

# An Overview of the Regulations:

Export Controls  
Sanctions  
Anti-Boycott  
Foreign Corrupt Practices Act

# What are Export Controls?

- **A group of laws and regulations that:**
  - **Restrict ability to freely send or share certain goods, technology or information outside the U.S. or with non-U.S. nationals inside the U.S.**
  - **Prohibit certain transactions due to trade sanctions or other restrictions**
- **These laws are intended to promote U.S. national security and other policy goals**
- **They have broad extra-territorial reach**
- **Violations carry significant penalties, fines and both University and individual liability**

# Who Administers U.S. Export Controls?

## **International Traffic in Arms Regulations (ITAR)**

### **Department of State**

- Directorate of Defense Trade Controls (DDTC)
- 22 CFR Parts 120 - 130

Licenses Defense  
Articles and Services

## **Export Administration Regulations (EAR)**

### **Department of Commerce**

- Bureau of Industry and Security (BIS)
- 15 CFR Parts 730 - 774

Primary Licensing  
Agency for Dual-Use  
Exports

## **Office of Foreign Assets Control (OFAC)**

### **Department of the Treasury**

- 31 CFR 500

Administers Economic  
Sanctions (Embargoes)

# Acronyms...

- EAR** Export Administration Regulations
- ITAR** International Traffic in Arms Regulations
- BIS** Bureau of Industry & Security (Commerce)
- DDTC** Directorate of Defense Trade Controls (State)
- CCL** Commerce Control List
- NLR** No License Required
- ECCN** Export Control Classification Number
- CCATS** Commodity Classification Automated Tracking System (EAR)
- CJ** Commodity Jurisdiction (ITAR)
- FRE** Fundamental Research Exception

# It's Not Just Shipping...

- Taking an export controlled instrument outside the U.S.
- Being asked for a certification of compliance relating to a post doc's visa application
- Sharing technical information about controlled items with non-U.S. nationals, even in the U.S. (“deemed export”)
- Training non-U.S. nationals on how to install ITAR-controlled GPS receiver
- Emailing export controlled technology or information about the technology outside the U.S.
- Uploading “strong” encryption open source software code on a website
- Bringing a laptop to Iran, Syria or Sudan (unless a license exception applies)
- Dealing with the Ministry of Health of Sanctioned Countries
- Attending a conference in Iran and bringing a laptop which happens to contain an operating manual for a controlled instrument
- Speaking at a conference in Paris and discussing layouts you received from a vendor for ITAR controlled semiconductors which are not in the public domain

➤ These activities may require a prior license from Commerce, State or OFAC

# What's the Risk?

February 1, 2012

**Department of Justice**

**United States Attorney William C. Killian Eastern District of Tennessee**

**Former University Of Tennessee Professor John Reece Roth Begins Serving Four-Year Prison Sentence On Convictions Of Illegally Exporting Military Research Data**

**During the course of a contract he allowed two foreign national students to access export controlled data and equipment, and to export some of the data from the contract on a trip to China.**

**U.S. Attorney Bill Killian said, "This sentence communicates the importance of export compliance to academia and industry, especially in the research and development communities."**

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# I-129 Visa Certification: Visa Issues for International Scholars?

- Certification is required for all H-1B and O-1 petitions.
- Employers certify that they have reviewed the EAR and ITAR and have determined whether a license is required from the U.S. Department of Commerce or the U.S. Department of State to allow an employee access to controlled technology (even if in the US).
- The hiring supervisor, PI, Department Chair, or other appropriate University authority responsible for oversight of an employee's work and access to technology must attest to whether or not a license is required.

## Attestation (check one):

\_\_\_ I certify that a license is **not** required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data (as described in EAR and ITAR) to the foreign person.

OR

\_\_\_ I certify that a license is **required** from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data (as described in EAR and ITAR) to the foreign person and I will prevent access to the controlled technology or technical data to the foreign person until the required license or other authorization has been obtained.

