

# EXPORT CONTROLS OVERVIEW

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# Synopsis

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- ❑ Definitions (ITAR/EAR/BIS/OFAC, etc.)
- ❑ Export Control Regulations
- ❑ Export Control Exemptions
- ❑ Significance on University Research
- ❑ Commerce Control List (ECCN/EAR99)
- ❑ Non-Compliance Consequences (case examples)
- ❑ Best Practices
- ❑ Q & A

# What is an Export?

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“Release” or transfer of items out of the United States. (EAR 734.2 (b))

- Tangible items e.g. equipment
- Technology
- Software
- Source code
- Technical data or information
- Defense articles or
- services

.....to a foreign country *or to a foreign person in the U.S.*

- **Visual inspection by a foreign person in the US or abroad of controlled technology**

# What are Export Controls?

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A set of *federal laws & regulations*

Export control laws regulate the transfer of **commodities, technology, information, and software** considered to be strategically important to the U.S. in the interest of national security, economic, and foreign policy concerns

Concerns shipments/transfers *out* of the U.S. & transfers to foreign nationals *within* the U.S. (“**Deemed Export**”)

# Closer Look at Deemed Export

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A “deemed export” is an export of technology or source code to a **foreign person** in the U.S.

Examples of a deemed export of technology or source code:

- *Visual inspection of controlled technology*
- *Oral exchange of technical information*
- *Guidance is given on the practice or application of a technology*

# Foreign Person

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*The definition of foreign person includes:*

- any foreign government,
- foreign corporation or organization that is not incorporated or organized to do business in the U.S., and
- anyone who is not a U.S. citizen or lawful permanent resident (a green card holder).

# Export Control Regulations

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Three major Export Control regulatory schemes imposed by the US Government to protect national security interests and promote foreign policy objectives are:

- *The International Traffic in Arms Regulations* (ITAR) administered by the U.S. Department of State;

[http://pmddtc.state.gov/itar\\_index.htm](http://pmddtc.state.gov/itar_index.htm)

- The *Export Administration Regulations* (EAR) administered by the U.S. Department of Commerce;

<http://www.bis.doc.gov/>

- The *Office of Foreign Asset Control* (OFAC) administered by the U.S. Department of Treasury

<http://www.treas.gov/offices/enforcement/ofac>

# Closer Look at Regulations

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## *ITAR*

Regulates Export and Licensing of Single-Use Defense Articles (military and space applications)

Controlled Items List: U.S. Munitions List (USML)

Examples: missiles, military armour, certain chemical agents, naval technology, satellite/spacecraft technology, ammunition, explosives

## *EAR*

Regulates Export and Licensing of Dual-Use Commodities (commercial and military applications)

Controlled Items List: Commerce Control List (CCL)

Examples: laptops, smart -phones, certain drones, certain navigation systems, infrared cameras, lasers, biological agents



# Closer Look at Regulations

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## OFAC

Regulates Licensing of transactions involving *sanctions and embargos*

Comprehensive and Selective Sanctions may apply to:

- Countries
- Companies
- Individuals

Current list of comprehensively embargoed countries/territories:

- North Korea, Iran, Cuba, Syria, Sudan, Russia, following regions of Ukraine -- *Crimea, Donetsk and Luhansk*

## Export Controls may apply to the following

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- Shipment of items to location outside of the U.S.
- Travel to certain sanctioned or embargoed countries for research and teaching
- Transfer of export controlled technical data to persons located outside of the U.S.
- Sharing of export controlled scientific or technical information with foreign nationals within the U.S. (“**Deemed Export**”)

# Export Controls at a University

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## Fundamental Research Exclusion

- Basic and applied research in science and engineering, where the resulting information is *ordinarily published* and *shared broadly* within the scientific community.
- *No restrictions* on publications of scientific and technical information resulting from the project or activity

## Education exclusion

- ITAR: information concerning general scientific, mathematical, or engineering principles *commonly taught in schools, colleges, and universities*
- EAR: information released by instructions in *catalog courses and associated teaching laboratories of academic institutions*

## Public Domain Exclusion

- Published information that is generally accessible to the public does not require a license

# Significance of Deemed Export Rule on University Research

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## *If export controls apply and license is required*

Have to obtain license before export-controlled item/information or service can be shared abroad or on US campus with foreign national participating in the research

### What is a service?

- ❑ Assisting a non-US person in developing an ITAR item - Includes design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, use
- ❑ A service does not need to involve ITAR to be illegal. Assisting individuals normally resident in sanctioned countries or on a denied parties list can be an illegal service. Even inviting a speaker from a sanctioned country to a conference you are organizing can be a prohibited “service.”
- Teaching foreign collaborators how to use controlled items in research (“defense service”)

# Export Controls - Why should I care?

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- Inviting a speaker from a sanctioned country to a conference hosted by the University
- Serving on an advisory board of a foreign university
- Conferences where previously unpublished research will be presented or discussed: who can participate, co-sponsor
- Travel overseas
- Overseas collaborations
- Transfers of research equipment abroad

# When Export Controls are triggered...

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Export controls are complicated! The regulations contain several moving “moving parts” that require detailed analysis on a case-by-case basis.

