The information contained in these slides reflects University of Illinois policies and UI’s interpretation of export and trade regulations. It may not be consistent with other organizations’ interpretations and policies. In addition, the information changes from time to time. UI users - Please confirm with your campus export control officer that this power point presentation is the most recent version.

If you see information in this power point that you believe is incorrect or out of date, please send an e-mail to: ketherid@uillinois.edu
Overview

- Fundamentals of U.S. Export Controls and Trade Sanctions

- Application to University activities - examples
  - Deemed Exports – Research on campus, Purchasing
  - Actual Exports – International Travel and Research, Shipping
Fundamentals of U.S. Export Controls and Trade Sanctions

- What is an export?
- U.S. Export Regulations: the ITAR and the EAR
- Other restrictions on transfers
- Exclusions and exemptions from export controls
- Licensing and Penalties
Fundamentals of U.S. Export Controls and Trade Sanctions

What is an Export?

An export is a *transfer* of *export-controlled* items, information or assistance out of the U.S., or within the U.S. to a *non-U.S. person* (a “deemed export”).

Key elements:
- *Transfer*
- *Export-controlled*
- *Non-U.S. person*
At bottom, an export is a type of transfer. Easy to see that something leaving the country, whether physically or electronically, is an export controlled transfer -- but so is a disclosure of controlled information to a non-U.S. person here in the U.S. Same for providing assistance relating to controlled items or information. Restrictions on information may differ from restrictions on tangible items, as you will see later.

Software is treated as an item or information depending on its form. E.g., source code is “information.” Executable software programs are items.
Disclosing U.S. export-controlled information to a non-U.S. national is deemed to be an export to the person’s home country.

‘Home country” is where he/she is a citizen or permanent resident.

The deemed export concept applies to information, not items.

Many U.S. universities face deemed export issues due to large non-U.S. national student populations.
What is export-controlled? Whatever is controlled under the export regulations. For our purposes, that means the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). The ITAR are administered by the State Department and the EAR are administered by the Commerce Department. They cover things that originated in the U.S. (wherever they may be now), and things that are in the U.S. (wherever they came from).
The ITAR govern things that are “inherently military” and space-related.

Part of the ITAR is a list of what is covered – the USML. Basically we are talking about items that can cause or defend against death in a military setting, and related information and software. And space-related items and information.

The ITAR also govern things not on the USML, if they have a “significant military application.”

ITAR controls are stringent. Usually no non-U.S. persons may have access without a license.
The EAR govern commercial items, including “dual use” items and information, where there is a commercial use and also a possible military or security application. Note – “commercial” is basically in contrast to “military” – doesn’t mean it has to be for sale or saleable.

Like the ITAR, the EAR include a vast, detailed list of things that are covered – the Commerce Control List. Anything not on the CCL is covered by a catch-all category called EAR 99. If you think of the ITAR and EAR as buckets, the ITAR bucket is smaller – again, covering “inherently military” things and space-related items and information.

The EAR is a huge bucket that catches everything that isn’t caught by the ITAR or other specialized regulations. Depending on the item, EAR controls can be not so stringent or as stringent as ITAR controls.
The information on this slide is current as of 6/30/13.

There are other agencies and laws regulating transfers. OFAC regulates transfers of value. It mostly focuses on end users and countries of concern. OFAC maintains a long list of persons and entities of concern. OFAC also administers trade sanctions and embargoes focusing on a small number of countries – especially what we call the T5 countries. The controls are narrowly focused, but if your activity is controlled by OFAC, you almost surely will need permission (a license) to do it.

Also note the examples of other agencies and laws that control certain types of exports.
There are exclusions from export controls. Three important exclusions that both the ITAR and the EAR have are shown here. Think of these as holes in the buckets. The OFAC bucket is small and has few and tiny holes. The ITAR bucket has a few more holes. The EAR bucket has more holes and bigger holes.
The ITAR and EAR both have a “Fundamental Research Exclusion” (“FRE”). The concept is that information resulting from fundamental research should be excluded from export controls.

Please study this definition carefully. It is important to get this firmly fixed in your mind.

Note – the FRE applies to information, not items, and does not apply to strong encryption source code. (“Strong” encryption source code meets a specific technical description under the EAR.)

Under the ITAR, the information must be generated in the U.S. Under the EAR, there is more flexibility - the key is the intent and freedom to publish. Note “ordinarily.”
Most University research is fundamental research, but you can lose the exclusion if the contract says the research or results are export controlled, or you can lose it by accepting restrictions like publication approvals. If a sponsor can prevent you from publishing, your research no longer fits the definition. It’s not seen as research where the results are ordinarily published.

