Export Control Fact Sheet

What is an Export?

• Transfers of controlled information, including technical data, to persons and entities outside the U.S.
• Shipment of controlled physical items, such as scientific equipment, that require export licenses from the U.S. to a foreign country.
• Verbal, written, electronic, and/or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals (“deemed exports”) in the U.S.

How are these exports controlled?

Regulations:

• Export control regulations have been in existence since the 1940s.
• The main regulations are:
  - Export Administration Regulations (EAR).
  - International Traffic in Arms Regulations (ITAR).
  - Office of Foreign Assets Control (OFAC).
• EAR is implemented by the Dept. of Commerce.
• ITAR is implemented by the State Department.
• OFAC is implemented by the Treasury Department.
• These regulations control the export by requiring a license first.
• The export control regulations exist to:
  - limit the military potential of U.S. adversaries
  - prevent proliferation of weapons of mass destruction
  - advance U.S. foreign policy goals
  - protect U.S. economy and promote trade goals

Items controlled by regulations:

• Exports controlled by the EAR are not inherently military in nature (“dual use”)
• Exports controlled by ITAR are inherently military
• EAR regulates goods and technology on the Commodity Control List (CCL)
• The CCL covers ten topical categories and a “catch-all” category
• Examples of CCL categories includes electronics, microorganisms and toxins, computers, lasers and sensors, propulsion systems
• ITAR regulates defense articles, defense services and technical data listed on the U.S. Munitions List (USML)
• Some USML categories are specific, e.g., spacecraft systems (which includes GPS with certain characteristics), but in general the USML lacks the specificity of the CCL
• Examples of defense articles on the USML include specified chemical agents, cameras designated for military purposes, etc.
• Defense services means furnishing assistance (including training) to foreign nationals related to defense articles and furnishing controlled “technical data”
• Technical data means information for design, development, production, operation, testing or maintenance of defense articles.
How do these export control laws affect universities?

- May require that the university obtain a license from the Commerce or State Department before exporting
- Violations of these laws can result in criminal penalties (including fines and/or prison sentences for individuals) and civil sanctions, and may affect future research opportunities
- There are some “safe harbor” provisions that exempt universities from obtaining a license to export
- No license needed to disclose technical information to foreign nationals in the U.S. (“deemed exports”) in classes or laboratories, at conferences or in publications, or to other countries if the information is
  - in the public domain;
  - generated through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community; or
  - involves “educational information” (i.e., information released by instruction in catalog courses and associated teaching laboratories at academic institutions in the U.S., other than for certain encrypted software).
- Information is in the public domain, if, in part, it is published and generally accessible to the public through unlimited and unrestricted publication
- Fundamental research is research that is carried out openly and without restrictions on publication or access to or dissemination of the research results
- Controlled equipment, encrypted software, chemicals, biological agents and toxins, and other articles or services on lists referenced above generally can not be exported abroad without a license.

How does Case comply with export control regulations?

- Educational programs for faculty and staff
- Review RFPs for Export Control language
- Checklist on University Review Form
- Distribute follow-up Export Control Questionnaire as necessary
- Review terms and conditions associated with grants and contracts to ensure that fundamental research exemption is not compromised
- Notify PIs when export control restrictions apply to sponsored research
- Obtain export license when necessary