# The Lists (Presently under reform)

- Munitions (ITAR, USML)

- Weapons, ammunition, explosives, propellants
- Chemical, biological, toxicological agents (nerve agents, defoliants, bioagents, bioagent detectors & vaccines)
- Spacecraft, missiles, rockets, torpedoes, bombs, mines
- Aircraft, ships & submersibles, tanks
- Fire control, guidance and control equipment (IMUs, IR Cameras, Night Vision)
- Military electronics
- Protective personnel equipment
- Submersive vessels, Oceanographic and Associated Equipment

- Dual Use (EAR, CCL)

- Nuclear (redirect -> ITAR, NRC, DoE) (Uranium)
- Materials, chemicals, microorganisms and toxins (Nipah, Staph, Avian Influenza, Ebola, Anthrax)
- Aerospace, propulsion, avionics
- Marine
- Navigation (GPS, beyond commercial)
- Electronics, computers (Adjusted Peak Performance)
- Telecommunications, information security (High Encryption > 64 Bit)
- Sensors and lasers (IR Cameras, Oscilloscopes, Mass Spectrometers)

# Fundamental Research Policy Protects Research Output



1985

National Security  
Decision Directive 189



11/1/2001

Affirmation  
of NSDD-189



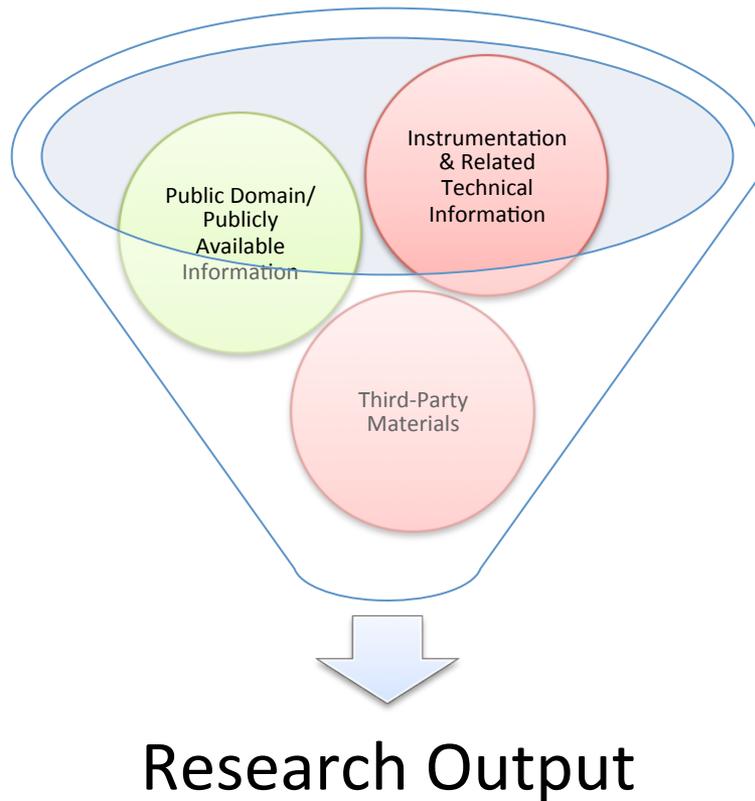
2010

Re-affirmation  
of NSDD-189

**“Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared within the scientific community”**

“No restriction may be placed upon the conduct or reporting of  
federally funded fundamental research  
that has not received national security classification...”

# How do Export Controls Affect Universities?



INPUT may be export controlled

- Licenses needed for foreign students/ researchers participating
- Licenses needed to bring items abroad to carry out research
- Cannot publish INPUT
- May not be able to publish all RESEARCH OUTPUT

# How do Export Controls Affect Universities?

## *How to reconcile Columbia's commitment to unrestricted publication with restrictions posed by Export Controls?*

### ➤ Preserve and rely upon the exceptions that protect universities

- Fundamental Research (output only)
  - No publication restrictions in contracts, except short IP review
  - No restrictions on foreign national participation
  - Segregate Fundamental Research from controlled technical information (generally input)
- Public Domain/Publicly Available: Applies to our research as well as other information.
  - ITAR Public Domain – must be published first --Public release of technical data is an export subject to licensing
  - EAR Publicly Available – published or will be published
- *Bona Fide* Employee of a University: available under the ITAR and EAR, in the U.S. only, limitations apply
- Educational Information:
  - EAR: Information released by instruction in catalogue courses and associated teaching labs
  - ITAR: Information about **general** scientific, mathematical or engineering principles **commonly** taught at universities

