Export Controls

Office of Research

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What are Export Controls?

U.S. federal 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.
What is an Export?

- Transfer of controlled technology, information, equipment, software or services to a foreign person in the U.S. or abroad by any means; e.g.,
  - actual shipment outside the U.S.
  - visual inspection in or outside the U.S.
  - written or oral disclosure
U.S. Export Controls and Responsible Agencies

- State Department
  - Inherently military technologies
  - International Traffic in Arms Regulations (ITAR)
- Commerce Department
  - “Dual-Use” technologies (primary civil use)
  - Export Administration Regulations (EAR)
- Treasury Department, Office of Foreign Assets Control (OFAC)
  - Administers trade sanctions program
Implications of Export Laws

- Applies to **ALL** activities, not just sponsored research!
- No effect on the majority of university research, however…
- *Potential* impact on:
  - Ability of foreign students to participate in research involving an export-controlled technology
  - Ability to provide services (including training on export-controlled equipment) to foreign nationals
  - Ability to send export-controlled equipment to foreign countries
“Deemed Exports”

- Laws prohibit the disclosure of controlled technical information by any method to a foreign national in the U.S. or abroad without a license from the federal oversight agency (Commerce, State, or Treasury).
- 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 Requirements Exemptions

Deemed Exports

One of the following must apply:

- “Public Domain” Exemption
  - ITAR, EAR
- Education/Teaching Exclusion
  - ITAR, EAR
- Employment Exemption
  - ITAR only
- Fundamental Research Exclusion
  - ITAR, EAR
“Public Domain” Exemption

No license is required if the information is:

- published in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public;
  - either free or at a price that does not exceed the cost of reproduction and distribution (EAR)
  - Sales at newsstands/bookstores and available without restriction (ITAR)
- readily available at libraries open to the public or at university libraries;
- in patents and open patent applications available at any patent office;
- released at an open conference, meeting, seminar, trade show, or other open gathering;
  - Unlimited distribution and generally accessible to the general public (ITAR)
- available in any form after approval by the cognizant U.S. government department or agency (ITAR); or
- available through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community (ITAR).
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.
Employment Exemption (ITAR only)

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

- **NOTE: even if permissible under ITAR, may not be exempt under EAR (dual-use items)**
**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.**”

- However, “**things**” (e.g. tangible items) and “**services**” (e.g. training) **cannot** be excluded under this exemption.
How to DESTROY the Fundamental Research Exclusion

- The University accepts any 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.

- “Side deals” between a PI and Sponsor
  - Also violates University policy
OUR STRATEGY

Protect fundamental research exclusion by eliminating contractual clauses that destroy our ability to claim the exclusion.
Providing Services to Foreign Nationals

- ITAR and EAR prohibit assisting and training foreign nationals anywhere in the design, development, use, testing, etc., of export-controlled equipment without a license from State or Commerce
  - Ex: Training on a fermenter having a capacity of 20 liters
Providing Services

- There are no clear exclusions or safe harbors from the requirement to obtain a license for foreign nationals to use controlled equipment, however....

- MU maintains that the Education Exclusion applies if the student uses the equipment as part of a program of instruction.
Providing Services

- OFAC prohibits the provision of services without a license to countries subject to U.S. sanction programs
- Website list of banned countries:
  - [http://www.treas.gov/offices/enforcement/ofac/sanctions/](http://www.treas.gov/offices/enforcement/ofac/sanctions/)
  - Currently: Balkans, Burma, Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sudan, Syria, and Zimbabwe
Providing Services

- Providing services includes, but is not limited to:
  - Conducting surveys and interviews in boycotted countries
  - Providing marketing, business, editing services to persons in boycotted countries
  - Creating new information materials at the behest of persons in a boycotted country
  - Engaging the services of persons in a boycotted country to develop new information materials
  - Working directly or indirectly with persons in a boycotted country to import into or export from the U.S. publication services, including editing services
    - *Simple “peer review” to determine if an article is worthy of publication is permissible, but substantial rewriting or revision would likely require a license.*
Shipment of controlled equipment outside of the U.S.

- A license is required to ship equipment controlled by ITAR to any foreign country.
- There are few exclusions or exceptions!
  - Obtaining a license is a lengthy process, often taking months to complete.
  - Notify the Office of Research as early as possible!
Shipment

- A license **may** be required to ship equipment out of the U.S. under the EAR depending on whether the equipment is controlled, where it is being sent and whether an exception applies.
  - A license may be required to ship software out of the U.S.! **Contact the Office of Research for assistance.**

- The process to classify equipment under the EAR is very tedious, detailed and time consuming.
  - **Contact the Office of Research early!**
**SHIPMENT**

- There is a presumption under OFAC laws that any and all shipments of equipment and provision of services to countries subject to U.S. sanctions/boycotts or persons in those countries are **ILLEGAL**.
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 MU faculty member.
  - 15 CFR Part 740.9
PENALTIES

ADMINISTRATIVE

- Termination of export privileges
  - EAR and ITAR
- Suspension and/or debarment from government contracting
  - EAR and ITAR
- Voluntary disclosure of violations serves as a “mitigating factor” in determining penalties
PENALTIES

Monetary: 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

Monetary: 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**

**MONETARY: OFAC VIOLATIONS**

- Criminal (willful) violations:
  - Fine up to $1 million for companies
  - Fine up to than $100,000 for individuals

- Civil violations:
  - Fine up to $55K for each violation by any person
License Example

- University archeologists desire to take GPS systems to France to use in training foreign colleagues:
  - GPS equipment is covered by EAR Category 7, Navigation and Avionics (ECCN Nos. 7A005, 7A105, and 7A994)
    - Two of those entries redirect the exporter to ITAR
  - GPS equipment is covered by ITAR Category XV, Spacecraft Systems and Associate Equipment
  - Exporter must evaluate the EAR and ITAR entries to identify the appropriate licensing authority and classification
  - If it is determined that licenses are needed, application must be made and approval received prior to packing the bags!
Accepting Projects with Export-Controlled Elements

- Does an export control on your project mean that you cannot pursue it? Absolutely not!
  - However, careful preparation will be key as acceptance creates compliance issues for individuals and the university.

- In deciding whether to accept an award that requires the institution to handle export-controlled information, consider whether the information is:
  - Central
    - likely rendering the entire project export-controlled
  - Tangential
Accepting Projects with Export-Controlled Elements

Examples of monitoring tools:
- Execute a nondisclosure agreement
- Require that the information be clearly marked “export controlled”
- Work with the PI to safeguard the information
- Have the PI sign a statement accepting responsibility for protecting the information
- Continued monitoring and communication throughout the project will be essential to ensure that no violations of export regulations occur.
How do I know if I need a License?
(a.k.a. Red Flags)

- Does your project involve:
  - Shipping equipment to a foreign country?
  - Collaborating with foreign colleagues in foreign countries?
  - Training foreign nationals in using equipment?
  - Working with a country subject to a U.S. boycott?

- Is the RFP marked “Export Controlled”?

- Is the sponsor demanding pre-approval rights over publications or the participation of foreign national persons?
If you answer yes...

- A determination must be made by MU as to possible license requirements
  - Contact the Office of Research!
- Please note!
  - If license is needed it takes considerable time and effort, and can be months in process
- Remember! These laws apply to all activities – not just sponsored projects!
Remember:

Protect the Fundamental Research Exclusion!

No restrictive clauses on publication or participation!

No side deals!
Thank You!

Questions?
Please contact the Office of Research Compliance
Phone: 882-9500  Fax: 884-8371
Email: mayj@missouri.edu

Additional MU Export Control Information
http://www.research.missouri.edu/complia/export.htm