



Export Controls 101

Presented by: Angela Pilla, EXCS, University Export Control Officer

Objectives

Upon completion of this training, participants should be able to:

- Form a basic understanding of Export Control regulatory scope, purposes and current review process
- Identify areas of research subject to federal regulations that are not generally known to the research community
- Understand expectations for CUNY Export Control Administrators
- Determine when to reach out for additional information/assistance

Export Terminology

Export – any oral, written, electronic, visual or physical item shipment, transfer or transmission sent **outside of the U.S.**

Deemed Export – releasing or transferring of information or technology to a foreign national/person **within the U.S.**

Foreign National/Person – any person who is not a U.S. citizen or lawful permanent resident (e.g., green card holder) or protected individual

(can also refer to: any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated in the United States or organized to do business in the U.S.)

Technology– specific information that is necessary for development, production, or use of a product

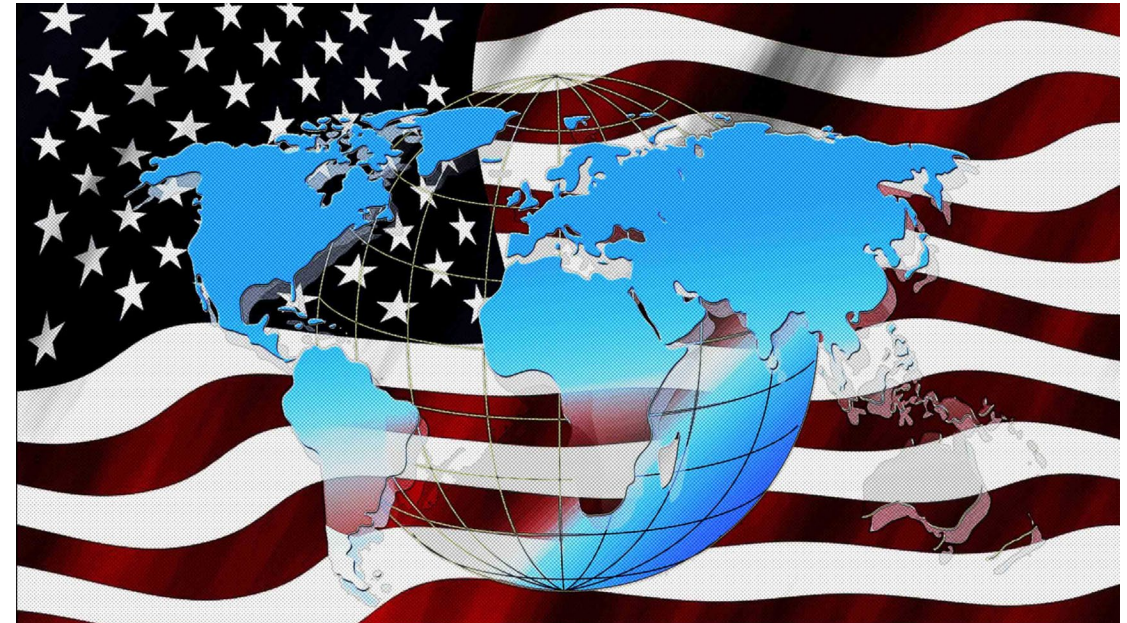
Technical data - information that is required for the design, development, operation, installation, etc. of defense articles (e.g., blueprints, plans, diagrams, engineering specifications, etc.)

What are export controls? What are their purpose?

U.S. Export Controls are federal laws, regulations, sanctions and embargoes that restrict the transfer or export/release of controlled goods, technology/technical data, information, services, and software to foreign nationals in or outside the U.S.

Their purpose:

- ✓ Support U.S. national security and foreign policy
- ✓ Prevent terrorism
- ✓ Prevent proliferation of weapons of mass destruction (WMD)
- ✓ Preserve U.S. economic competitiveness



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Who administers the export control regulations?

Department of Commerce – Bureau of Industry & Security (BIS)

- Regulates commercial goods/services with potential military applications (dual-use) through the Export Administration Regulations (EAR)
- Commerce Control List (CCL)
- EAR99

Department of State – Directorate Defense Trade Controls (DDTC)

- Regulates exports of single-use articles/services and related technical data that are military in nature through the International Traffic in Arms Regulations (ITAR)
- Safeguarding U.S. National Security
- U.S. Munitions List (USML)

Department of Treasury – Office of Foreign Assets Control (OFAC)

- Enforces embargoes and trade restrictions against: foreign countries, governments, entities, and individuals that threaten national security through the Foreign Assets Control Regulations (FACR)
- Specially Designated Nationals (SDN)

Activities that may require an export controls review

- Engaging in research that involves controlled materials, technical data, and biological agents; shipping/transferring items, software or technology/technical data depending on the item, destination, recipient and end use
- International collaborations with countries such as **Cuba, Crimea, Donetsk, Luhansk (regions in Ukraine), Iran, North Korea, and Syria**
- Teaching, researching or collaborating with foreign nationals or entities in the U.S. and abroad if they are associated with sanctioned countries (including providing and sharing research results or protected intellectual property with individuals or entities associated with sanctioned countries)
- Hiring/Hosting foreign nationals on campus (i.e., visitors)
- Foreign national involvement in research projects in the U.S. (Deemed Export)
- Training foreign nationals that may have access to export-controlled data or technology, including foreign nationals on tours through research areas that may be restricted
- Traveling to or working in sanctioned countries, including traveling with controlled materials, technical data and/or technology
- Sponsored research agreements containing contractual restrictions on publication, dissemination and foreign national involvement
- Department of Defense (DoD) related research projects
- Material Transfer Agreements (MTAs) involving exporting chemicals, toxins, research equipment, etc.

