicants and recipients that current and pending support/other support includes all resources made available to a researcher in support of and/or related to all of their research endeavors, including resource and/or financial support from all foreign and domestic entities.

- **DOE**- Directive O 486.1 (https://www.directives.doe.gov/directives-documents/400-series/0486.1-BOrder/@_images/file)
- **NIH** - Guide Notice NOT-OD-19-114 (<https://grants.nih.gov/grants/guide/notice-files/NOT-OD-19-114.html>)
- **NIH Frequently Asked Questions** - Other Support and Foreign Components (<https://grants.nih.gov/faqs#/other-support-and-foreign-components.htm>)
- **NSF** - 19-200 Dear Colleague Letter: Research Protection (https://www.nsf.gov/pubs/2019/nsf19200/research_protection.jsp)
- **DOD** - October 10 2019 - Dear Colleagues Letter (https://rso.tamus.edu/wp-content/uploads/2019/10/DOD_201910.pdf)

Why Should We Be Concerned?

9/11 changed many things:

- Top research universities became a focal point for U.S. government export control compliance
- There is a growing intersection of cutting-edge science, technology and engineering research with national security, foreign policy and homeland security
- Role of the research university is evolving to be global in scope and multidisciplinary
- U.S. export controls can create significant tensions with university policies of non-discrimination based on nationality and a free and open campus.



Consequences of EC Violations

- Severe criminal and civil noncompliance penalties and sanctions for **individuals** as well as institutions/corporations
 - Up to \$1M for institutions/corporations and up to \$500,000 for individuals
 - Up to 20 years in prison
 - Termination of export privileges
 - Suspension and/or debarment from federal government contracting
 - Loss of federal funds



Recent EC Violation Cases

- Dr. J. Reece Roth, University Researcher– charged with 15 counts of violating the Arms Export Control Act; sentenced to 4 years in prison (allowed access of controlled data to 2 foreign nationals and export US Air Force contract data on a trip to China) – Sentenced to 48 months in Prison
- Dr. Thomas Butler, University Researcher– convicted of 47 of 69 charges; Sentenced to 2 years in prison, \$15,000 fine for making fraudulent claims and unauthorized exports (plague bacteria)
- ZTE \$1.19 Billion (total fine)
- Schlumberger Oilfield Holdings Ltd. fined \$232.7 million
- Raytheon fined \$25 million
- Boeing \$15 million

Some Business Areas Subject to EC

- Research Projects and Contracts
 - Especially military, nuclear, outer space or dual-use projects
- Foreign Travel
- Shipping Items to Foreign Countries (What, Where, Re-Export?)
- Visiting Scholars and VIP Visitors (Foreign nationals)
- Collaborations with Foreign Universities, Governments or Corporations
- Disclosures of Invention



Fundamental Research Exclusion

- Basic and applied research at Universities is generally exempt from Export License requirements due to a Fundamental Research Exclusion. (NSDD-189. September 21, 1985 NATIONAL POLICY ON THE TRANSFER OF SCIENTIFIC, TECHNICAL AND ENGINEERING INFORMATION)
- The Fundamental Research Exclusion only applies to **technical data**. It does not exempt the University from license requirements on any **physical items**.

SRS' role in Export Controls

- The Fundamental Research Exclusion is void if the University (or TEES) accepts a contract with any
 - publication restrictions, or
 - restrictions on the participation of foreign nationals
- Some contracts contain troublesome clauses which impose these types of restrictions. TEES tries to negotiate the clauses out, to remain under the umbrella of the fundamental research exclusion as much as possible.
- If the sponsor will not remove the restrictions, a Technology Control Plan (TCP) and/or export control license(s) may be required, which could take some additional time and delay the project funds from being released.

Examples of Troublesome Clauses

- **DFAR 252.204-7000 Disclosure of Information** – creates a publication restriction
- **FAR 52.227-17 Rights in Data – Special Works** - prevents the release, distribution, and publication of any data originally produced in the performance of the award
- **ARL 52.004-4400** – requires approval of Foreign Nationals
- **AFMC 5352.227-9000 Export Controlled Data Restrictions** - requires an export license prior to assigning any foreign national to work on the project or allowing foreign persons access to the work, equipment or technical data generated by the project

DFARS 7012 Clause

- **DFAR 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting** – Not necessarily export control concern, but could be. It primarily relates to data security breaches, and imposes many IT Data Security controls which must be met.
- TEES has 30 days from the time the contract is signed to let the Federal Agency know our compliance status with these requirements.
- Kevin Gamache and TEES IT oversee compliance with these requirements.

CUI – “Controlled Unclassified Information”

- Executive Order 13556
- Controls many types of data including, but not limited to export controlled data and student financial records.
- Imposes many requirements on
 - Information Systems
 - Safeguarding information
 - Access and Sharing
 - Marking of Files and Documents
 - Controlled Environments
 - Destruction
- Kevin Gamache is currently the lead person overseeing compliance with the CUI requirements.

Thank you for your attention!

We'll be happy to answer any questions you may have.

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