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# Export Control Compliance Introduction

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# Introduction

- Export Control Laws
  - Restrict the release of commodities, software, technology, and information that may have a military, security, or strategic use
    - Applies to transfers out of country
    - Applies to in-country transfers
    - Applies to U.S. citizens wherever they are located
    - Applies to everyone in the United States





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# Export Control Regulations





# International Traffic in Arms Regulations (ITAR)

- Department of State
- Regulates exchange and security of defense articles, services and related technical data determined inherently military in character and identified on the U.S. Munitions List
- Protects U.S. defense technologies
- ITAR controlled items can be procured from commercial vendors





## Office of Foreign Assets Control (OFAC)

- Treasury Department
- Administers and enforces economic and trade sanctions and embargoes based on U.S. foreign policy and national security goals
- OFAC regulations are not directed at specific technologies, rather target the "end user" (certain foreign countries and individuals)
- Restrict transfer and exchange of items and services among sanctioned individuals, entities or countries
- Restrict relationships with or benefitting certain countries via OFAC's Sanctions Programs and Country Information list
- Restricts travel to certain countries
- Prohibit transactions with certain end users (in the U.S. or abroad) via OFAC's Specially Designated Nationals List



## Export Administration Regulations (EAR)

- Administered by the Bureau of Industry and Security (agency of the Department of Commerce)
- Regulates "dual use" articles, i.e., potentially commercial as well as military or security applications (basically everything)
- Controlled items and technology are identified on the Commerce Control List
- Includes the BIS entity list
- Commodity classification assistance is available via SNAP-R
- Online and in person training





# What is subject to the Regulations?

- Items in the United States
  - Nearly all commodities, software and technology in the U.S
- Some items located outside of the United States
  - U.S. origin items wherever located
- Activities of U.S. and foreign persons
  - Everyone in the United States
  - U.S. citizens abroad



## What does it mean to “Export”?

- An export can be any oral, written, electronic or visual disclosure, shipment or transfer of commodities, technology, information, technical data or assistance to:
  - anyone outside the U.S. including a U.S. citizen
  - a "foreign national" in the U.S. or abroad
  - a foreign embassy or affiliate located in the U.S. or abroad





# Who is a Foreign National?

A "Foreign National" is any person who is **NOT** a:

- U.S. Citizen
- U.S. Lawful Permanent Resident (Green Card)
- Protected Individuals:
  - Person Granted Asylum
  - Person Granted Refugee Status



# Deemed Exports

- The EAR and ITAR control disclosure of technology
- The Deemed Export Rule is used to control disclosures of technology:
  - *The release of technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national*



# How are Deemed Exports Disclosed?

Exports can be disclosed via the following actions:

- Telephone discussions
- E-mail communications
- Fax
- Computer/network access
- Face-to-face discussions
- Training sessions
- Tours which involve visual inspections
- Hosting of foreign scientists



# How Does One Export Items Subject to the EAR or ITAR?

- Licenses
  - Dept. of Commerce – EAR controlled items & technology
  - Dept. of State – ITAR controlled items & technical data
  - Dept. of Treasury – Financial transactions, travel, and other transactions with sanctioned entities

*\*Applications must be made through the Export Control Office*

- General Licenses
- Exclusions, exemptions (ITAR) and exceptions (EAR)



## Exclusions

Although the regulations cover nearly everything leaving the U.S., there are certain exclusions from the regulations, including for:

- Fundamental Research (EAR & ITAR)
- Educational Information (EAR)
- Publicly Available/Public Domain (EAR/ITAR)



# Definition of Fundamental Research

- ‘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. (National Security Decision Directive 189)



# Fundamental Research

- Research results that qualify as Fundamental Research are NOT subject to export controls
- Known as the Fundamental Research Exclusion (FRE)
- In order to qualify as Fundamental Research, the research must be conducted free of any publication or dissemination restrictions and without any national security related access restrictions
- Applies only to the dissemination of research data and information, not to the transmission of material goods provided



## Loss of FRE

- FRE is destroyed by any clause – whether sponsorship is federal, state, private, nonprofit or other – IF the clause:
  - Gives the sponsor the right to approve or disapprove publications
  - Restricts participation in conduct of research: 1) for proprietary or national security reasons (EAR); or 2) and is funded by the U.S. Government (ITAR)