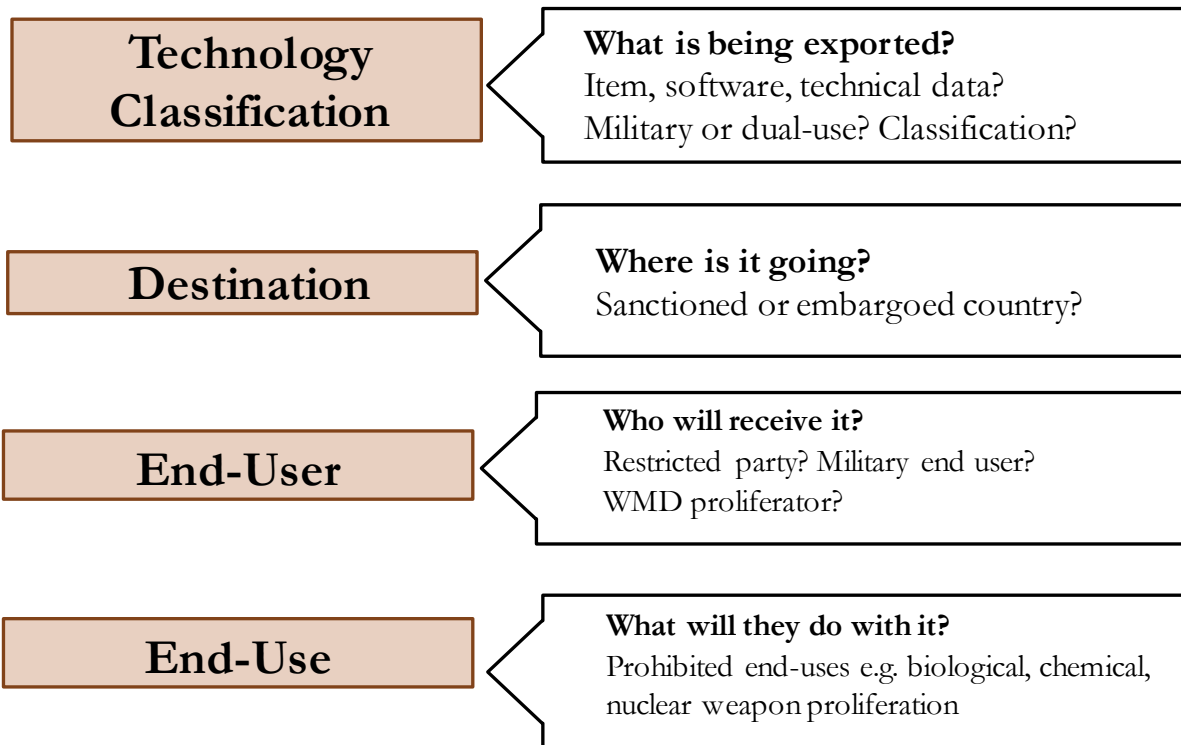
Determine if license exceptions apply (requires detailed analysis; may need to involve faculty; may reach out to peer institutions; can take several days)

Apply for licenses

- **ITAR** – *Registration with the Department of State*
- **EAR** – Department of Commerce (can take 1-3 months)
- **OFAC** – Treasury (lengthy process: can take 3-6 months)

## Four Elements of U.S. Export Controls

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# COMMERCE CONTROL LIST

## Commerce Control List Categories Five Product Groups

0	<b>Nuclear Materials, Facilities And Equipment (and Miscellaneous Items)</b>
1	<b>Materials, Chemicals, Microorganisms and Toxins</b>
2	<b>Materials Processing</b>
3	<b>Electronics</b>
4	<b>Computers</b>
5	<b>Part 1 -- Telecommunications and Part 2 -- Information Security</b>
6	<b>Sensors and Lasers</b>
7	<b>Navigation and Avionics</b>
8	<b>Marine</b>
9	<b>Aerospace and Propulsion</b>

A	<b>End Items, Equipment, Accessories, Attachments, Parts, Components, and Systems</b>
B	<b>Test, Inspection and Production Equipment</b>
C	<b>Materials</b>
D	<b>Software</b>
E	<b>Technology</b>

If your item falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as **EAR99**. **EAR99** items generally consist of low-technology consumer goods and do not require a license in many situations. However, if you plan to export an EAR99 item to an embargoed country, to an end-user of concern, or in support of a prohibited end-use, you may be required to obtain a license.



