



# Export Control Information

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## Montana State University

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# What are Export Controls

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**US laws that regulate the distribution to foreign nationals and foreign countries of strategically important products, services and information for reasons of foreign policy and national security.**



# US Export Controls and Responsible Agencies

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- **State Department: Inherently military technologies--International Traffic in Arms Regulations (ITAR)**
- **Commerce Department: “Dual-Use” technologies (primary civil use) -- Export Administration Regulations (EAR)**
- **Treasury Department, Office of Foreign Assets Control (OFAC): Prohibits transactions with countries subject to boycotts, trade sanctions, embargoes**



# Implications of Export Laws

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- No effect on 90% of university research
- But **potential** impact on
  - Ability of foreign students to participate in research involving a controlled technology (mostly under ITAR)
  - Ability to provide services (including training in the use of controlled equipment) to foreign nationals (ITAR, EAR, OFAC)
  - Ability to send controlled equipment to foreign countries (ITAR, EAR, and OFAC)



# Dissemination of Information

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- Laws prohibit the disclosure without a license from Commerce or State of controlled technical information by any method to a foreign national in the U.S. or abroad.
- Methods of disclosure include
  - Fax
  - Telephone discussions
  - E-mail communications
  - Computer data disclosure
  - Face-to-face discussions
  - Training sessions
  - Tours which involve visual inspections



# License Requirement for Dissemination of Information Does Not Apply If

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- One of 3 exclusions applies:
  - Education Exclusion (ITAR, EAR)
  - Fundamental Research Exclusion (ITAR, EAR)
  - Employment Exclusion (ITAR only)



# Education Exclusion

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- No license is required to share with foreign nationals “information concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain”
- Students using controlled equipment to conduct research should be registered for a class



# Fundamental Research Exclusion

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- No license is required to disclose to foreign nationals information which is “published and which is generally accessible or available to the public [through, for example] fundamental research in science and engineering at universities where the resulting information is *ordinarily published and shared broadly in the scientific community.*”



# The Fundamental Research Exclusion



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Is destroyed if the University accepts any contract clause that:

- Forbids the participation of foreign nationals;
- Gives the sponsor a right to *approve* publications resulting from the research; or
- Otherwise operates to restrict participation in research and/or access to and disclosure of research results



# University Strategy

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Protect fundamental research exclusion  
by eliminating contractual clauses that  
destroy our ability to claim the exclusion



# Employment Exclusion

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- No license is required to share covered technical data with a foreign national who
  - Is not a national of certain countries;
  - Is a full-time, bona fide MSU employee;
  - Has a permanent address in the US while employed;
  - Is advised in writing not to share covered technical data with any foreign nationals.



# Providing Services to Foreign Nationals

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- ITAR and EAR prohibit assisting & training foreign nationals anywhere in the design, development, use, testing etc. of controlled equipment without a license from Commerce or State
  - Ex. Fermenters having a capacity of at least 20 liters



# No Exclusions

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- There are no **clear** exclusions or safe harbors from the requirement to obtain a license for foreign nationals to use controlled equipment, however....
- The University maintains that the Education Exclusion applies if the student uses the equipment as part of a program of instruction



# Providing Services Under OFAC

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- OFAC prohibits the provision of services to countries subject to US sanction programs, boycotts, etc. w/o a license
- Providing services include:
  - Conducting surveys and interviews in boycotted countries
  - Providing marketing & business services to persons in boycotted countries



# Providing Services Cont'd

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- Creating new information materials at the behest of persons in a boycotted country
- Engaging the services of persons in a boycotted country to develop new information materials



# Countries under Boycotts

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- Examples: Cuba, Iran, Iraq, Libya, Liberia, Sudan, Syria, North Korean
- For full, up to date listing, visit OFAC website:  
<http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html>





# Requirement of a license to ship controlled equipment out of US

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- A license is required to ship equipment controlled by **ITAR** to **any** foreign country
- There are few exclusions or exceptions
- It can take months to obtain a license from State.
- Notify OSP as early as possible.



# Shipping Equipment Cont'd

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- A license **may** be required to ship equipment out of the US under the **EAR** depending on whether the equipment is controlled, where it is being sent and whether an exception applies.
- NOTE: A license may be required to ship software out of the US!
- The process to classify equipment under the EAR is very tedious, detailed and time consuming. Contact OSP early!



# Shipping Equipment Cont'd

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- There is a presumption under **OFAC** laws that any and all shipments of equipment and provision of services to countries subject to US sanctions/boycotts or persons in those countries are **ILLEGAL**.
- Balkans, Burma, Cuba, Iran, Iraq, Libya, Liberia, Sudan, Syria, Zimbabwe



# Laptop Exception

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- *Excluding embargoed countries*, faculty who wish to take their laptops out of the country to use in a university project that qualifies as fundamental research may be able to do so under the license exception for temporary export (TMP) if the laptop meets the requirement for "tools of trade" and is under control of the MSU faculty member (15 CFR Part 740.9).