## License Exceptions (EAR)

License exceptions allow exports under certain enumerated and specific circumstances. Examples:

- Temporary exports (TMP)
- Baggage (BAG)
- Gift parcels and humanitarian donations (GFT)
- Consumer communication devices (CCD)
- Servicing and replacement of parts and equipment (RPL)

*\*Use of license exceptions must be reviewed and approved by the Export Control Officer*

*\*Note on ITAR exemptions and general licenses: contact the Export Control Officer*



# Penalties for Violations & Non-Compliance

## Administrative Penalties:

- Termination of export privileges
- Suspension and/or debarment from government contracting
- Substantial monetary fines

## Criminal and Civil Penalties:

- Willful violations (Criminal)
  - Can include prison time, fines, both
- Levied against individuals and organizations



Voluntary disclosures serve as a “mitigating factor”



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# Export Control Management at Cornell





# General Principles

- Each department/individual is responsible for compliance
- When in doubt, ask the Export Control Officer



# International Travel

- The Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions, and embargoes based on U.S. foreign policy and national security concerns.
  - OFAC makes travel to certain destinations illegal without a specific or general authorization.
- Travel to Iran, Cuba, North Korea, Syria, Sudan, Crimea Region of the Ukraine, and Venezuela must be reviewed and approved by the Export Control Officer.
- Cornell's International Travel Registry (<https://travelregistry.cornell.edu/>)
  - Mandatory for everyone traveling internationally
- Cuba-specific process (<https://global.cornell.edu/travel-cuba>)
- Case example



# Items Taken Abroad

- Identify items and technology which may be exported via shipping or hand carry to the foreign destination. This is still considered an export
  - Items such as commercial software and encryption code are subject to export control laws
- License exception TMP is available for foreign travel with Cornell owned laptops and other specified items (EAR)
  - Only temporary exports used as a 'Tool of the trade'
  - Restrictions:
    - Return in 1 year
    - Must retain effective control over the item(s)
    - Carry TMP letter found on Cornell's export control site
    - Not available for travel to sanctioned countries
    - Travel to China, Russia and Venezuela requires additional filing
- If possible, consider taking loaner devices
  - IT@Cornell's High Risk Travel Loaner Program:  
<https://it.cornell.edu/highrisktravel>



# Proprietary Information

- Third Party Information
  - Not protected by the FRE
  - Case Example
  - Proprietary technical information (technology for the development, design, production, or use of a controlled item) should always be treated as controlled – meaning access by certain foreign nationals in the U.S. is prohibited
- Actions
  - Work with Export Control Officer and your Grant and Contract Officer to determine if you are receiving controlled information, what the level of control is, and what the appropriate security measures are
    - A technology control plan will be required for any controlled information stored at Cornell
  - Minimize the receipt of proprietary information



## Restricted Party Screening

- What is it?
- Why do we screen?
- Who is screened?
- Lists Screened?
- What departments perform screening?





# Visitors – Best Practice

- PIs should know who is in their lab at all times.
- Records should be kept of visitor's name, affiliation, date, and purpose of visit.
- All lab visitors and their current affiliation should be screened using the Visual Compliance software tool.
  - Screening can be done by department HR representative or the Export Control Officer.
- Visitors cannot have access to any proprietary, confidential, or controlled information.
  - Ensure that any of the above is secured and out of sight.



OFAC



## International Shipments

- Contact the Export Control Officer as early as possible to determine whether or not a license is needed (*30-60 day turnaround time for standard licenses*).
- Customs Agent Mohawk Global Logistics has been assigned Power of Attorney to act as Cornell's agent in expediting and clearing shipments leaving and entering the United States.
  - Web address: <http://www.mohawkglobal.com>
  - Phone: 315-455-3003 Fax: 315-455-3032
  - E-mail: [info@mohawkglobal.com](mailto:info@mohawkglobal.com)



## Country Specific Resources

- Engagement with China FAQ: .  
<https://global.cornell.edu/resources/engagement-china-faq>
- Iran Sanctions Guidance Document:  
[https://researchservices.cornell.edu/policies/export-controls-iran-sanctions-guidance-document#footnote1\\_myfk6j7](https://researchservices.cornell.edu/policies/export-controls-iran-sanctions-guidance-document#footnote1_myfk6j7)



# Questions?

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