

# **Export Control Laws Briefing**

**Academic Department Heads  
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# Export Control

- Transfer of controlled technology, information, equipment, or services
  - To a foreign person
    - Shipment
    - Visual inspection within or outside the U.S.
    - Written or oral disclosure

# Foreign Person

- Anyone not a lawful permanent resident of the U.S.
- Any foreign corporation or other entity or group that is not incorporated or organized to do business in the U.S.
- Any foreign government

# Overview

- Federal laws restrict the export of goods and technology
- Federal government has been placing emphasis on enforcement – especially universities
- The vast majority of university teaching and research falls under one, or more, of several exemptions
- We need to understand how to determine if a specific activity falls under an exemption:
  - Yes = no action needed
  - No = must gain export license

# Three Federal Departments

- EAR – Department of Commerce, Export Administration Regulations
- ITAR – Department of State, International Traffic in Arms Regulations
- OFAC – Department of Treasury, Office of Foreign Assets Control

# EAR

- Limit export or “deemed” export of dual-use items and information
- Legitimate commercial purpose
- Potential military applications
  - Particular individuals
  - Particular purpose
  - Particular countries
- E.g., computers, biologics, chemicals, software
- Commodity Control List (CCL) - 15 CFR 774 Supplement I

# ITAR

- Items and information of a military nature (e.g., weapons, encryption technology)
- Munitions Control List (MCL) - 22 CFR 121.1

# OFAC

- Enforces economic and trade sanctions against specific countries and individuals
- T7 Countries: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, plus Balkans, Burma, Liberia, Zimbabwe
- Focus on terrorists, narcotics traffickers, proliferation of weapons of mass destruction
- <http://www.treas.gov/offices/enforcement/ofac/>
- Prohibited activities (examples):
  - Conducting surveys and interviews
  - Engaging services to develop informational materials
  - Engaging persons to support research activities
  - Providing marketing and business services

# Export Controls

- Apply to the transfer of specified items or information to individuals or entities outside the U.S.
- Apply to the disclosure of certain information to foreign nationals inside the U.S. (“deemed” export)
- Apply to the offering of services involving controlled equipment or information to foreign nationals
- Apply to the provision of services or other transactions to certain countries or individuals on the embargo list

# Licenses

- A license is needed to export items (goods or technology) unless the action falls under an exemption
- Time required typically between 1.5 and 12 months after application
- Sanctions are severe:
  - Civil – fines and prison
  - Criminal – fines and prison
  - Administrative – loss of federal funding

# Exclusions

- Fundamental Research
  - Basic and applied
  - May include foreign nationals
  - Can be no restrictions on access by students or others
  - Can be no restriction on publication
  - Research carried out openly
  - Results are intended to be shared broadly in the scientific community
- Public Domain
  - Some data or information are already available in libraries, newsstands, bookstores, subscriptions, free web sites, or published patent applications
  - Such data or information may be part of a class, laboratory, conference, or seminar

# Exclusions (Continued)

- Teaching
  - ITAR exemptions include information of a “general scientific, mathematical or engineering” nature
  - But not technology or materials
  - EAR excludes education information released by instruction in catalog courses and associated teaching laboratories
  - You do not need a license to share information as part of a course
  - You can train foreign nationals on how to use most otherwise - controlled equipment is part of a class or class laboratory
- Employment
  - No license needed to share controlled technical information with a foreign person who
    - Is a full-time, bona fide university employee
    - Has a permanent address in the U.S. while employed and
      - Is not a national of a T7 country
      - Is advised in writing not to share controlled information with other foreign persons

# Shipping Equipment

- Equipment subject to ITAR may not be shipped without a license from the Department of State
- Equipment subject to EAR may require a license depending on:
  - Where it is being shipped
  - Whether exceptions apply (e.g., laptop for fundamental research under faculty researcher control)
- It is illegal for equipment to be shipped to a country subject to OFAC sanctions or embargo

# General Rule

- WPI including its faculty and employees may not export to foreign persons certain information and materials without a license unless an exclusion applies.
- While most teaching and research at WPI falls under an exclusion, it is important that we identify those that do not and gain a license before proceeding.
- WPI wishes to protect its fundamental research exemption
  - Negotiate elimination of clauses that restrict
    - Publication
    - Access
    - Participation

# Things to Watch For

- Restrictions in grants or contracts on publishing (e.g., review for other than IP determination)
- Language that we will abide by export control restrictions
- Restrictions on participation in research or teaching or to the disclosure of results
- Side deals between PI and Sponsor

# Compliance Plan

- Educate key academic administrators
- Establish training program for
  - Research Administration
  - Corporate and Foundation Relations
  - Technology Transfer
  - Shipping and Receiving
- Establish an awareness program for
  - Faculty (T, TT, adjunct, PP)
- Written procedures for reviewing proposals
  - Additional questions on submission form
  - Check list for ORA and CFR
  - Process to determine if exclusion applies, or else, license required
- Decision Process and Authority
  - Acceptance of projects that require a license, who decides?
- Document all decisions
- Designate a Responsible Officer

# Checklist

- Do any of the following apply:
  - Shipping equipment to another country?
  - Collaborating with colleagues in foreign countries?
  - Training foreign persons to use equipment?
  - Working with a country subject to boycott?
- Do the terms of the RFP or BAA require
  - Sponsor approval over publications
  - Sponsor approval of foreign person participation
- Does the Phrase “Export Control” appear anywhere?

# Categories – ITAR (Military)

- 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
- X - Protective Personnel Equipment

# Categories – ITAR (military)

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 - Reserved

XX - Submersible Vessels, Oceanographic and Associated Equipment

XXI - Miscellaneous Articles

# Categories – EAR (dual use)

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

# Case Study #1

*I plan to publish my telecommunications research results in a foreign journal. Do I need a license to send the manuscript to the publisher?*

**Telecommunications is in an EAR (dual use) category. However, the transaction is not covered by the EAR because the research results would be made public by the proposed action.**

# Case Study #2

*I teach a graduate course on solid-state lasers which is listed in our course catalog. Many of the students are foreign persons. Do I need a license?*

**No. Release of information by instruction in catalog courses and course laboratories of academic institutions is not subject to EAR.**

# Case Study #3

*Can I have a foreign graduate student work in my lab? Do I need a license?*

**Yes. A foreign graduate student may work in your laboratory but only on research that qualifies as “fundamental research.”**

# Case Study #4

*I am building a small satellite to be launched on a Russian rocket. Do I need a license?*

**Yes. This is equipment that will be launched into space and is, therefore, covered by ITAR. The research may well be exempt under the fundamental research exemption but the export of the satellite is not.**