# Structure of the ECCN

## Categories

0	Nuclear & Miscellaneous
1	Materials, Chemicals, Microorganisms, & Toxins
2	Materials Processing
3	Electronics
4	Computers
5	Telecommunications & Information Security
6	Sensors & Lasers
7	Navigation & Avionics
8	Marine
9	Aerospace & Propulsion

## Product

A	Systems, Equipment, & Components
B	Test, Inspection, & Production Equipment
C	Materials
D	Software
E	Technology

A - finished product

B - used to make the item

C - raw materials

D - computer software/code

E - Idea

## Control Reasons

000-099	National Security
100-199	Missile Technology
200-299	Nuclear Nonproliferation
300-399	Chemical & Biological
500-599	National Security
600-699	Wassenaar / former USML
900-999	Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN

# Reasons for Controls:

Multi-lateral- Regime /  
International Convention-Based

**CW = Chemical Weapons Convention**

**CB = Chemical & Biological Weapons**

**NP = Nuclear Nonproliferation**

**NS = National Security**

**MT = Missile Technology**

**FC = Firearms Control**

**UN = United Nations Embargo**

**EI = Encryption Item**

Unilateral- United States  
Government determination

*CC = Crime Control*

*AT = Anti-Terrorism*

*RS = Regional Stability*

*SI = Significant Item*

*SL = Surreptitious Listening*

**Note: ECCNs may have multiple reasons for control**

Short Supply, a unilateral reason for control, was removed by the Export Control Reform Act of 2018 (ECRA).

# Trade Sanctioned Persons and Organizations Lists

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1. [The Specially Designated Nationals and Blocked Persons List](#) (Treasury)
2. [The Foreign Sanctions Evaders List](#) (Treasury)
3. [The Entity List](#) (Commerce)
4. [The Denied Persons List](#) (Commerce)
5. [The Unverified List](#) (Commerce)
6. [The Nonproliferation Sanctions List](#) (State)
7. [The AECA Debarred List](#) (State) *Arms Export Control Act*

# Search the Consolidated Screening List

Search [eleven screening lists](#) at one time by filling in the search boxes below. If you get too many results, try including more information to the additional fields. If you get too few results, try searching one field at a time.

## Keyword

Search for words in the name, alternative names (aliases), title of the entity, and additional remarks regarding the entity.

## Name

Search for an entity's name or one of its alternative names.

## Fuzzy Name

When set to off, the spelling of the Name you search for must be correct to get results. When set to on, the spelling for the Name you search for may be slightly off. Check the score for each result to determine how close a match it is to the entity's name or its alternative names. A score of 100 is an exact match. Results are returned with the highest scores first.

## Address

Search for the street address, city, province, and postal code of an entity.

## Sources

Choose which of the eleven screening lists that you want to search.

## Countries

Choose which countries that you want to search. Note, the Nonproliferation Sanctions and ITAR Debarred lists do not include the country with an entity. If you choose to search for entities by country then you will not be searching these two lists.

SEARCH

**export.gov**

Helping U.S. Companies Export

## Supplement No. 1 to Part 738 - Commerce Country Chart

[REASON FOR CONTROL]

Countries	Chemical and biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control		
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3
Afghanistan	X	X	X	X		X	X	X	X	X		X		X
Albania <sup>2</sup> <sup>3</sup>	X	X		X		X	X	X	X	X				
Algeria	X	X		X		X	X	X	X	X		X		X
Andorra	X	X		X		X	X	X	X	X		X		X
Angola	X	X		X		X	X	X	X	X		X		X
Antigua and Barbuda	X	X		X		X	X	X	X	X	X	X		X
Argentina	X					X		X	X		X	X		X
Armenia	X	X	X	X		X	X	X	X	X		X	X	
Australia	X	X		X		X	X	X	X	X		X		X
Austria	X					X		X	X					
Azerbaijan	X					X		X	X			X		X

# Export Control Review Elements

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*Determination as to whether or not authorization is required to export is determined by the following criteria: 1) what is the ECCN of the item; 2) where it is going; 3) who is the end-user; and 4) what is the end-use*