Roles and Responsibilities of CUNY Export Control Administrators (ECA)

- Provide initial advice to the CUNY faculty, staff and students at their respective college regarding export control issues, including export licensing requirements
- Communicate with the CUNY Office of Research (OR) to ensure compliance with export control regulations
- Implement a Technology Control Plan (TCP)
- Coordinate export control activities of other college functions including:
 - Human Resources
 - Information Technology
 - Facilities Management
 - Procurement
 - Shipping & Receiving
- Identify export control training needs at their college and address in collaboration with OR

Preliminary Evaluation Form

This document should be completed so that the ECA can perform a preliminary review of a project that may have export control implications. Once completed, please send to University Export Control Officer for any questions answered 'yes' or if you need additional assistance.

CUNY Export Control Preliminary Evaluation Form		
CUNY Export Control Overview and list of Export Control Administrators are available on the Research Compliance web site at http://www.cuny.edu/research/compliance/Export-Control.html .		
1. Please answer the following questions, using the CUNY Export Compliance Overview as a guide, to perform a preliminary evaluation of whether a project may be subject to export control regulations; in making this evaluation, be sure to consider whether any of the issues mentioned below are addressed in the related grant, contract, MTA, MOU or NDA .		
	Yes	No
Project documents mention U.S. export control regulations	<input type="radio"/>	<input type="radio"/>
Sponsor restricts non-US entity participation	<input type="radio"/>	<input type="radio"/>
Sponsor prohibits access by non-US persons to project information	<input type="radio"/>	<input type="radio"/>
Sponsor prohibits the hiring of non-US persons	<input type="radio"/>	<input type="radio"/>
Project involves international transfer of controlled items or data	<input type="radio"/>	<input type="radio"/>
Sponsor claims that the results are proprietary	<input type="radio"/>	<input type="radio"/>
You expect the physical export of controlled items or information	<input type="radio"/>	<input type="radio"/>
You expect to travel internationally as part of your responsibilities for the project	<input type="radio"/>	<input type="radio"/>
You expect digital or electronic transmission of controlled data to a foreign destination	<input type="radio"/>	<input type="radio"/>
Sponsor requires publication restrictions for reasons other than patent filing or proprietary information	<input type="radio"/>	<input type="radio"/>
Project documents indicate that export-controlled information or technology will be furnished for use in the project	<input type="radio"/>	<input type="radio"/>
Project will involve use of advanced cryptographic technology including access to source code for cryptography and/or technical data to develop the source code	<input type="radio"/>	<input type="radio"/>
If you have checked yes to any of the above, please contact your College's Export Control Administrator for additional review and evaluation.		

What is an export license? How do I know if one is required?

An export license is prior authorization from one or more of the government agencies that gives the licensee the permission to export a specific commodity or engage in a specific activity that is normally prohibited.

Key questions to ask yourself:

- What is being shipped, sent, transmitted, etc.?
- Who is receiving the item? (end-user)
- Where is the item going?
- What will it be used for? (end-use)
- Is this a temporary export?

Research areas affected by export controls

- Engineering
- Space Sciences
- Computer Sciences
- Research with lasers
- Encryption technology
- Research involving advanced cryptographic technology
- Research involving controlled chemicals, biological agents, toxins or select agents



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Fundamental Research

Any basic or applied research in science and engineering, the results of which are ordinarily 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

Fundamental Research Exclusion (FRE)

FRE applies to:

- Research conducted in the U.S.
- Research with no publication restrictions other than pre-publication review with the purpose of ensuring protection of proprietary information
- Research with no sponsor restrictions on nationality of the personnel involved in research
- The results of the research

- Research conducted outside of the U.S.
- Physical shipment of goods
- Use of equipment controlled by ITAR
- Specific software (including encryption software) with access limitations
- Research not intended for publication or restrictions apply

FRE does NOT apply to:

Restricted Party Screening – when is it needed?

