



The Fundamentals of Export Controls

April 18, 2019

Today's Topics

- Basics of export controls
- Key terms and concepts
- Export controls at OU
- Importance of compliance



What are Export Controls?

- Purpose: Advance U.S. national security, foreign policy, and economic interests
- Three government agencies administer the majority of export control regulations:
 - Department of Commerce
 - Department of State
 - Department of Treasury
 - An export license (express written permission from the U.S. government) may be required prior to export
 - Licenses may be denied, granted with provisos, revoked at any time or may be unavailable

What are Export Controls?

- The U.S. government restricts the release of certain items, information, technology, and software to foreign nationals in the U.S. and abroad
- Penalties for violations are severe
 - Fines, jail time, denial of export privileges
 - Can be levied against the individual as well as the institution

Export Administration Regulations

“EAR”

- 15 CFR 730-774 - Department of Commerce regulations
- Very broad jurisdiction over “dual use” items and technology
- Controlled items, technology and software are listed on the Commerce Control List (CCL) and are identified with an Export Control Classification Number (ECCN)
- Narrow license requirements

International Traffic in Arms Regulations “ITAR”

- 22 CFR 120-130 - Department of State regulations
- Narrow jurisdiction over defense articles, technical data and defense services
- Defense articles are found on the United States Munitions List (USML) in one of twenty one Categories
- Very restrictive, licenses generally required for all foreign national involvement

Office of Foreign Assets Control “OFAC”

- 31 CFR 500-599 - Department of the Treasury through the Office of Foreign Assets Control (OFAC) is responsible for administering economic sanctions
- Exports to, imports from and interactions with individuals located in Cuba, Iran, N. Korea, Sudan and Syria are extremely regulated
 - Collaboration, travel, financial transactions could require a license or qualification for a general license may be available

OU's Export Control Policy

The University of Oklahoma is committed to fully complying with all U.S. laws and regulations. Each employee is expected to support this commitment and is responsible for being aware of his or her obligations and addressing them in a prompt and pro-active manner.

Under no circumstances should the export of controlled commodities or information take place contrary to U.S. export control regulations.

Sponsorship of University operations/functions by any agency of the U.S. federal government does not mitigate, supersede, or remove the University's responsibility to adhere to U.S. export control laws.

Any person with knowledge of a violation or noncompliance shall immediately report the circumstances surrounding the activity to the Office of Export Controls.

About the Office of Export Controls (OEC)

- OU is committed to fully complying with all U.S. laws and regulations, including “export controls”
- The OEC handles the legal responsibilities that stem from research or other activities subject to national security-based regulations
- We do this by conducting training, screening research, physical exports and other University activities for export control issues and obtain licenses when necessary

What's Regulated?

- Physical exports
 - Any items, materials, equipment sent out of the U.S.
- Deemed exports
 - Confidential/proprietary technology or technical data
 - Once a decision is made to maintain technology as proprietary it becomes subject to export control regulation
- Defense services
 - Interactions with foreign military units and forces, regular or irregular
- Exportation of services to certain countries
 - Cuba, Iran, North Korea, Syria, Sudan
- Transactions with restricted parties
- Prohibited end uses (weapons proliferation)
- Antiboycott activities

Exempt Information and Activity

- **Published information**
 - Available to the public, generally in any form, without restrictions upon further dissemination
- **Educational information**
 - Released by instruction in catalog course or teaching lab of an academic institution (EAR)
 - General scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities (ITAR)
- **Information resulting from fundamental research**
 - Non proprietary basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community
 - Distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons
- **Information contained in certain patent applications**
 - Application, or an amendment, modification, supplement or division of an application that is authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5 (EAR)
 - **NOTE: These terms and concepts are defined and applied differently under the EAR and the ITAR. Generally, the ITAR is more restrictive.**

How does something become “export controlled”?

Generally, through:

Controlled items or technologies	Destination	End Use	End User
<ul style="list-style-type: none">• Subject to regulation and found on a control list (CCL or USML)• Physical exports are <u>always</u> subject to regulation	<ul style="list-style-type: none">• Especially: Cuba, Iran, North Korea, Sudan, Syria	<ul style="list-style-type: none">• Weapons proliferation, nuclear technology, acting with knowledge of a violation	<ul style="list-style-type: none">• Restricted parties, foreign military units or forces

Controlled items/technology?

Two-step review process:

1. Subject to regulation, **AND**
 - Confidential, proprietary, subject to publication restriction (i.e. approval required) national security restrictions, physical exports, etc.
2. Found on a control list
 - Commerce Control List (CCL)
 - If on CCL, “export controlled”
 - Items/technologies described in Export Control Classification Numbers (ECCN)
 - Most commercial items are designated EAR99
 - United States Munitions List (USML)
 - Defense articles and technical data
 - Export license from US gov’t almost always required

Controlled items or technologies

- Subject to regulation and found on a control list (CCL or USML)
- **Physical exports are always subject to regulation**

Interactions with individuals *in a sanctioned country?*

- Cuba, Iran and Sudan are heavily sanctioned
- Interactions with individuals located in these countries may be regulated as a “service of value” and may require a license from the Treasury Dept. (*occasionally* you can qualify for a general license)
- An OFAC license is required to export and/or import items not found on either the CCL or USML such as scientific samples and that are not normally subject to export control regulations otherwise.