## 1. Restricted Party Screening

## 2. Determination of Export Control Status

- ❖ **Not subject to Export Controls:**
  - Does not meet definition of “Export”, “Release”, “Technology”, “Technical Data”
  - Meets definition of Fundamental Research
  - Appropriately released into the Public Domain
- ❖ **Subject to Export Controls: Export Control Jurisdiction and Export Classification**
  - ITAR [USML Category]
  - EAR (ECCN)
  - OFAC

# Export Control Review Elements

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## 3. License Determination

- No License Required; Justification as to why
  - License Required
    - License Exception/Exemption
    - General or Specific License
- *Determination as to whether or not authorization is required to export is determined by the following criteria:*
- 1) what is the ECCN of the item; 2) where it is going; 3) who is the end-user; and 4) what is the end-use*

# Non-Compliance Consequences

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Non-compliance can result in substantial monetary and criminal penalties against the *institution* and the *individual*.

- Civil penalties per violation up to \$250,000 (EAR) or \$500,000 (ITAR)
  - Note: the government generally has the authority to charge more than one violation per transaction
- Criminal fines for willful violations of up to \$1 million and/or 20 years imprisonment
  - Academics have been given prison sentences in connection with willful violations
- Denial of export privileges under the EAR
- Debarment from participating directly or indirectly in the export of ITAR-controlled defense articles, technical data or defense services.



# Non-Compliance Consequences – Case Example

**Dr. Reece Roth was plasma physicist, senior professor at University of Tennessee**

**Indicted for making ITAR-controlled “exports” through his small company because he disclosed U.S. Air Force contract research results when he:**

- Allowed University of Tennessee graduate students from Iran, China to work on his Air Force contract research**
- Carried U.S. Air Force contract research reports containing ITAR-controlled information on his laptop while traveling to China**

**His laptop was seized and searched upon return from China**

**Convicted in December 2008 after separate jury trial; sentenced to 4 years in prison after all other defendants had already pled guilty to charges.**

# Case Study – Physical & Deemed Export

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**Dr. Brite Starr, a Professor in the Department of Biology at University X in Northeastern U.S., studies nocturnal animals for her research. To better observe their behavior, Dr. Starr recently purchased a thermal imaging infrared camera. Since the camera cost \$15,000, she had to use the university procurement process. The camera was delivered to Dr. Starr's lab.**

**Dr. Starr has recently become interested in studying some nocturnal animals that are unique to Cuba.**

**Dr. Starr collaborates closely with colleagues at University Y in Canada, as well the University of Havana, Cuba ( a former post-doc of Dr. Starr's leads the Cuban research team). She has been invited by her colleagues in Cuba to attend a symposium and give a key note. Dr. Starr plans to stay an extra two weeks in Cuba so that she can observe these unique nocturnal animals. She travels to Cuba with her thermal imaging infrared camera and her laptop.**

**Two weeks later, Dr. Starr travels to Canada where she meets with her collaborator at University Y, Dr. St. Pierre. While there, she discusses her recent observations from Cuba with Dr. St. Pierre's lab group. She shows the camera and its advanced capabilities. and discusses some of the clips she has filmed. Dr. St. Pierre and his lab team, which includes a Syrian and a Russian post-doc, provide useful feedback. After a short stay in Canada, Dr. Starr returns home to the U.S.**

*Why is Dr. Starr's international research trip problematic in terms of Export Controls?*

# Case Study, cont'd

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Principal Investigators ultimately have responsibility for the identification of export control scenarios and putting protection measures in place to prevent violations...

However, export control compliance is ---  
**everyone's** responsibility.

# How can I comply with these regulations?

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## Best Practices

### CONTACT YOUR EXPORT CONTROL OFFICIAL WHEN:

- Grants or contracts contain sponsor restrictions on publication or Participation in the terms and conditions.
  - Shipping or carrying technology overseas.
  - Hosting foreign visitors other than students, postdocs, H-1Bs.
  - Interacting with and travel to sanctioned countries (e.g. Russia, Iran, Cuba, Syria, Sudan, North Korea).
  - When purchasing export controlled equipment.
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## Best Practices – Overseas Travel

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- ❑ **Contact the Export Control Official or Equivalent for:**
    - ✓ Restricted Party Screening (RPS) of institutions you plan to visit.
    - ✓ License requirements for technology that you are taking with you.
  
  - ❑ **Take a CLEAN laptop** – assume nothing is secure. Also, high level encryption is not allowed in some countries (mass market acceptable).
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# Training to Increase Awareness

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- Complete CITI Training on Export Control
- Department of Commerce Training Videos

# Thank You!

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Questions?

Comments?

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