Screening should be done prior to engaging in the following activities prior to:

- Engaging into a contract with a vendor
- Exchanging information or materials as part of a Confidentiality Disclosure Agreement (CDA) or a Material Transfer Agreement (MTA)
- Collaborating with foreign nationals either in the U.S. or overseas
- Traveling international for CUNY related research, conferences, meetings etc. especially sanctioned countries
- Hiring/hosting foreign nationals
- Signing an agreement with foreign support or foreign sponsors

Descartes Visual Compliance

DESCARTES[™]
Visual Compliance Research Edition[™]

Descartes Visual Compliance screens against:

- Export related Restricted, Denied, and Blocked Persons Lists
- Sanctions programs and Related Blocked Persons Lists
- General Services Administration (GSA)
- Politically Exposed Persons (PEP) and Office of the Inspector General (OIG)
- International Terrorists, Blocked Person, Wanted and Entity Lists



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Technology Control Plan (TCP)

A Technology Control Plan (TCP) is a documented set of procedures that generally includes but is not limited to the following areas:

- Physical controls (laboratory security)
- IT Controls (data file/computer access security)
- Deemed Export license requirements
- Protocols for sharing and transferring the items with other authorized parties outside the scope of the CUNY laboratory
- Personnel authorization
- Labeling of items as controlled
- Timeframe for which the TCP is applicable



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Non-compliance with U.S. Export Regulations

Violations of the Export Administration Regulations (EAR)

- May be subject to both criminal and administrative penalties for both **individuals** and **institutions**
- Criminal penalties include up to 20 years of imprisonment and up to \$1M in fines per violation, or both
- Administrative monetary penalties can reach up to \$300,000 per violation or twice the value of the transaction, whichever is greater
- Violators may also be subject to the denial of their export privileges

Violations of the International Traffic in Arms Regulations (ITAR)

- Civil - \$1M per violation, debarment
- Criminal - \$1M or up to 20 years imprisonment, debarment

Violations of the Foreign Assets Controls Regulations (FACR)

- Civil and criminal penalties can exceed several million dollars (civil penalties vary by sanctions program)
- Fines or imprisonment or both

Voluntary Self-Disclosure

- Strongly encouraged and can be used as a mitigating factor when determining administrative penalties (if any are imposed)

Additional Information/Resources



[Research](#) / [Research Integrity & Compliance](#) / [Export Control](#)

Export Control

> CONFLICT OF INTEREST

> EXPORT CONTROL

> OVERVIEW

> EXPORT CONTROL FAQ'S

> EXPORT CONTROL PROCEDURES

> EXPORT CONTROL ADMINISTRATORS

> HUMAN RESEARCH PROTECTION PROGRAM

> RESEARCH AGREEMENTS

> SPONSORED RESEARCH AND PROJECTS

> RESEARCH INTEGRITY

> TRAINING & EDUCATION

> RESOURCE LIBRARY

> WHO TO CONTACT

> REPORT A CONCERN

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At CUNY, we are committed to maintaining an open teaching and research environment that supports the global benefit of our academic and research endeavors. At the same time, we remain equally committed to complying with export control regulations pertaining to the conduct of our research and the dissemination of its products. The information provided on this site details the regulatory requirements related to export control issues in research and sponsored projects and University policies and procedures for meeting these requirements.

Policy and Guidance

1. Export Compliance Policy Memo [PDF](#)
2. I-129 Policy Memo [PDF](#)
3. Export Control Overview
4. Guidance: Communication Amongst Compliance Functions [PDF](#)
5. Guidance: Faculty Academic Leave Process [PDF](#)
6. Guidance: International Travel Briefing [PDF](#)

Procedures, Work Instructions and Forms

1. Export Control Procedures
2. Work Instructions by Functional Area
3. Preliminary Evaluation Form [PDF](#)
4. I-129 Questionnaire [PDF](#)

Frequently Asked Questions

[Glossary of Acronyms](#) [PDF](#)

[CUNY Export Control Administrators](#)

Export Control Cases and Violations in the News



The New York Times

3 N.Y.U. Scientists Accepted Bribes From China, U.S. Says

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By Benjamin Weiser

May 20, 2013

It was, the chief federal prosecutor in Manhattan said on Monday, “a case of inviting and paying for foxes in the henhouse.”

Three researchers at the [New York University School of Medicine](#) who specialized in magnetic resonance imaging technology had been working on research sponsored by a grant from the National

May 20 UMass Lowell Fined For Entity List Violations

Posted by Clif Burns at 4:54 pm on May 20, 2013
Category: BIS - Entity List



Back in April the University of Massachusetts at Lowell (the “University”) agreed to pay to the Bureau of Industry and Security (“BIS”) a suspended penalty of \$100,000 in connection with its unlicensed export of an atmospheric sensing device, antennae and cables valued at slightly more than \$200,000 to Pakistan’s Space and Upper Atmosphere Research Commission (“SUPARCO”). The fine will be waived if the university does not commit any more export violations during a probationary period of two years.

The items at issue were all classified as EAR99. The violation occurred because SUPARCO is on BIS’s Entity List. The licensing policy for SUPARCO has a presumption of approval for EAR99 items, so had the university applied for a license for these exports, it almost certainly would have been granted.

The atmospheric sensing device is likely the basis for [this research paper](#) titled “Study of maximum electron density NmF2 at Karachi and Islamabad during solar minimum (1996) and solar maximum (2000) and its comparison with IRI” and co-authored by employees of SUPARCO and a professor at the University. This paper raises an interesting deemed export issue since transfer of technology, even EAR99 technology, would be a violation of the EAR unless the transferred technology was “publicly available” or if it qualifies as “fundamental research.” It is not always easy to determine whether discussions with foreign persons on the Entity List fall within these exceptions, so cooperative projects with such persons by a



For additional assistance

Please contact:

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