**Controlled equipment/materials/information – does not mean there is a violation**

➤ Exceptions and licenses may be available with advance notice

# Universities, cont'd....

**Deemed Export - *Releasing, furnishing, showing or disclosing export controlled technical information to a Foreign National, even in the US, is considered or “deemed” to be an export to the home country(ies) of the Foreign National.***

## **What technical information is controlled?**

- EAR: Generally, development, production, operation, installation, maintenance, repair, overhaul AND refurbishing.
- ITAR: Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance OR modification of defense articles.
- E.g.; blueprints, formulae, material specifications, operating manuals
- How to turn on equipment, NO, but how it operates, MAYBE
- Cannot provide training on ITAR-controlled instruments (e.g.; defense service)
- If there is controlled technical information, will need to assess foreign national involvement
- I-129 Visa Petitions require certification of compliance with deemed export restrictions

# Trade Sanctions

The U.S. has broad sanctions against **Cuba, Iran, North Korea, Syria, Sudan, and Crimea Region of the Ukraine**

The U.S. also prohibits dealing with Specially Designated Nationals - people and entities-SDNs, not based on their nationality

Sanctions are directed at countries/governments and individuals (SDNs), and prohibit the following:

- Dealings with Sanctioned Countries, Governments or SDNs
  - Negotiating contracts
  - Sending/receiving payments through a sanctioned banks, or with Specially Designated Nationals
  - “Facilitating” or “approving” a foreign (non-U.S.) person in its business dealings with sanctioned countries or persons
- Importing/exporting goods or services from/to Sanctioned Countries

Compliance requires screening of parties and review of activities.

# Sanctions, Cont'd

- Travel (and transactions ordinarily incident to travel) except for Cuba is generally permitted. Receiving honoraria, bringing equipment, smart phones, laptops to sanctioned countries is not (without a license or unless a license exception applies)
- There are exceptions for publication and informational materials; attendance at open conferences may be permitted, though all must be carefully reviewed
- Gov't licenses (authorizations) may be granted in some cases, permitting otherwise prohibited activities, but can take 6-12 months to process
- Sanctions are issued by the US, UN, EU, and many other countries creating complex compliance framework depending on location

# Antiboycott and Anticorruption Laws

**U.S. Antiboycott** laws prohibit participating in “unsupported international boycotts” (e.g.; Arab League – Israel, China/Taiwan) and require reporting of requests. Examples include:

- Accepting a grant that indicates no Israeli nationals will work on a project
- Agreeing not to do business with an entity that has Jewish employees

**US Foreign Corrupt Practices Act (FCPA)** -- Prohibits the offer of anything of value to any foreign official for the purpose of influencing the decision of that official to do anything that assists the offeror in the obtaining or retaining of business, or gaining an improper advantage

- Laws all over the world prohibit corruption of foreign officials and sometimes criminalize commercial bribery
- Dealings, gifts and activities involving officials should be assessed for reasonableness
- Under these laws professors or physicians are often considered government officials

# Export Controls vs. Economic Sanctions, Antiboycott Laws, FCPA

	Who or what is regulated?	U.S. Reach Abroad?	What is prohibited?
ITAR and EAR Export Controls	Goods, software and technology	Worldwide for any item made of U.S. Content, or anything entering U.S. jurisdiction	Certain end uses, end users (non-U.S.) or end destinations (plus certain transshipment requirements)
Economic sanctions	People	U.S. Persons Worldwide	Transactions involving certain persons, countries or activities
Antiboycott laws	People	U.S. Persons Worldwide	Providing certain information or agreeing to boycott participation
Foreign Corrupt Practices Act	People	U.S. Persons Worldwide	Offering anything to a foreign government official in exchange for any advantage

# Where to go for help?

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**Research Compliance and Training Website:** [http://www.columbia.edu/cu/compliance/docs/international\\_research/index.html](http://www.columbia.edu/cu/compliance/docs/international_research/index.html)