

# Perspectives on Challenges/Problems in Export Control Compliance

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Regulations

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# Purpose

Brief overview of key challenges for Investigators and Research Universities.

To identify key concepts

The University of Texas at Austin provides detailed compliance and training information through the Office of Sponsored Projects (OSP)

[http://www.utexas.edu/research/osp/export\\_control/index.html](http://www.utexas.edu/research/osp/export_control/index.html)

# Export Controls in General

Developed countries have a common interest in controlling the international movement of arms, munitions, weapons of mass destruction, missile technology, nuclear reactor fuel and components, hazardous substances, and certain advanced technologies

Export Control laws and regulations are some of the tools used by the U.S. to comply with its international agreements and to meet its national security and foreign-policy goals.

# What Regulations Are applicable?

**EAR:** Export Administration Regulations i.e., “Dual Use” controls; U.S. Department of Commerce – Bureau of Industry and Security – controls over primarily commercial-off-the-shelf commodities, software and technologies – end-use, end-user and country of export focus.

**U.S. and Foreign Customs regulations.**

**ITAR- Military and Space:** International Traffic in Arms Regulations; U.S. Department of State – Directorate of Defense Trade Controls

**OFAC Economic sanctions and embargoes:** U.S. Department of Treasury - Office of Foreign Assets Control – Economic and trade sanctions primarily Cuba, Iran, North Korea, Russia, Sudan, and Syria

# Risk for Violations

Civil penalties up to \$500,000 per violation

Federal felony

Criminal fines and imprisonment

Debarment from federal contracting

These present significant concerns for faculty, Administrators, and students

# Do Export Controls Apply to Research Universities?

**Yes!**

Export control laws and regulations apply to everyone in the US and to US persons anywhere in the world.

# Have colleges and universities received any special considerations?

Yes!

**1985: National Security Decision Directive 189.** This directive establishes national policy for controlling the flow of science, technology, and engineering information produced in federally-funded fundamental research at colleges, universities, and laboratories.

**Fundamental research is defined as follows:**

"Fundamental research" means 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."

Dr. Ashton Carter's memo to the Secretaries of the militaries stating that NSDD 189 states US policy and should be followed."

**The Department of Defense (DoD) fully supports free scientific exchanges and dissemination of research results to the maximum extent possible. "**

# What is “Fundamental Research”?

Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly with the scientific community

No restrictions on publication (other than brief review for proprietary or patentable information)

No restrictions on the use of foreign citizens

No specific national security controls on the research or results

# Common Examples of Exports

Sending or taking equipment out of the US for a research project

Sending controlled technical data out of the US by email, text, fax, etc.

“Deemed Export” -- Discussing controlled technical data with a foreign citizen, whether in US or abroad. This is far from intuitive and creates confusion over what may be taught in the classroom and lab. The answer is not always clear.

“Defense Service” even publicly available information may be used in a controlled manner.

# Foreign Travel

Anything you hand-carry, pack in your luggage, or have shipped out of the US is an export.

Significant burden to faculty, staff, and administrators.

# Common Examples of Controlled Items

Anything intended for use in space, space launch, or for ground control of space craft or satellites

Advanced composite materials

Encryption software and devices

Sonar, radar, laser, y codeGPS, advanced computers and technology

Advanced electronics and components

# Technology that is not controlled

Information and technology arising during or as a result of Fundamental Research in science and engineering

Information presented in a catalog course (including associated teaching labs)

Information that has been published and is generally available to the public

# Academic Freedom

No restrictions on working with foreign research assistants or collaborators during fundamental research

No restrictions on information presented to foreign students in catalog courses and labs

No restrictions on working with foreign nationals using information that is published and in the public domain for educational purposes.

# Proposed revisions to the ITAR could restrict Fundamental Research Exemption

A project is not fundamental research if there are publication restrictions or restrictions on the use of foreign citizens or if there are national security controls

Proposed revision to the ITAR could be interpreted to mean that even a review for proprietary or patentable technology could remove a project from fundamental research.

The potential risk for violations and the complexity of the regulations impose of chilling effect on investigators.

# U.S. and International Sanctions

Iran, North Korea, Sudan, and Syria are subject to comprehensive sanctions.

Few lawful exports to those countries.

Significant restrictions on collaborating with researchers in those countries.

Moving target - still uncertainties on Cuba. Russia sanctions another level of complexity.

China, Libya, and others are subject to sanctions that prohibit export of all military items and technology as well as certain commercial items and technologies. Confusion arises because of the non-uniform coverage.

# A Goal

Work toward former Secretary Gates' objective of taller fences around smaller yards.

Truly sensitive technology should be controlled in accordance with National Security Decision Directive 189 and Dr. Ashton Carter's memo to the Secretaries of the Military Departments regarding Fundamental Research.

# Questions?

Can effective compliance can help assure protection of our national security and prevent further regulatory burdens.

What is workable within limited budgets?