# Accepting Export Controlled Information from Others

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- Need a Non-Disclosure Agreement
- To be marked Export Controlled
- Contact OSP if receiving such material to determine compliance issues
- May be received by U.S. citizen if:
  - Information is ancillary to and not actually required for project
  - The right to publish remains unrestricted

# Administrative and Criminal Penalties

- Termination of export privileges (EAR and ITAR)
- Suspension and/or debarment from government contracting (EAR and ITAR)
- Voluntary disclosure of violations serves as a “mitigating factor” in deciding penalties
- Criminal (willful violations):
  - Up to \$1 million for the University or company
  - Up to \$250K per violation for *individuals* and/or up to 10 years in prison
- Civil
  - Up to \$12k per violation for *individuals* and the University/corporations



# Proposal Stage Red Flag Items

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- Does the Project involve
  - Shipping equipment to a foreign country?
  - Collaborating with foreign colleagues in foreign countries?
  - Training foreign nationals in using equipment?
  - Working with a country subject to a US boycott?



# If you answer yes...

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- A determination must be made by OSP as to possible license requirements

Note 1: If license is needed it takes *much time and effort of faculty* and can be months in process.

Note 2: These laws apply to all activities – not just sponsored projects





# Export Control Contract Review Tool – *What to Look For*

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## **Contract clauses which:**

- a. Reference U.S. export regulations, ITAR, EAR, OFAC.
- b. Restrict non-U.S. entity participation based on country of origin.
- c. Prohibit access by non-U.S. citizens to project information.
- d. Prohibit the hiring of non-U.S. persons.
- e. Grant the Sponsor a pre-approval right over research publications.
- f. Reference "classified" or "sensitive" material or refers to "security clearance for personnel."
- g. Grant the Sponsor a right to prepublication review for matters other than the inclusions of patent and/or proprietary Sponsor information.
- h. Allow the Sponsor to claim resulting research information as proprietary or trade secret.
- i. Require the delivery of an object, article, or thing (does not mean a final report) to non-US entity.



# Export Control Contract Review Tool – continued...

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## References to particular federal regulations

### **DFAR 252.204-7000, Disclosure of Information**

The Contractor shall not release to anyone outside the Contractor's organization any unclassified information...

**"FAR 52.227-17, Rights in Data - Special Works"...(d)** Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer...

**"FAR 52.215-9530 (a)** The parties acknowledge that technical data generated under this contract may be subject to export control, including disclosure to foreign nationals/representatives, whether such data is provided orally or in written form. The contractor agrees to obtain written approval from the Contracting Office (PCO) before assigning any foreign national/ representative to perform work under the contract or before granting foreign nationals or their representatives access to data related to the following items/subject matter, whether such data is provided by the Government or generated under this contract.



# Export Control Contract Review Tool – continued...

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## **H-6 Dissemination of Information**

a. There shall be no dissemination or publication, except within and between the Contractor and any subcontractors, of information developed under this contract or contained in the reports to be furnished pursuant to this contract without prior written approval of the COTR.

## **52.004-4400 FOREIGN NATIONALS PERFORMING UNDER CONTRACT (FEB 2002)**

In accordance with Title 8 U.S.C. 1324a, local Foreign Disclosure Officers (FDOs) may approve access by foreign nationals working on unclassified public domain contracts for the duration of the contract, provided the foreign nationals have appropriate work authorization documentation.



# Export Control Contract Review Tool – continued...

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## **Release of Information, July 2002 (ARL 52.005-4401)**

### **III. NSDD-189 - Helpful Directive for supporting fundamental research exemption**

**NSDD -189** - This Directive supports the university's claim that publication of research results should not be restricted in government contracts.

'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." It is the policy of this Administration that, to the maximum extent possible, the products of fundamental research remain unrestricted. It is also the policy of this Administration that, where the national security requires control, the mechanism for control of information generated during federally-funded fundamental research in science, technology and engineering at colleges, universities and laboratories is classification."