Note that it is okay to give the sponsor a time-limited publication review to screen for potentially patentable information or for the sponsor’s confidential information. Doing so does not cause the loss of the FRE.
Another big exclusion under both the ITAR and EAR is for information ALREADY published. “Published” means publicly disclosed in a way that is stated in the regulations – not necessary to appear in a scholarly publication. Note that encryption source code may not be eligible. The FRE is for information ordinarily published but not published yet.

Some of the ways the regs consider info to be published:
Libraries open to the public – including most University libraries
Bookstores – at cost not exceeding reproduction and distribution and reasonable profit
Free websites – where you can download without the host’s knowledge or control
Conferences, etc. – Under the ITAR, must be in the U.S.; under the EAR, anywhere. Reasonable fee, attendees may take notes and leave with their notes.
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<th>Fundamentals of U.S. Export Controls and Trade Sanctions</th>
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<td>Educational Information Exclusion</td>
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- **ITAR:** General science, math and engineering commonly taught at schools and universities (focus on subject matter)

- **EAR:** Information conveyed in courses listed in course catalogues and in their associated teaching labs of any academic institution (focus on venue)

- Not applicable to strong encryption source code
If the information is not excluded (didn’t fall out through one of the holes in the bucket) and especially if it’s EAR-controlled, there’s a second tier analysis to do because even though it is export controlled, it still might not require a license. The EAR are full of license exceptions and exemptions. License exceptions “TMP” and “BAG” cover items and info temporarily taken abroad as tools of trade and for personal use, respectively. The ITAR have a few exceptions; one useful one is the “Bona Fide full time Employee” exemption (can disclose unclassified technical data to full time non-U.S. national employees in U.S. provided you have notified them in writing about not re-exporting).
Unless exclusions or exemptions/exceptions apply, a license from Commerce or State may be required to transfer controlled items, information or assistance abroad, or to non-U.S. nationals in the U.S.

Even if exclusions or exemptions/exceptions apply, a license from OFAC may be required (e.g., due to country sanctions or online list).

If required, a license must be obtained before the transfer is made. Contact your campus export control officer at least 4 mos. in advance.

Many universities do not apply for export licenses for non-U.S. national student researchers. Instead, other solutions are found. E.g., the award is declined or a technology control plan is put in place to allow a project to proceed with restrictions on access.
In summary, there are controls attaching to activities of U.S. persons and U.S. items and information, wherever they are. There are controls on things in the U.S., regardless of where they came from. The export regulations have lists of items they control, and things not on the lists are also controlled if they fit within the general arena of the controls. There are controls targeting the recipients, and also targeting certain end uses.

**BUCKETS:**

**OFAC** – small (specific persons, entities and countries); few and tiny holes; if you fall in you need a license for whatever you want to do. **ITAR** – larger but still fairly small; some holes; if you are in, restrictions will apply to all FNs. All countries are prohibited without a license from State. **EAR** – very large, but more holes. Even if you are still in, depending on the item and the destination country you might not need a license.
Penalties for Violation

- Individuals and organizations both can be fined
- Individuals can be jailed for knowing or willful violations
- Maximum fine per criminal violation currently reaches $1M for individuals and $1M for entities (EAR, OFAC and ITAR)
- Less for civil violations, but still enormous (e.g., up to $500K per ITAR violation)
- Other possible consequences: debarment from government contracting and licensing; seizure or forfeiture of goods; deportation of involved foreign nationals; damage to reputation of University and individuals

This slide was updated on 6/30/13.

**EAR - Criminal:**
- For University: Up to $1M (IEEPA – 50 U.S.C. 1705(c), since EAA is in lapse)
- For individuals: Up to $1M or up to 20 years in jail, or both (IEEPA – 50 U.S.C. 1705(c))

**EAR – Civil/Administrative:** Up to $250K or 2 times the value of the transaction, whichever is greater (IEEPA - 50 U.S.C. 1705(b))

**OFAC - Criminal:**
- For University: Up to $1M (IEEPA – 50 U.S.C. 1705(c))
- For individuals: Up to $1M or up to 20 years in jail, or both (IEEPA – 50 U.S.C. 1705(c))

**OFAC - Civil:** Up to the greater of $250K or 2 times the value of the transaction, whichever is greater (IEEPA - 50 U.S.C. 1705(b))

**ITAR – Criminal (willful):**
- For University: Up to $1M per violation (22 U.S.C. 2778 (c))
- For individuals: Up to $1M per violation and up to 20 years in jail, or both (22 U.S.C. 2778 (c))

**ITAR – Civil:** Up to $500K per violation (22 U.S.C. 2778(e))
Application to University Activities

- Deemed export issues – campus research; purchasing (esp. software); other sponsored or revenue generating activities; I-129 attestations (visa); non-U.S. national visitors

- Actual export issues – international travel; shipping; tech transfer; international research (incl. non-U.S. sponsors) and other UI business abroad
The materials described above are updated from time to time. Please check with your campus export control officer to make sure you are accessing the latest versions of the materials.