Destination
<ul style="list-style-type: none">• Especially: Cuba, Iran, North Korea, Sudan, Syria

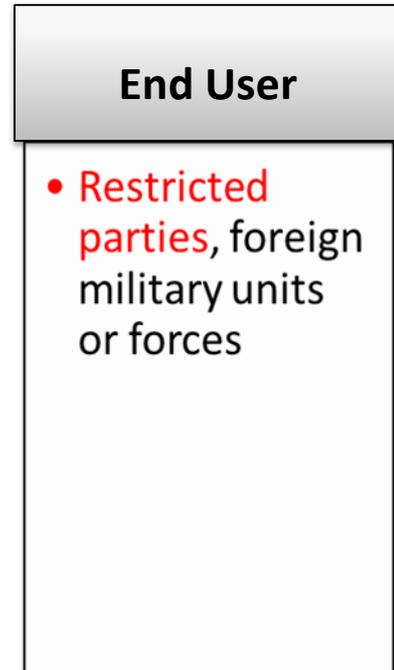
Prohibited end use?

- An export license from the Department of Commerce is required prior to performing **any** contract, service or employment that will directly assist in the design, development, production or use of missiles in or by certain countries, including China, Israel, Saudi Arabia
- Same requirement applies to chemical or biological weapons in or by any country
- “Knowledge” that circumstance exists or an awareness of a high probability of its existence or future occurrence
- “Self-blind” or cutting off the flow of information is prohibited
 - For example, asking a colleague to refrain from discussing actual end-use, end-user and ultimate country of destination

End Use
<ul style="list-style-type: none">• Weapons proliferation, nuclear technology, acting with knowledge of a violation

Restricted parties

- Lists maintained by the U.S. Government of individuals and entities whose presence in a transaction may require an export license, or may be prohibited altogether
- Individuals and organizations that have been involved in, are involved, or pose a significant risk of being involved in activities that are contrary to national security or foreign policy interests of the United States
- Generally, the OEC will advise against pursuing agreements, research activities, hosting individuals from or collaborations with restricted parties
- Examples of Parties The OEC screens:
 - Research Sponsors
 - Foreign collaborators
 - Consignees
 - Visiting scholars
- The presence of a foreign military in a transaction can trigger export control regulations



Key Terms and Concepts

- 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.

Key Terms and Concepts

- Deemed Export
 - The release of export controlled technology or software to a foreign national in the U.S.
 - “Deemed” to be an export to the foreign national’s country
- Export License
 - Specific authorization from the U.S. government to engage in an otherwise prohibited activity
 - The OEC applies for licenses on behalf of OU

Key Terms and Concepts

- Foreign National
 - Anyone who is not a U.S. citizen by birth or naturalization, a green card holder or protected individuals under the INA
 - OU cannot verify or provide this info absent law, regulation, executive order or government contract
 - Export controls do not impose requirements on recruitment, selection, employment, promotion or retention of foreign nationals

Key Terms and Concepts

- Technology/Technical Data
 - Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation. (ITAR)
 - Specific information necessary for the “development”, “production”, or “use” of a product. The information takes the form of 'technical data' or 'technical assistance'. (EAR)

Key Terms and Concepts

- Technology Control Plan “TCP”
 - Written procedures to protect export controlled technology
 - Limits researchers’ ability to freely share export controlled technology
 - Internal to OU
- Antiboycott Compliance
 - Laws that discourage and in some cases prohibit furthering or supporting the Arab League boycott of Israel
 - Refusing to do business with or in Israel or with blacklisted companies

Key Terms and Concepts

- Defense Service
 - The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles
 - Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice

Key Terms and Concepts

- “Specially Designed”
 - Certain items are more controlled if they are “specially designed” for a particular purpose or to meet a certain threshold.
 - However, if the technology is developed with knowledge that it will be used as a general purpose commodity or in low-level or non-military technologies then it is not “specially designed”.
 - Must be able to document that an item is not “specially designed”. Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts.
 - OEC reviews for “specially designed”.

Export Control “Triggers”

- Publication Restrictions
- Foreign National Restrictions
- Confidential/Proprietary/Non-Disclosure Language
- References to export controls
- Controlled Unclassified Information or Classified

Export Controls and OU

- Physical Shipments
- Proposals & Awards
- Agreements:
 - NDAs, CAs, PIAs, MTAs, Licensing, Service/Consulting, Data Use, Sponsored Research, Terms & Conditions
- Disclosures/Inventions
- Purchases
- Travel
- Visas
- Restricted Party Screenings
- Record Keeping
- Anything you have questions about!

Importance of Compliance

- U.S. law and regulation
- OU policy
- Penalties are severe and can be levied against the individual and/or the institution
- Export transactions not screened by the OEC will result in personal criminal/civil liability

Thank you!

You are a very important part of OU's export control compliance!

Your assistance is appreciated!



Questions? Concerns?

You can always contact us!

Mallory Day

5-7101

malloryday@ou.edu



Or



Office of Export Controls

5-7843

<mailto:export@ou.edu>