# Export Controls (EAR/ITAR) and Embargoes (OFAC)

\*This resource was created by the MIT Office of Sponsored Programs (OSP)

## Country

## Implicates

Afghanistan	OFAC, EAR (even EAR 99), ITAR (License will be denied)
Armenia	ITAR (License will be denied)
Azerbaijan	ITAR (License will be denied)
Balkans (Macedonia, S. Serbia, Montenegro, W. Balkans)	OFAC, EAR (even EAR 99)
Belarus	ITAR (License will be denied)
Burma*	OFAC, EAR (even EAR 99), ITAR (License will be denied)
China*	EAR Entity Chart (even EAR 99), ITAR (License will be denied)
Congo* (Zaire)	ITAR (License will be denied)
Cuba <sup>1</sup>	OFAC, EAR (even EAR 99), ITAR (License will be denied)
Haiti*	ITAR (License will be denied)
India	EAR Entity Chart (even EAR 99)
Iran <sup>1</sup>	OFAC, EAR (even EAR 99), ITAR (License will be denied)
Iraq <sup>1**</sup>	OFAC, EAR, ITAR (License will be denied)
Israel	EAR Entity Chart (even EAR 99)
Kosovo	EAR (even EAR 99)
Liberia*	OFAC, EAR (even EAR 99), ITAR (License will be denied)
Libya <sup>1</sup>	OFAC, EAR (even EAR 99), ITAR (License will be denied)

# Export Controls (EAR/ITAR) and Embargoes (OFAC)

Continued...

## Country

## Implicates

Montenegro	EAR (even EAR 99), ITAR (License will be denied)
N. Korea <sup>1</sup>	OFAC, EAR (even EAR 99), ITAR (License will be denied)
Pakistan	EAR Entity Chart (even EAR 99)
Russia	EAR Entity Chart (even EAR 99)
Rwanda*	EAR (even EAR 99), ITAR (License will be denied)
Serbia	EAR (even EAR 99), ITAR (License will be denied)
Sierra Leone	OFAC, EAR (even EAR 99)
Somalia*	ITAR (License will be denied)
Sudan <sup>1*</sup>	OFAC, EAR (even EAR 99), ITAR (License will be denied)
Syria <sup>1</sup>	ITAR (License will be denied)
Unita (Angola)	OFAC, EAR (even EAR 99), ITAR (License will be denied)
Vietnam	ITAR (License will be denied)
Yugoslavia	OFAC, EAR (even EAR 99), ITAR (License will be denied)



# Export Controls (EAR/ITAR) and Embargoes (OFAC)

Continued...

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**<sup>1</sup> State Department Terrorism Countries (T-7) (Note that Iraq is no longer considered a country that cooperates with terrorists.)**

\* US Arms Embargoed Countries

\*\* The U.S. lifted most sanctions on Iraq on May 23, 2003. As of June 6, 2003, transfers of many of the goods, software and technology on the Commerce Control List continue to require a license from the Office of Foreign Assets Control even though they are no longer embargoed. The licensing authority is expected to be transferred to the Commerce Department soon. Sanctions remain on assets previously blocked by U.S. sanctions. Prohibitions remain on engaging in transactions with certain Iraqi cultural property and with certain high-ranking representatives of the former regime and their agents. The General Prohibitions under the Commerce Department regulations remain in effect.



# Short List of Export-Controlled Technologies

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## **CATEGORIES: EXPORT ADMINISTRATION REGULATIONS**

[http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

- Category 0** Nuclear Materials, Facilities and Equipment (and Miscellaneous Items)
- Category 1** Materials, Chemicals, Microorganisms and Toxins
- Category 2** Materials Processing
- Category 3** Electronics Design, Development and Production
- Category 4** Computers
- Category 5** (Part 1) - Telecommunications - (Part 2) - Information Security
- Category 6** Sensors and Lasers
- Category 7** Navigation and Avionics
- Category 8** Marine
- Category 9** Propulsion Systems, Space Vehicles and Related Equipment





# Short List of Export-Controlled Technologies - continued...

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## **CATEGORIES: INTERNATIONAL TRAFFICKING IN ARMS REGULATIONS**

<http://www.pmdtc.org/reference.htm>

**Category I** Firearms, Close Assault Weapons and Combat Shotguns

**Category II** Guns and Armament

**Category III** Ammunition/Ordnance

**Category IV** Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

**Category V** Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

**Category VI** Vessels of War and Special Naval Equipment

**Category VII** Tanks and Military Vehicles

**Category VIII** Aircraft and Associated Equipment

**Category IX** Military Training Equipment



# Short List of Export - Controlled Technologies - continued...

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**Category X** Protective Personnel Equipment

**Category XI** Military Electronics

**Category XII** Fire Control, Range Finder, Optical and Guidance and Control Equipment

**Category XIII** Auxiliary Military Equipment

**Category XIV** Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

**Category XV** Spacecraft Systems and Associated Equipment

**Category XVI** Nuclear Weapons, Design and Testing Related Items

**Category XVII** Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

**Category XVIII** Directed Energy Weapons

**Category XIX** [Reserved]

**Category XX** Submersible Vessels, Oceanographic and Associated Equipment  
**Category XXI** Miscellaneous Articles



# Office of Sponsored Programs

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